



State of Wisconsin
1997 - 1998 LEGISLATURE

LRBs0192/1
TAY:kaf:arm

**ASSEMBLY SUBSTITUTE AMENDMENT 3,
TO 1997 ASSEMBLY BILL 203**

June 3, 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:

	1997-98	1998-99
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20.435 Health and family services, department

of

(6) SUPPORTIVE LIVING; STATE OPERATIONS

(di) Elder abuse awareness cam-

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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), 940.23,
24 940.285 (2), 940.29, 940.295 (3), 940.30, 940.305, 940.31, 941.30, 943.10 (2), 943.23
25 (1g) to (1r), 943.32 (1) and (2), 943.38, 948.02 (1) and (2), 948.025, 948.03, 948.04,

1 948.05, 948.055, 948.06, 948.07 or 948.30 or of solicitation under s. 939.30,
2 conspiracy under s. 939.31 or attempt under s. 939.32, to commit any of these crimes
3 and who has not been pardoned for the violation resulting in the conviction. Whoever
4 violates this paragraph may be required to forfeit not more than \$1,000.

5 (b) Notwithstanding s. 111.335, an adult day care center, adult family home,
6 assisted living facility, community-based residential facility, home health agency,
7 hospice, nursing home, hospital or treatment facility may refuse to employ a person
8 who has been convicted of a crime that is determined by the adult day care center,
9 adult family home, assisted living facility, community-based residential facility,
10 home health agency, hospice, nursing home, hospital or treatment facility to be
11 reasonably related to the circumstances of employment.

12 (4) An adult day care center, adult family home, assisted living facility,
13 community-based residential facility, home health agency, hospice, nursing home,
14 hospital or treatment facility may not employ any individual who may have access
15 to patients, residents or clients unless it has requested from the department any
16 information regarding that person that is contained in the registry under s. 146.40
17 (4g). An adult day care center, adult family home, assisted living facility,
18 community-based residential facility, home health agency, hospice, nursing home,
19 hospital or treatment facility may not employ any person who has a record of
20 misappropriation of property, neglect or abuse of a patient, resident or client. A
21 person who violates this subsection may be required to forfeit not more than \$1,000.

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

23 55.043 (1) (a) (intro.) If a county protective services agency has probable cause
24 to believe that there is ~~abuse, neglect or misappropriation of property, neglect or~~
25 abuse, the county protective services agency may conduct an investigation in

1 Milwaukee county to determine if the vulnerable adult in question is in need of
2 protective services. The county protective services agency shall conduct the
3 investigation in accordance with standards established by the department for
4 conducting the investigations. The investigation shall include at least one of the
5 following:

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

7 55.043 (4) OFFER OF SERVICES. (intro.) If upon investigation the county
8 protective services agency finds ~~abuse, neglect or~~ misappropriation of property,
9 neglect or abuse, the county protective services agency may do one or more of the
10 following:

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

12 55.043 (4) (e) Refer the case to the department of regulation and licensing or
13 the appropriate examining board if the ~~abuse, neglect or~~ misappropriation of
14 property, neglect or abuse involves an individual who is required to be licensed,
15 permitted, certified or registered under chs. 440 to 459.

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

17 55.043 (4) (f) Bring a petition for a guardianship and protective service or
18 protective placement if necessary to prevent ~~abuse, neglect or~~ misappropriation of
19 property, neglect or abuse and if the vulnerable adult would otherwise be at risk of
20 serious harm because of an inability to arrange for necessary food, clothing, shelter
21 and services.

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

23 55.043 (5) APPLICABILITY. This section does not apply to patients or residents
24 of state-operated or county-operated inpatient institutions or hospitals issued
25 certificates of approval under s. 50.35 unless the alleged ~~abuse, neglect or~~

1 misappropriation of property, neglect or abuse of such a patient or resident is alleged
2 to have been done by a person other than an employe of the inpatient institution or
3 hospital.

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

5 146.40 (**4g**) (a) 3. Findings of the department under sub. (4r) (b) or of the
6 hearing officer under sub. (4r) (d) concerning the ~~neglect, abuse or~~ misappropriation
7 of property, neglect or abuse by an individual listed under subd. 2.

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

9 146.40 (**4r**) (a) Any individual may report to the department that he or she
10 believes that a ~~nurse's assistant~~ person employed by or under contract with an adult
11 day care center, adult family home, assisted living facility, community-based
12 residential facility, home health agency, hospice, nursing home, hospital or
13 treatment facility has neglected, or abused a resident, patient or client of the adult
14 day care center, adult family home, assisted living facility, community-based
15 residential facility, home health agency, hospice, nursing home, hospital or
16 treatment facility or misappropriated the resident's, patient's or client's property of
17 a ~~nursing home resident or a hospital patient~~ or that a home health aide has
18 neglected, or abused a home health agency patient or misappropriated the patient's
19 property of a ~~home health agency patient~~.

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

21 146.40 (**4r**) (am) An adult day care center, adult family home, assisted living
22 facility, community-based residential facility, home health agency, hospice, nursing
23 home, hospital or treatment facility shall report any misappropriation of property,
24 neglect or abuse of a resident, patient or client by a nurse's assistant, home health
25 aide or other person employed by or under contract with the adult day care center,

1 adult family home, assisted living facility, community-based residential facility,
2 home health agency, hospice, nursing home, hospital or treatment facility to the
3 department. A person who violates this paragraph may be required to forfeit not
4 more than \$1,000.

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

6 146.40 (4r) (b) The department shall review and investigate any report
7 received under par. (a) or (am) and, if the allegation is substantiated, make specific,
8 documented findings concerning the ~~neglect, abuse or misappropriation of property,~~
9 neglect or abuse. The department shall in writing by certified mail notify the ~~nurse's~~
10 ~~assistant or home health aide~~ person specified in the report that his or her name and
11 the department's findings about him or her shall be listed in the registry under sub.
12 (4g) (a) 2. and 3. unless he or she contests the listings in a hearing before the
13 department. The written notification shall describe the investigation conducted by
14 the department, enumerate the findings alleging ~~neglect, abuse or misappropriation~~
15 ~~of property, neglect or abuse~~ of a ~~nursing home resident or home health agency~~
16 resident, patient or client of an adult day care center, adult family home, assisted
17 living facility, community-based residential facility, home health agency, hospice,
18 nursing home, hospital or treatment facility and explain the consequence to the
19 ~~nurse's assistant or home health aide~~ person of waiving a hearing to contest the
20 findings. The ~~nurse's assistant or home health aide~~ person named in the report shall
21 have 30 days after receipt of the notification to indicate to the department in writing
22 whether he or she intends to contest the listing or to waive the hearing.

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

24 813.123 (5) (a) 3. a. That the respondent has interfered with, or based upon
25 prior conduct of the respondent may interfere with, an investigation of the

1 vulnerable adult under s. 55.043 and that the interference complained of, if
2 continued, would make it difficult to determine if ~~abuse, neglect or misappropriation~~
3 of property, neglect or abuse is occurring or may recur.

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

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

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

11 (1) LONG-TERM CARE OMBUDSMAN PROGRAM. In the schedule under section 20.005
12 (3) of the statutes for the appropriation to the board on aging and long-term care
13 under section 20.432 (1) (a) of the statutes, as affected by the acts of 1997, the dollar
14 amount is increased by \$91,500 for each of fiscal years 1997-98 and 1998-99 to
15 increase the authorized FTE positions for the board on aging and long-term care by
16 2.0 GPR positions beginning July 1, 1997, for performance of services under section
17 16.009 (2) (b) of the statutes.

18 **SECTION 18. Effective dates.** This act takes effect on the day after
19 publication, except as follows:

20 (1) PRIOR CONVICTIONS OF CERTAIN EMPLOYEES. The treatment of section 50.065 of
21 the statutes takes effect on July 1, 1997, or on the day after publication, whichever
22 is later.

23 (END)