

State of Wisconsin



1997 Assembly Bill 886

Date of enactment: **June 12, 1998**
Date of publication*: **June 25, 1998**

1997 WISCONSIN ACT 281

AN ACT *to amend* 48.685 (2) (a) 1., 48.685 (2) (ag) 1., 48.685 (2) (am) (intro.), 48.685 (2) (b) 1. (intro.), 48.685 (2) (c), 48.685 (3) (a), 48.685 (3) (b), 48.685 (5) (intro.), 48.685 (5m) and 48.685 (6) (b); and *to create* 48.685 (2) (b) 4. and 938.396 (9) of the statutes; **relating to**: prohibiting a person who has been adjudicated delinquent on or after his or her 12th birthday for committing a serious crime from day care licensure, certification, employment, contracting or residence.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 48.685 (2) (a) 1. of the statutes, as created by 1997 Wisconsin Act 27, is amended to read:

48.685 (2) (a) 1. That the person has been convicted of a serious crime or, if the person is an applicant for issuance or continuation of a license to operate a day care center or for initial certification under s. 48.651 or for renewal of that certification or if the person is proposing to contract with a school board under s. 120.13 (14) or to renew a contract under that subsection, that the person has been convicted of a serious crime or adjudicated delinquent on or after his or her 12th birthday for committing a serious crime.

SECTION 3. 48.685 (2) (ag) 1. of the statutes, as created by 1997 Wisconsin Act 27, is amended to read:

48.685 (2) (ag) 1. That the person has been convicted of a serious crime or, if the person is an employe, prospective employe, contractor, prospective contractor, nonclient resident or prospective nonclient resident of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14) or of a day care provider that is certified under s. 48.651, that the person has

been convicted of a serious crime or adjudicated delinquent on or after his or her 12th birthday for committing a serious crime.

SECTION 4m. 48.685 (2) (am) (intro.) of the statutes, as created by 1997 Wisconsin Act 27, is amended to read:

48.685 (2) (am) (intro.) Subject to subd. 5., the department, a county department or a school board shall obtain all of the following with respect to a person specified under par. (a) (intro.) and shall obtain the information specified in subds. 1. to 5. with respect to a person specified in par. (ag) (intro.) who is under 18 years of age, but not under 12 years of age, and who is an employe, prospective employe, contractor, prospective contractor, nonclient resident or prospective nonclient resident of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14) or of a day care provider that is certified under s. 48.651:

SECTION 5. 48.685 (2) (b) 1. (intro.) of the statutes, as created by 1997 Wisconsin Act 27, is amended to read:

48.685 (2) (b) 1. (intro.) Subject to subds. 1. e., 2. and 3. and 4., every entity shall obtain all of the following with respect to a person specified under par. (ag) (intro.):

SECTION 7d. 48.685 (2) (b) 4. of the statutes is created to read:

* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

48.685 (2) (b) 4. Subdivision 1. does not apply with respect to a person under 18 years of age, but not under 12 years of age, who is an employe, prospective employe, contractor, prospective contractor, nonclient resident or prospective nonclient resident of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14) or of a day care provider that is certified under s. 48.651 and with respect to whom the department, a county department or a school board is required under par. (am) (intro.) to obtain the information specified in par. (am) 1. to 5.

SECTION 7g. 48.685 (2) (c) of the statutes, as created by 1997 Wisconsin Act 27, is amended to read:

48.685 (2) (c) If the background information form completed by a person under sub. (6) (am) indicates that the person is not ineligible to be employed, contracted with or permitted to reside at an entity for a reason specified in par. (ag) 1. to 5., an entity may employ or contract with the person or permit the person to reside at the entity for not more than 60 days pending the receipt of the information sought under par. (am) 1. to 5. or (b) 1. An entity shall provide supervision for a person who is employed, contracted with or permitted to reside as permitted under this paragraph.

SECTION 7m. 48.685 (3) (a) of the statutes, as created by 1997 Wisconsin Act 27, is amended to read:

48.685 (3) (a) Every 4 years or at any time within that period that the department, a county department or a school board considers appropriate, the department, county department or school board shall request the information specified in sub. (2) (am) 1. to 5. for all persons who are licensed, certified or contracted to operate an entity and shall request the information specified in sub. (2) (am) 1. to 5. for all persons under 18 years of age, but not under 12 years of age, who are employes, contractors or nonclient residents of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (4) or of a day care provider that is certified under s. 48.651.

SECTION 7p. 48.685 (3) (b) of the statutes, as created by 1997 Wisconsin Act 27, is amended to read:

48.685 (3) (b) Every 4 years or at any time within that period that an entity considers appropriate, the entity shall request the information specified in sub. (2) (b) 1. a. to e. for all persons specified in sub. (2) (ag) (intro.) other than persons who are under 18 years of age, but not under 12 years of age and who are employes, contractors or nonclient residents of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14) or of a day care provider that is certified under s. 48.651.

SECTION 8. 48.685 (5) (intro.) of the statutes, as created by 1997 Wisconsin Act 27, is amended to read:

48.685 (5) (intro.) The department may license to operate an entity, a county department may certify under s. 48.651 and a school board may contract with under s.

120.13 (14) a person who otherwise may not be licensed, certified or contracted with for a reason specified in sub. (2) (a) 1. to 5., and an entity may employ, contract with or permit to reside at the entity a person who otherwise may not be employed, contracted with or permitted to reside at the entity for a reason specified in sub. (2) (ag) 1. to 5., if the person demonstrates to the department, the county department or the school board by clear and convincing evidence and in accordance with procedures established by the department by rule that he or she has been rehabilitated. No person who has been convicted of any of the following offenses, and no person who is an applicant for issuance or continuation of a license to operate a day care center or for initial certification under s. 48.651 or for renewal of that certification, who is proposing to contract with a school board under s. 120.13 (14) or to renew a contract under that subsection or who is an employe, prospective employe, contractor, prospective contractor, nonclient resident or prospective nonclient resident of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14) or of a day care provider that is certified under s. 48.651, and who has been convicted of any of the following offenses or adjudicated delinquent on or after his or her 12th birthday for committing any of the following offenses, may be permitted to demonstrate that he or she has been rehabilitated:

SECTION 9. 48.685 (5m) of the statutes, as created by 1997 Wisconsin Act 27, is amended to read:

48.685 (5m) Notwithstanding s. 111.335, the department may refuse to license a person to operate an entity, ~~a county department may refuse to certify a day care provider under s. 48.651, a school board may refuse to contract with a person under s. 120.13 (14),~~ and an entity may refuse to employ, contract with or permit to reside at the entity a person specified in sub. (2) (ag) (intro.) if the person has been convicted of an offense that the department has not defined as a "serious crime" by rule promulgated under sub. (7) (a), or specified in the list established by rule under sub. (7) (b), but that is, in the estimation of the department, ~~county department, school board or entity,~~ substantially related to the care of a client. Notwithstanding s. 111.335, the department may refuse to license a person to operate a day care center, a county department may refuse to certify a day care provider under s. 48.651, a school board may refuse to contract with a person under s. 120.13 (14), a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14) and a day care provider that is certified under s. 48.651 may refuse to employ, contract with or permit to reside at the day care center or day care provider a person specified in sub. (2) (ag) (intro.) if the person has been convicted of or adjudicated delinquent on or after his or her 12th birthday for an offense that the department has not defined as a "serious crime" by rule promulgated under sub. (7) (a), or specified in the list established by rule

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under sub. (7) (b), but that is, in the estimation of the department, county department, school board, day care center or day care provider substantially related to the care of a client.

SECTION 9g. 48.685 (6) (b) of the statutes, as created by 1997 Wisconsin Act 27, is amended to read:

48.685 (6) (b) For persons specified under par. (a) who are regulated, licensed or certified by, or registered with, the department, for persons specified in par. (am) 1. who are under 18 years of age, but not under 12 years of age, and who are employes, prospective employes, contractors or prospective contractors of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (4) or of a day care provider that is certified under s. 48.651, for persons specified in par. (am) 2., and for other persons specified by the department by rule, the entity shall send the background information form to the department. For all other persons specified

in par. (a) and for all other persons specified under par. (am) 1., the entity shall maintain the background information form on file for inspection by the department.

SECTION 10. 938.396 (9) of the statutes is created to read:

938.396 (9) Notwithstanding sub. (2) (a), if a juvenile is adjudged delinquent for committing a serious crime, as defined in s. 48.685 (7) (a), the court clerk shall notify the department of justice of that fact. No other information from the juvenile's court records may be disclosed to the department of justice except by order of the court. The department of justice may disclose any information provided under this subsection only as part of a criminal history record search under s. 48.685 (2) (am) 1. or (b) 1. a.

SECTION 11. Effective date.

(1) This act takes effect on October 1, 1998, or on the day after publication, whichever is later.