



2009 SENATE BILL 500

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, GOTTLIEB and BALLWEG. Referred to Committee on Children and Families and Workforce Development.

1 **AN ACT** *to amend* 48.981 (2) (c), 106.54 (9) and 111.322 (2m) (bm); and *to create*
2 48.685 (6m) and 48.981 (2) (bg) of the statutes; **relating to:** requiring suspected
3 drug activity on the part of a caregiver or nonclient resident of a child care
4 provider to be reported to an immediate supervisor and to the sheriff and
5 suspected or threatened child abuse or neglect on the part of such an individual
6 to be reported under the child abuse and neglect reporting law and providing
7 a penalty.

Analysis by the Legislative Reference Bureau

Under current law, certain persons, such as physicians, teachers, social workers, and child care workers, who have reasonable cause to suspect that a child seen in the course of professional duties has been abused or neglected, or who have reason to believe that a child seen in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur, must report the facts and circumstances contributing to that suspicion or belief to the county department of human services or social services (county department) or, in Milwaukee County, the Department of Children and Families (DCF) or a licensed child welfare agency under contract with DCF or to the sheriff or city, village, or town police department (child abuse and neglect reporting law). A person who makes a report under the child abuse and neglect reporting law may not be discharged from

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employment for doing so and is immune from any liability, civil or criminal, that may result by reason of making the report.

This bill requires an employee of DCF, a county department, an agency contracted by DCF to certify day care providers for purposes of reimbursement under the Wisconsin Works Program (contracted agency), or a school board whose job duties include performing activities relating to the licensing of day care centers by DCF, the certification of day care providers by a county department or contracted agency, or the establishment of or contracting for day care programs by a school board (employee) and who has reasonable cause to suspect that a caregiver or nonclient resident of a day care center, day care provider, or day care program (caregiver or nonclient resident) has abused or neglected a child who is in the care of the day care center, day care provider, or day care program, or who has reason to believe that a caregiver or nonclient resident has threatened such a child with abuse or neglect and that abuse or neglect of the child will occur, to report the facts and circumstances contributing to that suspicion or belief as required under the child abuse and neglect reporting law.

The bill also requires an employee who reasonably suspects that a caregiver or nonclient resident has engaged or is engaging in any drug-related offense to immediately report the facts and circumstances contributing to that suspicion to the employee's immediate supervisor, who must immediately evaluate the report to determine whether there is reason to suspect that the offense has occurred or is occurring. If the immediate supervisor determines that there is reason to suspect that the offense has occurred or is occurring, the immediate supervisor must immediately report the facts and circumstances contributing to that suspicion to the sheriff.

The immediate supervisor must keep the identity of the reporting employee confidential. The sheriff must keep the identity of the reporting employee and the immediate supervisor confidential until the sheriff determines that the report merits further investigation. If the sheriff conducts a full investigation, the sheriff must keep the identity of the reporting employee and immediate supervisor confidential if it is reasonably possible to do so.

Any person participating in good faith in reporting a suspected drug-related offense by a caregiver or nonclient resident or in initiating, participating in, or testifying in, any action or proceeding in which such a drug-related offense is alleged is immune from any liability, civil or criminal, that may result by reason of the action and may not be disciplined, or threatened with disciplinary action, for doing so.

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:

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1 48.685 **(6m)** (a) 1. If any employee of the department, a county department, an
2 agency contracted with under s. 48.651 (2), or a school board whose job duties include
3 performing activities relating to the licensing of day care centers under s. 48.65,
4 certification of day care providers under s. 48.651, or the establishment of or
5 contracting for day care programs under s. 120.13 (14) reasonably suspects that a
6 caregiver or nonclient resident of a day care center, day care provider, or day care
7 program has engaged or is engaging in any offense under ch. 961, the employee shall
8 immediately report the facts and circumstances contributing to that suspicion to the
9 employee's immediate supervisor.

10 2. An immediate supervisor who receives a report under subd. 1. shall
11 immediately evaluate the report to determine whether there is reason to suspect that
12 the offense has occurred or is occurring. If the immediate supervisor determines that
13 there is reason to suspect that the offense has occurred or is occurring, the immediate
14 supervisor shall immediately report the facts and circumstances contributing to that
15 suspicion to the sheriff.

16 3. Except as provided in subd. 2., an immediate supervisor who receives a
17 report under subd. 1. shall keep the identity of the reporter confidential. A sheriff
18 that receives a report under subd. 2. shall keep the identity of the employee reporting
19 under subd. 1. and the immediate supervisor reporting under subd. 2. confidential
20 until the sheriff determines that the report merits further investigation. If the
21 sheriff conducts a full investigation, the sheriff shall keep the identity of that
22 employee and immediate supervisor confidential if it is reasonably possible to do so.
23 Any person who fails to report as required in subd. 1. or 2. may be required to forfeit
24 not more than \$1,000.

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1 (b) Any person participating in good faith in the making of a report under par.
2 (a) 1. or 2. or in initiating, participating in, or testifying in, any action or proceeding
3 in which an offense as described in par. (a) 1. is alleged shall have immunity from any
4 liability, civil or criminal, that results by reason of the action. For the purpose of any
5 proceeding, civil or criminal, the good faith of any person reporting under par. (a) 1.
6 or 2. shall be presumed.

7 (c) The department, a county department, an agency contracted with under s.
8 48.651 (2), a school board, or an employee of the department, a county department,
9 a contracted agency, or a school board may not take disciplinary action against, or
10 threaten to take disciplinary action against, any person because the person in good
11 faith reported any information under par. (a) 1. or 2. or initiated, participated in, or
12 testified in, any action or proceeding in which an offense described in par. (a) 1. was
13 alleged or because the department, county department, contracted agency, school
14 board, or employee believes that the person in good faith reported any information
15 under par. (a) 1. or 2. or initiated, participated in, or testified in, such an action or
16 proceeding.

17 (d) Any person who is subjected to disciplinary action, or who is threatened
18 with disciplinary action, in violation of par. (c) may file a complaint with the
19 department of workforce development under s. 106.54 (9). If that department finds
20 that a violation of par. (c) has been committed, that department may take such action
21 under s. 111.39 as will effectuate the purpose of this section. Section 111.322 (2m)
22 applies to a disciplinary action arising in connection with any proceeding under this
23 paragraph.

24 **SECTION 2.** 48.981 (2) (bg) of the statutes is created to read:

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1 48.981 (2) (bg) An employee of the department, a county department, an agency
2 contracted with under s. 48.651 (2), or a school board whose job duties include
3 performing activities relating to the licensing of day care centers under s. 48.65,
4 certification of day care providers under s. 48.651, or the establishment of or
5 contracting for day care programs under s. 120.13 (14) and who has reasonable cause
6 to suspect that a caregiver, as defined in s. 48.685 (1) (ag), or nonclient resident, as
7 defined in s. 48.685 (1) (bm), of a day care center, day care provider, or day care
8 program has abused or neglected a child who is in the care of the day care center, day
9 care provider, or day care program or who has reason to believe that a caregiver or
10 nonclient resident of a day care center, day care provider, or day care program has
11 threatened such a child with abuse or neglect and that abuse or neglect of the child
12 will occur shall, except as provided in sub. (2m), report as provided in sub. (3).

13 **SECTION 3.** 48.981 (2) (c) of the statutes is amended to read:

14 48.981 (2) (c) Any person not otherwise specified in par. (a), (b), (bg), or (bm),
15 including an attorney, who has reason to suspect that a child has been abused or
16 neglected or who has reason to believe that a child has been threatened with abuse
17 or neglect and that abuse or neglect of the child will occur may report as provided in
18 sub. (3).

19 **SECTION 4.** 106.54 (9) of the statutes, as created by 2009 Wisconsin Act 76, is
20 amended to read:

21 106.54 (9) The division shall receive complaints under s. 48.685 (6m) (d),
22 49.197 (6) (d), or 49.845 (4) (d) and shall process the complaints in the same manner
23 that employment discrimination complaints are processed under s. 111.39.

24 **SECTION 5.** 111.322 (2m) (bm) of the statutes, as created by 2009 Wisconsin Act
25 76, is amended to read:

