



2009 SENATE BILL 499

January 29, 2010 – Introduced by Senators DARLING, LAZICH, PLALE, OLSEN, COWLES and HOPPER, cosponsored by Representatives GUNDRUM, HONADEL, ZIEGELBAUER, DAVIS, KERKMAN, PRIDEMORE, STRACHOTA, MONTGOMERY, VOS, LEMAHIEU, TOWNSEND, VAN ROY, GUNDERSON, BROOKS, SUDER, KLEEFISCH, SPANBAUER, MURTHA, LOTHIAN, BIES, PETERSEN, MEYER, VUKMIR, RIPP, PETROWSKI, A. OTT, ZIPPERER and GOTTLIEB. Referred to Committee on Children and Families and Workforce Development.

1 **AN ACT** *to amend* 48.685 (5) (br) 6.; and *to create* 48.685 (5) (br) 5g. and 48.685
2 (5) (br) 5m. of the statutes; **relating to:** prohibiting a person who has been
3 convicted or adjudicated delinquent for committing a drug-related felony or
4 who is the subject of a pending criminal charge or delinquency petition for
5 committing a drug-related felony from showing that he or she has been
6 rehabilitated for purposes of being licensed, certified, or contracted with to
7 provide child care, of being employed or contracted as a caregiver of a child care
8 provider, or of being permitted to reside at a premises where child care is
9 provided.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Children and Families (DCF) may not license a person to operate a day care center; DCF in a county having a population of 500,000 or more, a county department of human services or social services, or an agency contracted by DCF to certify day care providers for purposes of reimbursement under the Wisconsin Works program may not certify a day care provider for those purposes; and a school board may not contract with a person to provide a day care program (collectively, “child care provider”) if a background

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investigation indicates that the person has been convicted or adjudicated delinquent on or after his or her 12th birthday for committing a serious crime, including a drug-related felony, or is the subject of a pending criminal charge or delinquency petition alleging that the person has committed a serious crime, including a drug-related felony, on or after his or her 12th birthday unless the person shows that he or she has been rehabilitated.

Similarly, a child care provider may not employ or contract with a caregiver or permit a nonclient resident to reside at a premises where child care is provided if a background investigation indicates that the caregiver or nonclient resident has been convicted or adjudicated delinquent on or after his or her 12th birthday for committing a serious crime, including a drug-related felony, or is the subject of a pending criminal charge or delinquency petition alleging that the person has committed a serious crime, including a drug-related felony, on or after his or her 12th birthday unless the caregiver or nonclient resident shows that he or she has been rehabilitated.

Current law, however, prohibits any person who has been convicted or adjudicated delinquent on or after his or her 12th birthday for committing a drug-related felony from showing 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 (DOC), less than five years before the date of the background investigation.

This bill prohibits a person from showing that he or she has been rehabilitated if a background investigation indicates that the person has been convicted or adjudicated delinquent on or after his or her 12th birthday for committing, or is the subject of a pending criminal charge or delinquency petition alleging that the person has committed on or after his or her 12th birthday, any of the following:

1. A drug-related felony, if the person has ever been convicted or adjudicated delinquent for committing any other crime.
2. A drug-related felony, if the person has never been convicted or adjudicated delinquent for committing any other crime and the person completed his or her sentence, including any probation, parole, or extended supervision, or was discharged by DOC, less than ten years before the date of the background investigation.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

- 1 **SECTION 1.** 48.685 (5) (br) 5g. of the statutes is created to read:
- 2 48.685 (5) (br) 5g. An offense under ch. 961 that is a felony, if the person has
- 3 ever been convicted or adjudicated delinquent for committing any other crime.

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1 **SECTION 2.** 48.685 (5) (br) 5m. of the statutes is created to read:

2 48.685 (5) (br) 5m. An offense under ch. 961 that is a felony, if the person has
3 never been convicted or adjudicated delinquent for committing any other crime and
4 the person completed his or her sentence, including any probation, parole, or
5 extended supervision, or was discharged by the department of corrections, less than
6 10 years before the date of the investigation under sub. (2) (am) or (b) 1.

7 **SECTION 3.** 48.685 (5) (br) 6. of the statutes, as created by 2009 Wisconsin Act
8 76, is amended to read:

9 48.685 (5) (br) 6. A violation of s. 125.075 (1), 125.085 (3) (a) 2., 125.105 (2) (b),
10 125.66 (3), 125.68 (12), 940.09, 940.19 (2), (4), (5), or (6), 940.20, 940.203, 940.205,
11 940.207, 940.25, or 943.23 (1g), a violation of s. 948.51 (2) that is a felony under s.
12 948.51 (3) (b) or (c), or a violation of s. 346.63 (1), (2), (5), or (6) that is a felony under
13 s. 346.65 (2) (am) 5., 6., or 7., or (f), (2j) (d), or (3m), ~~or an offense under ch. 961 that~~
14 ~~is a felony~~, if the person completed his or her sentence, including any probation,
15 parole, or extended supervision, or was discharged by the department of corrections,
16 less than 5 years before the date of the investigation under sub. (2) (am) or (b) 1.

17 **SECTION 4. Initial applicability.**

18 (1) RETROACTIVE APPLICATION. This act first applies to a decision to deny,
19 suspend, revoke, rescind, or refuse to renew a license under section 48.65 of the
20 statutes, a certification under section 48.651 of the statutes, or a contract under
21 section 120.13 (14) of the statutes, or to refuse to pay a child care provider under
22 section 49.133 or 49.155 (7) of the statutes, made on the effective date of this
23 subsection, notwithstanding that the conviction, adjudication, or charge on which
24 the decision is based was obtained or filed before the effective date of this subsection.

25 **SECTION 5. Effective date.**

