

1991 Assembly Bill 120

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1991 WISCONSIN ACT 42

AN ACT *to renumber and amend* 118.19 (5); *to amend* 119.04 (1); and *to create* 115.31 (title), 115.31 (1), 115.31 (2g) to (8), 118.19 (4) and 973.135 of the statutes, **relating to:** notifying the department of public instruction if certain educational agency employes engage in specified conduct, revocation of licenses granted by the department of public instruction, granting rule-making authority and providing a penalty.

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

SECTION 1. 115.31 (title) of the statutes is created to read:

115.31 (title) License revocation; reports; investigation.

SECTION 2. 115.31 (1) of the statutes is created to read:

115.31 (1) In this section:

(a) “Administrator” means the chief administrative officer of an educational agency. If the chief administrative officer is the subject of a report under this section, “administrator” means the presiding officer of the governing board of the educational agency or the secretary of the department in which the educational agency is located.

(b) “Educational agency” means a school district, cooperative educational service agency, state correctional institution under s. 302.01, the Ethan Allen school, the Lincoln Hills school, the Wisconsin school for the visually handicapped, the Wisconsin school for the deaf, the Mendota mental health institute, the Winnebago mental health institute, a state center for the developmentally disabled, a private school or a private, nonprofit, nonsectarian agency under contract with the board of a 1st class city school district under s. 118.153 (3) (c).

(c) “Immoral conduct” means conduct or behavior that is contrary to commonly accepted moral or ethical

standards and that endangers the health, safety, welfare or education of any pupil.

SECTION 3. 115.31 (2g) to (8) of the statutes are created to read:

115.31 (2g) Notwithstanding subch. II of ch. 111, the state superintendent shall revoke a license granted by the state superintendent, without a hearing, if the licensee is convicted of any Class A, B, C or D felony under ch. 940 or 948, except ss. 940.08 and 940.205, for a violation that occurs on or after the effective date of this subsection ...[revisor inserts date].

(2r) (a) Except as provided under par. (b), the state superintendent may not reinstate a license revoked under sub. (2g) for 6 years following the date of the conviction, and may reinstate a license revoked under sub. (2g) only if the licensee establishes by clear and convincing evidence that he or she is entitled to reinstatement.

(b) The state superintendent shall reinstate a license revoked under sub. (2g), prior to the expiration of the 6-year period following the conviction, if he or she receives from the court in which the conviction occurred a certificate stating that the conviction has been reversed, set aside or vacated.

(3) An administrator shall do all of the following:

(a) Report to the state superintendent the name of any person employed by the educational agency and licensed by the state superintendent if any of the following occurs:

1. The person is charged with a crime under ch. 948, including a crime specified under s. 948.015, a felony

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with a maximum term of imprisonment of at least 5 years or a crime in which the victim was a child.

2. The person is convicted of a crime described under subd. 1 or of 4th degree sexual assault under s. 940.225 (3m).

3. The person is dismissed, or his or her contract is not renewed, by the employer based in whole or in part on evidence that the person engaged in immoral conduct.

4. The person resigns and the administrator has a reasonable suspicion that the resignation relates to the person having engaged in immoral conduct.

(b) Report to the state superintendent the name of any person employed by the educational agency who is not licensed by the state superintendent if the person is convicted of a crime described under par. (a) 1 or of 4th degree sexual assault under s. 940.225 (3m).

(c) Send a copy of any report that is made to the state superintendent under par. (a) or (b) to the person who is the subject of the report.

(4) If an administrator requests a person who is employed by an educational agency and licensed by the state superintendent to resign, and the administrator has a reasonable suspicion that the person engaged in immoral conduct, the administrator shall inform the person of the duty to report to the state superintendent under sub. (3) (a) 4.

(5) (a) A report under sub. (3) shall be made within 15 days after the administrator becomes aware of the charge, conviction, dismissal, nonrenewal or resignation.

(b) Any administrator who in good faith reports or fails to report information under sub. (3), and any other person who reports information under sub. (3) to the state superintendent, is immune from civil liability for such acts or omissions.

(6) (a) Upon receiving a report under sub. (3) (a) 2. or (b) indicating that a person was convicted of a crime, the state superintendent shall verify the conviction.

(b) Upon receiving a report under sub. (3) relating to a person licensed by the state superintendent, the state superintendent shall investigate to determine whether to initiate revocation proceedings. During the investigation, the department shall keep confidential all information pertaining to the investigation except the fact that an investigation is being conducted and the date of the revocation hearing.

(c) Notwithstanding s. 16.61 (4), the department shall destroy all information pertaining to an investigation or a revocation proceeding, other than the fact that a person was convicted of a crime described under sub. (3) (a) 1., 3. years from the date on which the investigation is terminated or a final decision denying revocation of the person's license is issued, whichever is later.

(7) Any person who intentionally fails to report as required under this section may be fined not more than \$1,000 or imprisoned for not more than 6 months or both.

(8) The state superintendent shall promulgate rules to implement and administer this section.

SECTION 4g. 118.19 (4) of the statutes is created to read:

118.19 (4) (a) Notwithstanding subch. II of ch. 111, the state superintendent may not grant a license to any person who has been convicted of any Class A, B, C or D felony under ch. 940 or 948, except ss. 940.08 and 940.205, or of an equivalent crime in another state or country, for a violation that occurs on or after the effective date of this subsection ... [revisor inserts date], for 6 years following the date of the conviction, and may grant the license only if the person establishes by clear and convincing evidence that he or she is entitled to the license.

(b) Notwithstanding par. (a), the state superintendent shall grant a license to a person convicted of a crime described under par. (a), prior to the expiration of the 6-year period following the conviction, if the conviction is reversed, set aside or vacated.

SECTION 4r. 118.19 (5) of the statutes is renumbered 115.31 (2) and amended to read:

115.31 (2) After Except as provided under sub. (2g), after written notice of the charges and of an opportunity for defense, any ~~certificate or license to teach issued granted~~ by the ~~department~~ state superintendent may be revoked by the state superintendent for incompetency or immoral conduct on the part of the holder licensee.

SECTION 5. 119.04 (1) of the statutes is amended to read:

119.04 (1) Subchapters IV, V and VII of ch. 115, ch. 121 and ss. 66.03 (3) (c), 115.01 (1) and (2), 115.28 (15), 115.31, 115.33, 115.34, 115.343, 115.345, 115.361, 115.45, 118.01 to 118.04, 118.06, 118.07, 118.10, 118.12, 118.125 to 118.14, 118.15, 118.153, 118.16, 118.162, 118.163, 118.18, 118.19 ~~(3) (b) and (7)~~, 118.20, 118.24 (2) (c) to (f), 118.255, 118.258, 118.30 to 118.35, 120.12 (5), (15), (16), (17), (18), (19) and (20), 120.125 and 120.13 (1), (2) (b) to (g), (14), (17) to (19), (26) and (34) are applicable to a 1st class city school district and board.

SECTION 6. 973.135 of the statutes is created to read:

973.135 Courts to report convictions to the state superintendent of public instruction. (1) In this section:

(a) "Educational agency" has the meaning given in s. 115.31 (1) (b).

(b) "State superintendent" means the state superintendent of public instruction.

(2) If a court determines that a person convicted of a crime specified in ch. 948, including a crime specified in s. 948.015, a felony for which the maximum term of imprisonment is at least 5 years, 4th degree sexual assault under s. 940.225 (3m) or a crime in which the victim was a child, is employed by an educational agency, the clerk of the court in which such conviction occurred shall

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promptly forward to the state superintendent the record of conviction.

(3) If a conviction under sub. (2) is reversed, set aside or vacated, the clerk of the court shall promptly forward to the state superintendent a certificate stating that the conviction has been reversed, set aside or vacated.

SECTION 6m. Nonstatutory provisions. The state superintendent of public instruction, in consultation with appropriate persons, shall review the employment termination and disciplinary procedures for employes, and other persons, who regularly come into contact with children or pupils. The review shall include an assessment of the feasibility of utilizing an automatic employment termination or other disciplinary action for persons con-

victed of serious crimes, such as those enumerated in section 115.31 (2g) of the statutes, as created by this act. By January 15, 1992, the state superintendent shall report the results of the review and any recommendations, including statutory changes, to the governor and to the chief clerk of each house of the legislature for distribution to the appropriate standing committees in the manner provided under section 13.172 (3) of the statutes.

SECTION 7. Initial applicability. The treatment of section 115.31 (3) and (4) of the statutes first applies to any person who is charged with or convicted of a crime, who is dismissed, whose contract is not renewed or who resigns on the effective date of this SECTION.
