



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2009 Senate Bill 331

**Senate Amendment 3, and
Senate Amendment 1 to Senate
Amendment 3**

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2009 Senate Bill 331 makes various changes relating to background checks required for child care providers.

Senate Amendment 3

Senate Amendment 3, as amended by Senate Amendment 1 to Senate Amendment 3 (hereafter, “the amendment”) does the following:

Clarifies Appropriations Provisions

The amendment clarifies that all moneys received from fees charged to child care providers for background checks are appropriated to the Department of Children and Families (DCF) instead of to the Department of Health Services (DHS).

Serious Offenses Added

Under the bill, if a child care provider or a caregiver or nonclient resident of the child care provider is convicted of a serious crime, the child care provider’s license or certification must be immediately revoked or the provider’s contract with a school board to provide child care must be immediately rescinded.

The amendment adds as a serious crime felony representations depicting nudity. [s. 942.09 (2), Stats.]

Under current law, a person who has committed a serious offense may be permitted to demonstrate that he or she has been rehabilitated and then may be licensed, certified, or contracted with as a child care provider or may be permitted to be a caregiver or nonclient resident of a child care provider. The bill lists several criminal offenses for which a person may not be permitted to

demonstrate that he or she has been rehabilitated for the purpose of being licensed, certified, or contracted with as a child care provider or for being a nonclient resident or caregiver in a child care provider's home or facility.

The amendment adds all of the following as offenses for which a child care provider may not be permitted to demonstrate that he or she has been rehabilitated (these provisions do not apply to nonclient residents and day care center employees who have regular contact with clients):

- Identity theft. [s. 943.201, Stats.]
- Theft of an entity's identity. [s. 943.203, Stats.]
- Felony forgery. [s. 943.38 (1) or (2), Stats.]
- Felony receiving stolen property. [s. 943.34 (1), Stats.]
- Felony fraudulent insurance or employee benefit program claim. [s. 943.395 (1), Stats.]
- Felony financial transaction card crime. [s. 943.41 (3) (e), (4) (a), (5), (6), or (6m), Stats.]
- Felony theft of telecommunications service. [s. 943.45 (1), Stats.]
- Felony theft of commercial mobile service. [s. 943.455 (2), Stats.]
- Felony theft of video service. [s. 943.46 (2), Stats.]
- Felony theft of satellite cable programming. [s. 943.47 (2), Stats.]
- Felony retail theft. [s. 943.50 (1m), Stats.]
- Felony computer crime. [s. 943.70 (2) (a) or (am) or (3) (a), Stats.]
- A crime against a financial institution that is a felony. [subch. IV, ch. 943, Stats.]

The bill provides that a person who has been convicted, or adjudicated delinquent, for a violation relating to background checks required for child care providers may not be permitted to demonstrate rehabilitation, if the violation involves providing false information to DCF, a county department, a school board, or a child care provider or other entity.

The amendment adds that a conviction for the intentional withholding of such information from any of these entities also prohibits a person from demonstrating rehabilitation.

Under the bill, there are also criminal offenses for which a person may not be permitted to demonstrate that he or she has been rehabilitated if the offense was committed within the five years before the background check.

The amendment provides that, for these offenses, a person may not be permitted to demonstrate that he or she has been rehabilitated if the person completed his or her sentence, including any

probation, parole, or extended supervision, or was discharged by the Department of Corrections, less than five years before the date of the background investigation. The amendment also makes this change for background checks for purposes of licensing a foster home.

The amendment provides that, if the county department or, in Milwaukee County, DCF, or a licensed child welfare agency under contract with DCF determines that a specific person has abused or neglected a child, the county department, DCF, or the licensed child welfare agency must provide the subunit of DCF that administers the statute relating to background checks for child care providers with information about the person who has been determined to have abused or neglected the child within 15 days after the date of the determination.

Five-Year Ineligibility to Receive a Child Care Subsidy

Under the amendment, if a court finds, or if it is determined after an administrative hearing, that a recipient or former recipient of a child care subsidy has violated any provision of the Wisconsin Share statutes or rules, the individual would be ineligible to receive a subsidy for up to five years beginning on the date of the judgment or decision. This provision would take effect on the day after publication of the bills.

Reporting of Suspected Frauds

The amendment creates additional provisions relating to reporting of suspected frauds. Under the amendment, if any employee of DCF, a county, or a tribal governing body reasonably suspects that fraudulent activity in public assistance programs has occurred or is occurring, the employee would have to immediately report the facts and circumstances contributing to that suspicion to their immediate supervisor.

A supervisor who receives such a report would have to immediately evaluate the report to determine whether there is reason to suspect that the fraudulent activity has occurred or is occurring. If the supervisor determines that there is reason to suspect that the fraudulent activity has occurred or is occurring, the supervisor would have to immediately report the facts and circumstances contributing to that suspicion to the unit of DCF that is responsible for investigating suspected fraudulent activity. In addition, if the immediate supervisor is an employee of DCF or of a county having a population of 145,000 or more (Brown, Dane, Kenosha, Milwaukee, Outagamie, Racine, Rock, Waukesha, and Winnebago), the supervisor would also have to immediately report those facts and circumstances to the sheriff. An immediate supervisor who receives a report on fraudulent activity must keep the identity of the reporter confidential. A sheriff or unit of the department that receives a report must keep the identity of the employee and the immediate supervisor who report the information confidential until the sheriff or unit determines that the report merits further investigation. If the sheriff or unit conducts a full investigation, the sheriff or unit must keep the identity of that employee and immediate supervisor confidential if it is reasonably possible to do so. Any person who fails to report as required under this provision may be required to forfeit not more than \$1,000.

Under the amendment, if an employee of DCF, DHS, a county, or a tribal governing body reasonably suspects fraudulent activity relating to the Wisconsin Works program or other economic support program under ch. 49, Stats., and reports the facts and circumstances contributing to that

suspicion to any management employee of DCF, DHS, the county, or the tribal governing body or to the district attorney, then all of the following apply:

- Any person participating in good faith in the making of a report, as described above, or in initiating, participating in, or testifying in, any action or proceeding in which fraudulent activity is alleged has immunity from any civil or criminal liability that results by reason of the action. Good faith must be presumed.
- The DCF, DHS, a county, a tribal governing body, or an employee of DCF, DHS, a county, or a tribal governing body may not take disciplinary action against, or threaten to take disciplinary action against, any person because the person in good faith reported any information or initiated, participated in, or testified in, any action or proceeding in which fraudulent activity was alleged or because DCF, DHS, the county, the tribal governing body, or the employee believes that the person in good faith reported any information or initiated, participated in, or testified in, such an action or proceeding.
- Any employee of DCF, DHS, a county, or a tribal governing body who is subjected to disciplinary action, or who is threatened with disciplinary action, may file a complaint with the Department of Workforce Development.

Use of Recovered Public Assistance Funds

The amendment would allow county departments, W-2 agencies, and tribal governing bodies to use recovered public assistance overpayments for any purpose allowable under the federal temporary assistance to needy families (TANF) program, rather than only for cash benefits to W-2 participants. This provision would take effect on the day after publication of the bills.

Effective Date

The amendment also modifies the effective date so that the Act takes effect the first day of the third month beginning after publication.

Legislative History

On November 3, 2009, the Joint Committee on Finance:

- Recommended adoption of Senate Amendment 1 to Senate Amendment 3 by a vote of Ayes, 15; Noes 0.
- Recommended adoption of Senate Amendment 3, as amended by Senate Amendment 1, by a vote of Ayes, 15; Noes, 0.
- Recommended the bill for passage, as amended, by a vote of Ayes, 15; Noes, 0.

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