

Fiscal Estimate - 2009 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 09-3492/2	Introduction Number SB-331	
Description Prohibiting a person who has been convicted or adjudicated delinquent for committing certain serious crimes or who is the subject of a pending criminal charge or delinquency petition for committing a serious crime from being licensed, certified, or contracted with to provide child care, from being employed or contracted as a caregiver of a child care provider, or from being permitted to reside at a premises where child care is provided and making an appropriation		
Fiscal Effect State: <input type="checkbox"/> No State Fiscal Effect <input checked="" type="checkbox"/> Indeterminate <input checked="" type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Create New Appropriations <input type="checkbox"/> Decrease Costs		
Local: <input type="checkbox"/> No Local Government Costs <input checked="" type="checkbox"/> Indeterminate 1. <input type="checkbox"/> Increase Costs 3. <input type="checkbox"/> Increase Revenue 5. Types of Local Government Units Affected <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities 2. <input type="checkbox"/> Decrease Costs 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts		
Fund Sources Affected Affected Ch. 20 Appropriations <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input checked="" type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS 20.505(4)(kp)		
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Fiscal Estimate Narratives

DOA 11/2/2009

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Description Prohibiting a person who has been convicted or adjudicated delinquent for committing certain serious crimes or who is the subject of a pending criminal charge or delinquency petition for committing a serious crime from being licensed, certified, or contracted with to provide child care, from being employed or contracted as a caregiver of a child care provider, or from being permitted to reside at a premises where child care is provided and making an appropriation					

Assumptions Used in Arriving at Fiscal Estimate

Senate Bill (SB) 331 make changes to the licensing and payment standards for child care providers.

Under current law, persons applying for a child care license will not be granted a license if the person has been convicted or adjudicated delinquent on or after his or her 12th birthday for committing a serious crime as defined under Chapter 48 unless the person can show he or she has been rehabilitated. The same standard applies to persons that a child care provider employs or contracts with and to persons that the provider allows to reside at the premises where the child care is provided. SB 331 prohibits any person from being licensed, certified or contracted with to provide child care, from being employed or contracted with to provide child care, or from being a nonclient resident of the premise where child care is provided and prohibits that person from showing he or she is rehabilitated for specific serious crimes.

Current law allows the Department of Children and Families (DCF) to revoke the license of a child care provider if that person or a person under their supervision commits certain actions [Wis. Stat. 48.715(3)]. Current law also allows DCF to suspend the license of a child care provider when the department finds the public health, safety or welfare requires emergency action [Wis. Admin. Code DCF 250.11(10)].

Finally, current law allows an individual seeking to be licensed as a child care provider to demonstrate he or she has been rehabilitated if necessary to obtain a license. While that initial rehabilitation review occurs through DCF, an individual has the right to appeal a denial of that rehabilitation request to the Division of Hearings and Appeals (DHA) in the Department of Administration [Wis. Stat. 48.685(5c)(a)].

SB 331 mandates that DCF must immediately revoke the license of a provider if convicted of a serious crime as defined in Wis. Stat. 48.685(1)(c)3m, or if a caregiver at the facility or non-client resident of the facility is convicted or adjudicated delinquent for committing a serious crime on or after his or her 12th birthday.

In addition, SB 331 mandates that DCF immediately suspend the license of a provider if subject of pending criminal charge alleging that the person committed a serious crime as defined in Wis. Stat. 48.685(1)(c)3m, or if a caregiver at the facility or non-client resident of the facility is the subject of a pending criminal charge or delinquency petition alleging the person has committed a serious crime on or after his or her 12th birthday.

Finally, SSB 331 removes the rehabilitation option for specific offenses, whether convicted or charged, in child care cases.

Chapter 48 provides that a person who disagrees with DCF's failure to issue, renew or continue a license or who objects to actions taken under Wis. Stat. 48.715, Sanction and Penalties, has the right to an administrative hearing classified as a contested case under Wisconsin Chapter 227. DHA has jurisdiction to conduct these hearings for DCF and is the recipient of these appeals from all 72 of Wisconsin's counties. The objecting party must file a request for hearing with DHA within 10 days. DHA must process the appeal, schedule and conduct the administrative hearing within 30 days unless the party agrees to an extension of time [Wis. Stat. 48.72].

DCF's increased enforcement activity through license revocation or payment suspension has already resulted in an increased workload for DHA. Each hearing request requires that DHA staff open a case, conduct prehearing conferences, issue prehearing reports, respond to motions, schedule a hearing, provide notice to all parties, and gather the case record. The administrative law judge must then review the record and possibly hold the hearing.

DHA estimates that the required revocations mandated by SSB 331 will likely result in increased appeals to DHA similar to another recent law change. For instance, DCF is allowed to immediately suspend payments to a child care provider for services if DCF reasonably suspects the provider has violated any provision of the applicable child care statutes [Wis. Stat. 49.155(7)(a)(4)]. Specifically, since September 2009, DCF has issued over 100 payment suspension letters to child care providers resulting in DHA receiving 60 hearing requests on this issue alone. DHA has assigned these payment suspension cases to 19 administrative law judges.

Finally, SB 331 removes any discretion from DCF to resolve some of these cases at the department level and that will potentially trigger additional administrative appeals. The revocation requirement based upon specific offenses for which rehabilitation review is no longer available, may result in increased revocation appeals to DHA which will require processing an appeal, opening a case and conducting prehearing conferences to determine jurisdiction for the appeal. DCF will then be required to file a response to the administrative appeal stating that pursuant to state law rehabilitation is not allowed and the license revocation is required, or that payment suspension is required pending a final outcome in the underlying criminal case and requesting dismissal of the case. Therefore, even if the delineated serious criminal convictions are a bar to licensure such that no hearing need be conducted to review eligibility, DHA will be required to review briefs by the parties and issue an order of dismissal and provide notice to the parties as required by Wis. Stat. 48.72 and Wis. Admin. Code 227.

DHA cannot identify the number of additional FTE or expenditure authority it will need to meet the requirements of SB 331 because it cannot anticipate the number of license revocations or payment suspensions that will occur and how many will file an administrative appeal. Therefore, the fiscal estimate for SB 331 is indeterminate.

Long-Range Fiscal Implications

Unknown.