



State of Wisconsin  
1997 - 1998 LEGISLATURE

LRBs0185/1  
TAY:kaf:hmh

**ASSEMBLY SUBSTITUTE AMENDMENT 2,  
TO 1997 ASSEMBLY BILL 203**

May 28, 1997 - Offered by Representative HAHN.

1     **AN ACT to amend** 49.498 (3) (b) 1., 55.043 (1) (a) (intro.), 55.043 (4) (intro.), 55.043  
2           (4) (e), 55.043 (4) (f), 55.043 (5), 146.40 (4g) (a) 3., 146.40 (4r) (a), 146.40 (4r) (b)  
3           and 813.123 (5) (a) 3. a.; and **to create** 20.435 (6) (di), 46.90 (9m), 50.065 and  
4           146.40 (4r) (am) of the statutes; **relating to:** requiring criminal history  
5           searches of certain persons hired or proposed to be hired by certain facilities or  
6           services, requiring conduct of an elder abuse awareness campaign, authorizing  
7           positions for the board on aging and long-term care, clarifying requirements for  
8           reporting the misappropriation of property, abuse or neglect of certain patients  
9           or facility residents, making appropriations and providing a penalty.

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

10           **SECTION 1.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert  
11           the following amounts for the purposes indicated:

	<b>1997-98</b>	<b>1998-99</b>
--	----------------	----------------

**20.435 Health and family services, department**

**of**

(6) SUPPORTIVE LIVING; STATE OPERATIONS

(di) Elder abuse awareness cam-

paign

GPR

A

-0-

25,000

**SECTION 2.** 20.435 (6) (di) of the statutes is created to read:

20.435 **(6)** (di) *Elder abuse awareness campaign*. The amounts in the schedule for the purpose of conducting a statewide elder abuse awareness campaign under s. 46.90 (9m).

**SECTION 3.** 46.90 (9m) of the statutes is created to read:

46.90 **(9m)** ELDER ABUSE AWARENESS CAMPAIGN. From the appropriation under s. 20.435 (6) (di), the department shall conduct a statewide elder abuse awareness campaign by use of mass media communication, including public service announcements, and by development, printing and distribution of informational brochures and posters, to increase the general public's awareness of the problem of elder abuse.

**SECTION 4.** 49.498 (3) (b) 1. of the statutes is amended to read:

49.498 **(3)** (b) 1. Inform each resident, orally and in writing at the time of admission to the nursing facility, of the resident's legal rights during the stay at the nursing facility, including a description of the protection of personal funds under sub. (8) and a statement that a resident may file a complaint with the department under s. 146.40 (4r) (a) concerning neglect, abuse or misappropriation of property, neglect or abuse of a resident.

1           **SECTION 5.** 50.065 of the statutes is created to read:

2           **50.065 Prior convictions, employes of certain facilities or services. (1)**

3           In this section:

4           (a) "Adult day care center" means a facility that is operated by an adult day care  
5           provider that provides care and services to persons who are aged 60 or older for less  
6           than 24 hours a day.

7           (b) "Hospice" has the meaning given in s. 50.90 (1).

8           (c) "Hospital" has the meaning given in s. 50.33 (2).

9           (d) "Treatment facility" has the meaning given in s. 51.01 (19).

10          **(2)** (a) Any person who is engaged in the business of providing the services of  
11          an adult day care center, an adult family home, an assisted living facility, a  
12          community-based residential facility, a home health agency, a hospice, a nursing  
13          home, a hospital or a treatment facility shall request the department of justice to  
14          perform a criminal history search on any individual who may have access to patients,  
15          residents, or clients of the facility or service whom the adult day care center, adult  
16          family home, assisted living facility, community-based residential facility, home  
17          health agency, hospice, nursing home, hospital or treatment facility proposes to hire.  
18          The adult day care center, adult family home, assisted living facility,  
19          community-based residential facility, home health agency, hospice, nursing home,  
20          hospital or treatment facility may charge the applicant the actual cost of the criminal  
21          history search.

22          (b) 1. Notwithstanding s. 111.335 (1), upon application for employment with  
23          an adult day care center, adult family home, assisted living facility,  
24          community-based residential facility, home health agency, hospice, nursing home,

1 hospital or treatment facility, the applicant shall attest in writing to one of the  
2 following:

3 a. A statement that the applicant has not been convicted of a crime in this state  
4 or in any other state.

5 b. A statement that the applicant has been convicted of a crime in this state or  
6 in any other state. If the applicant attests to a statement under this subd. 1. b., the  
7 applicant shall further state in writing the nature of the convictions.

8 2. A person who intentionally attests to a false statement under this paragraph,  
9 including the intentional omission of any conviction, may be fined not more than  
10 \$500.

11 (c) An adult day care center, adult family home, assisted living facility,  
12 community-based residential facility, home health agency, hospice, nursing home,  
13 hospital or treatment facility may employ a person pending the completion of a  
14 criminal history search under par. (a) unless the person has attested under par. (b)  
15 to having a criminal conviction that prohibits the adult day care center, adult family  
16 home, assisted living facility, community-based residential facility, home health  
17 agency, hospice, nursing home, hospital or treatment facility from employing the  
18 person under sub. (3).

19 **(3)** (a) No adult day care center, adult family home, assisted living facility,  
20 community-based residential facility, home health agency, hospice, nursing home,  
21 hospital or treatment facility may intentionally employ an individual who may have  
22 access to patients or residents of the facility or service who has been convicted under  
23 s. 940.01 to 940.03, 940.05, 940.06, 940.19, 940.20, 940.21, 940.225 (1) to (3), 940.285  
24 (2), 940.29, 940.295 (3), 940.30, 940.305, 940.31, 943.10 (2), 943.23 (1g) to (1r), 943.32  
25 (2), 948.02 (1) and (2), 948.025, 948.03, 948.05, 948.055, 948.06, 948.07 or 948.30 or

1 of solicitation under s. 939.30, conspiracy under s. 939.31 or attempt under s. 939.32,  
2 to commit any of these crimes and who has not been pardoned for the violation  
3 resulting in the conviction. Whoever violates this paragraph may be required to  
4 forfeit not more than \$1,000.

5 (b) An adult day care center, adult family home, assisted living facility,  
6 community-based residential facility, home health agency, hospice, nursing home,  
7 hospital or treatment facility may employ a person who has been convicted under s.  
8 940.23, 941.30, 943.10 (1), 943.20, 943.30, 943.32 (1), 943.38 or 948.04, or of  
9 solicitation under s. 939.30, conspiracy under s. 939.31 or attempt under s. 939.32  
10 to commit any of these crimes, only if all of the following apply:

11 1. A period of at least 4 years has elapsed since the person's jail or prison  
12 sentence or probation or parole was discharged.

13 2. The person has had no other convictions in the 4 years immediately  
14 preceding the date on which the person applies to the adult day care center, adult  
15 family home, assisted living facility, community-based residential facility, home  
16 health agency, hospice, nursing home, hospital or treatment facility.

17 (bm) Whoever violates par. (b) may be required to forfeit not more than \$500.

18 (c) Notwithstanding s. 111.335, an adult day care center, adult family home,  
19 assisted living facility, community-based residential facility, home health agency,  
20 hospice, nursing home, hospital or treatment facility may refuse to employ a person  
21 who has been convicted of a crime that is determined by the adult day care center,  
22 adult family home, assisted living facility, community-based residential facility,  
23 home health agency, hospice, nursing home, hospital or treatment facility to be  
24 reasonably related to the circumstances of employment.

1           (4) An adult day care center, adult family home, assisted living facility,  
2 community-based residential facility, home health agency, hospice, nursing home,  
3 hospital or treatment facility may not employ any individual who may have access  
4 to patients, residents or clients unless it has requested from the department any  
5 information regarding that person that is contained in the registry under s. 146.40  
6 (4g). An adult day care center, adult family home, assisted living facility,  
7 community-based residential facility, home health agency, hospice, nursing home,  
8 hospital or treatment facility may not employ any person who has a record of  
9 misappropriation of property, neglect or abuse of a patient, resident or client. A  
10 person who violates this subsection may be required to forfeit not more than \$1,000.

11           **SECTION 6.** 55.043 (1) (a) (intro.) of the statutes is amended to read:

12           55.043 (1) (a) (intro.) If a county protective services agency has probable cause  
13 to believe that there is ~~abuse, neglect or misappropriation of property, neglect or~~  
14 abuse, the county protective services agency may conduct an investigation in  
15 Milwaukee county to determine if the vulnerable adult in question is in need of  
16 protective services. The county protective services agency shall conduct the  
17 investigation in accordance with standards established by the department for  
18 conducting the investigations. The investigation shall include at least one of the  
19 following:

20           **SECTION 7.** 55.043 (4) (intro.) of the statutes is amended to read:

21           55.043 (4) OFFER OF SERVICES. (intro.) If upon investigation the county  
22 protective services agency finds ~~abuse, neglect or misappropriation of property,~~  
23 neglect or abuse, the county protective services agency may do one or more of the  
24 following:

25           **SECTION 8.** 55.043 (4) (e) of the statutes is amended to read:

1           55.043 (4) (e) Refer the case to the department of regulation and licensing or  
2           the appropriate examining board if the ~~abuse, neglect or~~ misappropriation of  
3           property, neglect or abuse involves an individual who is required to be licensed,  
4           permitted, certified or registered under chs. 440 to 459.

5           **SECTION 9.** 55.043 (4) (f) of the statutes is amended to read:

6           55.043 (4) (f) Bring a petition for a guardianship and protective service or  
7           protective placement if necessary to prevent ~~abuse, neglect or~~ misappropriation of  
8           property, neglect or abuse and if the vulnerable adult would otherwise be at risk of  
9           serious harm because of an inability to arrange for necessary food, clothing, shelter  
10          and services.

11          **SECTION 10.** 55.043 (5) of the statutes is amended to read:

12          55.043 (5) APPLICABILITY. This section does not apply to patients or residents  
13          of state-operated or county-operated inpatient institutions or hospitals issued  
14          certificates of approval under s. 50.35 unless the alleged ~~abuse, neglect or~~  
15          misappropriation of property, neglect or abuse of such a patient or resident is alleged  
16          to have been done by a person other than an employe of the inpatient institution or  
17          hospital.

18          **SECTION 11.** 146.40 (4g) (a) 3. of the statutes is amended to read:

19          146.40 (4g) (a) 3. Findings of the department under sub. (4r) (b) or of the  
20          hearing officer under sub. (4r) (d) concerning the ~~neglect, abuse or~~ misappropriation  
21          of property, neglect or abuse by an individual listed under subd. 2.

22          **SECTION 12.** 146.40 (4r) (a) of the statutes is amended to read:

23          146.40 (4r) (a) Any individual may report to the department that he or she  
24          believes that a ~~nurse's assistant~~ person employed by or under contract with an adult  
25          day care center, adult family home, assisted living facility, community-based

1 residential facility, home health agency, hospice, nursing home, hospital or  
2 treatment facility has neglected, or abused a resident, patient or client of the adult  
3 day care center, adult family home, assisted living facility, community-based  
4 residential facility, home health agency, hospice, nursing home, hospital or  
5 treatment facility or misappropriated the resident's, patient's or client's property of  
6 ~~a nursing home resident or a hospital patient~~ or that a home health aide has  
7 neglected, or abused a home health agency patient or misappropriated the patient's  
8 property of ~~a home health agency patient~~.

9 **SECTION 13.** 146.40 (4r) (am) of the statutes is created to read:

10 146.40 (4r) (am) An adult day care center, adult family home, assisted living  
11 facility, community-based residential facility, home health agency, hospice, nursing  
12 home, hospital or treatment facility shall report any misappropriation of property,  
13 neglect or abuse of a resident, patient or client by a nurse's assistant, home health  
14 aide or other person employed by or under contract with the adult day care center,  
15 adult family home, assisted living facility, community-based residential facility,  
16 home health agency, hospice, nursing home, hospital or treatment facility to the  
17 department. A person who violates this paragraph may be required to forfeit not  
18 more than \$1,000.

19 **SECTION 14.** 146.40 (4r) (b) of the statutes is amended to read:

20 146.40 (4r) (b) The department shall review and investigate any report  
21 received under par. (a) or (am) and, if the allegation is substantiated, make specific,  
22 documented findings concerning the ~~neglect, abuse or misappropriation of property,~~  
23 neglect or abuse. The department shall in writing by certified mail notify the ~~nurse's~~  
24 ~~assistant or home health aide~~ person specified in the report that his or her name and  
25 the department's findings about him or her shall be listed in the registry under sub.



1 (4g) (a) 2. and 3. unless he or she contests the listings in a hearing before the  
2 department. The written notification shall describe the investigation conducted by  
3 the department, enumerate the findings alleging ~~neglect, abuse or misappropriation~~  
4 of property, neglect or abuse of a ~~nursing home resident or home health agency~~  
5 resident, patient or client of an adult day care center, adult family home, assisted  
6 living facility, community-based residential facility, home health agency, hospice,  
7 nursing home, hospital or treatment facility and explain the consequence to the  
8 ~~nurse's assistant or home health aide~~ person of waiving a hearing to contest the  
9 findings. The ~~nurse's assistant or home health aide~~ person named in the report shall  
10 have 30 days after receipt of the notification to indicate to the department in writing  
11 whether he or she intends to contest the listing or to waive the hearing.

12 **SECTION 15.** 813.123 (5) (a) 3. a. of the statutes is amended to read:

13 813.123 (5) (a) 3. a. That the respondent has interfered with, or based upon  
14 prior conduct of the respondent may interfere with, an investigation of the  
15 vulnerable adult under s. 55.043 and that the interference complained of, if  
16 continued, would make it difficult to determine if ~~abuse, neglect or misappropriation~~  
17 of property, neglect or abuse is occurring or may recur.

18 **SECTION 16. Nonstatutory provisions; department of justice.**

19 (1) CRIMINAL HISTORY SEARCHES. The authorized FTE positions for the  
20 department of justice are increased by 2.0 PR positions on July 1, 1997, to be funded  
21 from the appropriation under section 20.455 (2) (gm) of the statutes, for the purpose  
22 of performing criminal history searches as required under section 50.065 (2) of the  
23 statutes, as created by this act.

24 **SECTION 17. Appropriation changes; aging and long-term care board.**

