

2011 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB71)

Received: **04/27/2011**

Received By: **pgrant**

Wanted: **As time permits**

Companion to LRB:

For: **Steve Kestell (608) 266-8530**

By/Representing: **Chris Kulow**

May Contact:

Drafter: **pgrant**

Subject: **Education - state superintendent**

Addl. Drafters:

Extra Copies: **TKK**

Submit via email: **YES**

Requester's email: **Rep.Kestell@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Teacher license revocations

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pgrant 04/27/2011	csicilia 05/02/2011		_____			
/1	pgrant 05/02/2011	csicilia 05/03/2011	jfrantze 05/02/2011	_____	lparisi 05/02/2011	lparisi 05/02/2011	
/2			mduchek 05/03/2011	_____	lparisi 05/03/2011	lparisi 05/03/2011	

FE Sent For:

<END>

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/?	pgrant 04/27/2011	csicilia 05/02/2011					
/1		1/2 j's s/3 11	jfrantze 05/02/2011		lparisi 05/02/2011	lparisi 05/02/2011	

FE Sent For:

<END>

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For: **Steve Kestell (608) 266-8530**

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Teacher license revocations

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1/?	pgrant	1 gjs 5/2 11	do 5/2	phl sk			

FE Sent For:

<END>

Grant, Peter

From: Kulow, Chris
Sent: Thursday, April 21, 2011 4:27 PM
To: Grant, Peter
Subject: FW: AB 71
Attachments: 1156_001.pdf

Peter,

Here are suggestions for an amendment to AB 71. I'll leave it up to you how to proceed (amendment or sub).

Let me know if you need further clarification.

Christopher Kulow
Office of State Representative Steve Kestell
15 West - State Capitol; 266-8530
<http://kestell.assembly.wisconsin.gov>

From: John D. Forester [mailto:john.forester@wsaa.org]
Sent: Thursday, April 21, 2011 4:00 PM
To: Kulow, Chris
Subject: AB 71

Chris:

Attached please find a revised version of Assembly Bill 71. The revisions incorporate the changes that we discussed in our meeting with Representative Kestell. Specifically, this draft (1) adds to the type of action one takes with respect to pornographic material, (2) eliminates the requirement that the conduct also violate the local school district's policy, and (3) requires that the state superintendent make a probable cause determination within 45 days of receiving a report and, where such a determination is made, immediately commence license revocation proceedings.

There are two technical points that I should note for your reference. First, the current language of Wis. Stat. §115.31 (6)(b) states that "[u]pon receiving a report . . . the state superintendent shall investigate to determine whether to initiate revocation proceedings." Although this provision appears in current statutes, the speed of such investigations is at issue. More importantly for present purposes, however, our proposed amendment would impose a time limit for making a probable cause determination in a different subsection, yet the language of sub. (6)(b) would remain unchanged. Obviously, we do not want anyone to attempt to avoid the time limit being established by the bill by simply saying that there is a separate investigative process under (6)(b) that can or must be undertaken. Accordingly, the attached draft makes clear that the probable cause time limit is in effect for investigations conducted under sub. (6)(b).

In addition, the phrase "as described in sub. (1)(c)2" -- which modifies the phrase "immoral conduct" in a portion of the bill -- was deleted in the attached draft. We did not have a specific discussion with Representative Kestell about this technical point. Nevertheless, I have consistently made this adjustment so that the department does not have a short, immediate time line for investigating immoral conduct related to pornography, but an indefinite time line for investigating any other form of immoral conduct (e.g., sex with a pupil). I have left this change

4/21/2011

in the attached draft but believe it important to alert you to it in the interest of full disclosure and so you do not believe that we are attempting to exceed the scope of our discussion with this draft.

I hope that this information is helpful to you. As always, feel free to contact me directly if you have any questions or concerns.

John D. Forester

Director of Government Relations
School Administrators Alliance (SAA)
4797 Hayes Road
Madison, WI 53704
608-242-1370
608-242-1290 (fax)
www.wsaa.org

ASSEMBLY BILL 71

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

SECTION 1. 115.31 (1) (c) of the statutes is renumbered 115.31 (1) (c) 1.

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

115.31 (1) (c) 2. "Immoral conduct" includes the intentional use of an educational agency's equipment to download, view, solicit, seek, display, or distribute pornographic material in violation of the educational agency's policy.

SECTION 3. 115.31 (2m) of the statutes is created to read:

115.31 (2m) The state superintendent shall determine under sub. (6) (b) whether there is probable cause to believe that a person has engaged in immoral conduct within 45 days of receiving a report under sub. (3) (a). The state superintendent shall immediately initiate proceedings to revoke a license granted by the state superintendent if the licensee is dismissed or his or her contract is not renewed based in whole or in part on evidence that the licensee engaged in there is probable cause to believe that immoral conduct, as described in sub. (1) (c) 2, under this section has occurred. Notwithstanding sub. (6) (b) and (c), the department shall post the name of the licensee and the results of the revocation proceeding on the Internet site.

4/22/11
Kirk Strang (sp?)

shan? immor?
for any imm. conduct?

but (2) says "may"

add prob. cause stat

608-280-6203

4/25/11

called Chris & asked 3 q's

① prob. cause stud in statute?

② 45 day limit for both imm. conduct
& incompetency?

③ put person's name during investigation
as well as when determine whether to proceed
is made? (For both imm. conduct &
incompetency or just imm. conduct?)

He'll get back to me.

Grant, Peter

From: Kulow, Chris
Sent: Tuesday, April 26, 2011 2:32 PM
To: Grant, Peter
Subject: FW: AB 71

Peter,

After speaking to DPI we want to go in a slightly different direction than what the School Admins originally were looking for. See below. Per your questions regarding the probable cause vs reasonable cause we think it would be cleaner to just require an investigation to commence immediately. We are also OK with the Department's current internet posting policy but do not want records destroyed after 3 yrs. Also we want to require more of the district in their reporting of incidents to DPI.

Let me know if you have any questions.

Christopher Kulow
Office of State Representative Steve Kestell
15 West - State Capitol; 266-8530
<http://kestell.assembly.wisconsin.gov>

From: Kammerud, Jennifer DPI [mailto:Jennifer.Kammerud@dpi.wi.gov]
Sent: Monday, April 25, 2011 4:08 PM
To: Kulow, Chris
Cc: Pollock, Sheri G. DPI
Subject: AB 71

Chris,

What follows is the list of items on which I believe we were to follow up with either you or the drafter. If desired, the drafter can contact Sheri Pollock directly.

- ✓ 1. Clarify the definition of immoral conduct. Create a paragraph under 115.31 to clarify that certain behaviors (e.g. viewing pornography) constitute immoral conduct, notwithstanding the existing definition. With this change there will be clarity for school districts as to what they are required to report.
- ✓ 2. Upon receiving a report of immoral conduct from a school district the department is required to open an investigation and flag the person's license on its Internet site (this is current practice). The initiation of this investigation would replace the initiation of revocation proceedings contained in the bill.
- ✓ 3. The department is required to note on its Internet site if a person's license has been revoked or suspended (current practice).
- ✓ 4. Eliminate the requirement that the department destroy investigation records after three years.
5. Require districts to provide records to the department during an investigation. Records to be provided include the unredacted personnel and investigation files including all notices and allegations.
6. The department is to keep a list and make it available upon request of anyone who has been under investigation.

Let me know if I missed something. That is all I had written down.

Jennifer

Jennifer Kammerud
Legislative Liaison
Department of Public Instruction

4/26/2011

125 South Webster Street
Madison, WI 53707
Ph: (608) 266-7073
E-mail: jennifer.kammerud@dpi.wi.gov

Language suggestions:

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, juvenile correctional facility, as defined in s. 938.02 (10p), secured residential care center for children and youth, as defined in s. 938.02 (15g), the Wisconsin Center for the Blind and Visually Impaired, the Wisconsin Educational Services Program for the Deaf and Hard of Hearing, 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 a school board under s. 118.153 (3) (c).

(c)

1. "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.

ADD :

2. Notwithstanding (c)1., "Immoral conduct" includes the intentional use of an educational agency's equipment to download, view, or distribute pornographic material.

ADD:

Deleted: f

115.31(3)(d) Notwithstanding s. 19.356, any report provided to the state superintendent under this section shall include an unredacted copy of the licensee's personnel file and all records related to the investigation conducted by or on behalf of the educational agency.

AMEND

115.31(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.

115.31(6)(b) (b) Upon receiving a report under sub. (3) relating to a person licensed by the state superintendent, the state superintendent shall open an investigation to determine whether to initiate revocation proceedings. Upon opening an investigation, the state superintendent shall report, via its website, that the licensee is under investigation. During the investigation, the state superintendent 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.

Deleted: e

REPEAL the following

115.31(6)(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.

REPLACE with:

The department shall maintain a record of all license investigations that shows, at a minimum, the name of the licensee, date investigation was opened, reason for the investigation, and result of the investigation. When an investigation results in revocation, that shall be reported via its website.



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-1355/1
PG:cjs:ph

LRBs 0095/1
PK: cjs

SOON

A. SUBST. AMPT. —
TO 2011 ASSEMBLY BILL 71

SA ✓

March 30, 2011 - Introduced by Representatives KESTELL, ZIEGELBAUER, BERNIER, BIES, HONADEL, JACQUE, KERKMAN, KLEEFISCH, KRUG, LEMAHIEU, MARKLEIN, MURSAU, A. OTT, PETRYK, PRIDEMORE, SPANBAUER, STEINEKE, STRACHOTA and ENDSLEY, cosponsored by Senators OLSEN, LEIBHAM and DARLING. Referred to Committee on Education.

regen

1 AN ACT *to renumber* 115.31 (1) (c); and *to create* 115.31 (1) (c) 2. and 115.31 (2m)
2 of the statutes; **relating to:** revocation ~~for immoral conduct~~
3 by the Department of Public Instruction.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Public Instruction (DPI) may, after written notice of the charges and an opportunity for defense, revoke any license granted by DPI for incompetency or immoral conduct on the part of the licensee. Current law defines "immoral conduct" as conduct that is contrary to commonly accepted moral or ethical standards and that endangers the health, safety, welfare, or education of any pupil.

This bill provides that "immoral conduct" includes the intentional use of an educational agency's equipment to download, view, or distribute pornographic material ~~(in violation of the educational agency's policy).~~

The bill directs DPI to initiate proceedings to revoke a license if the licensee is dismissed or his or her contract is not renewed based in whole or in part on evidence that the licensee engaged in immoral conduct, as described in the bill.

The bill also directs DPI to post the name of the licensee and the results of the revocation proceeding on its Internet site.

substitute amendment

A →

ASSEMBLY BILL 71

For further information see the *state* 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.~~ 115.31 (1) (c) of the statutes is renumbered 115.31 (1) (c) 1.

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

3 115.31 (1) (c) 2. "Immoral conduct" includes the intentional use of an

← score

4 educational agency's equipment to download, view, or distribute pornographic

← score

score

5 material ~~(in violation of the educational agency's policy).~~

← score

6 ~~SECTION 3.~~ 115.31 (2m) of the statutes is created to read:

7 115.31 (2m) The state superintendent shall initiate proceedings to revoke a
8 license granted by the state superintendent if the licensee is dismissed or his or her
9 contract is not renewed based in whole or in part on evidence that the licensee
10 engaged in immoral conduct, as described in sub. (1) (c) 2. Notwithstanding sub. (6)
11 (b) and (c), the department shall post the name of the licensee and the results of the
12 revocation proceeding on its Internet site.

(END)

Section #. 115.31 (3) (a) (intro.) of the statutes is amended to read:

115.31 (3) (a) (intro.) 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:

History: 1991 a. 42 ss. 1 to 3, 4r; 1993 a. 16, 98; 1995 a. 27 s. 9145 (1); 1995 a. 77; 1997 a. 27, 237; 1999 a. 9; 2001 a. 57, 103, 109; 2005 a. 344.

INS. X



X

Section #. 115.31 (6) (b) of the statutes is amended to read:

115.31 (6) (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 state superintendent 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.

History: 1991 a. 42 ss. 1 to 3, 4r; 1993 a. 16, 98; 1995 a. 27 s. 9145 (1); 1995 a. 77; 1997 a. 27, 237; 1999 a. 9; 2001 a. 57, 103, 109; 2005 a. 344.

Handwritten notes:
Licensee shall be responsible for
posting to the state superintendent's
internet site the name of the licensee
under investigation.

the department's
the department's

The state superintendent shall post on ~~its~~ ^{Internet} Internet site the name of the licensee who is under investigation.



X

Q SEC. #. RC. 115.31 (6)(c)

Q 115.31 ^(B)(6)(c) The department shall maintain
 a record of ^{all} ⁼ investigations conducted under
 par. (b) that indicates the ^{name} name of the licensee,
 the ^{date} date the investigation began, the ^{reason} reason
 for the investigation, and the ^{result} result of the
 investigation. Whenever an investigation ^{results} results in
 the ^{revocation} revocation of a license, the department shall
 post on its Internet site the name of the
 person ^{was} was revoked.
 person whose license was revoked.

(End)

X

~~SEC. 19.31(3)(d)~~

~~19.31(3)(d) Notwithstanding s. 19.356,~~

↑ include and include ~~with any report under paragraph~~

~~(b)~~ a complete copy of the licensee's
personnel file and all records ^{related} ~~related~~
of the licensee
to any investigation conducted by or on
behalf of the educational agency;

A

¶ The substitute amendment also makes the following changes to the laws governing license revocation by DPI:

¶ 1. requires an educational agency when reporting to DPI about a licensee's conduct to include a complete copy of the licensee's personnel file and all records related to any investigation of the licensee conducted by or for the educational agency. INS. B

¶ 2. requires DPI to post on its Internet site the name of the licensee under investigation.

¶ 3. requires DPI to maintain a record of all investigations that it conducts. The

The substitute amendment

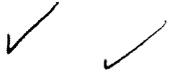
(B)

(no ff) The substitute amendment explicitly
 exempts the transfer of ^{these} records from
 an educational agency to DPI from
 the provision of the open records law
 that requires the entity disclosing a
 record to notify the subject of the
 record that it is disclosing the record. (C)

record must indicate the name of the licensee,
 licensee, the date the investigation began,
 the reason for the investigation,
 and the result of the investigation. If
 DPI revokes a license, it must post on
 DPI revokes a license, it must post on
 its Internet site the name of the person
 whose license was revoked.
 whose license was revoked.

⑨ 4. The substitute amendment eliminates
 the provision that requires DPI to destroy
 all information pertaining to an investigation
 or a revocation or a revocation proceeding, with certain
 exceptions, within three years.

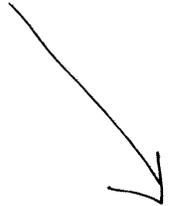
2-1:1



Section #. 19.356 (2) (a) (intro.) of the statutes is amended to read:

19.356 (2) (a) (intro.) Except as provided in pars. (b) ~~and (c)~~ ^{to (d)} and as otherwise authorized or required by statute, if an authority decides under s. 19.35 to permit access to a record specified in this paragraph, the authority shall, before permitting access and within 3 days after making the decision to permit access, serve written notice of that decision on any record subject to whom the record pertains, either by certified mail or by personally serving the notice on the record subject. The notice shall briefly describe the requested record and include a description of the rights of the record subject under subs. (3) and (4). This paragraph applies only to the following records:

History: 2003 a. 47.



2-1:2

+ LA

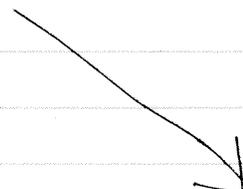
9

SEC. # CR: 19.356(2)(d)
19.356(2)(d)

9

19.356(2)(d) Paragraph (a) does not
apply to the transfer of a record by

~~the transfer of a record by~~ the
administrator of an educational agency to the
state superintendent of public instruction
under s. 115.31(3)(a)
under s. 115.31(3)(a).



2-123

Section #. 115.31 (1) (c) of the statutes is amended to read:

115.31 (1) (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.

History: 1991 a. 42 ss. 1 to 3, 4r; 1993 a. 16, 98; 1995 a. 27 s. 9145 (1); 1995 a. 77; 1997 a. 27, 237; 1999 a. 9; 2001 a. 57, 103, 109; 2005 a. 344.

2

no 9

< material on page 2, lines 3 to 5, should be "pulled up" here when this insert is put in the bill. >

< end ins 2-1 >

Grant, Peter

From: Kulow, Chris
Sent: Monday, May 02, 2011 2:19 PM
To: Grant, Peter
Subject: Amendment to Sub of AB 71

Peter,

Please ~~draft an amendment to~~ ^{redraft} LRBs0095/1 on page 3 line 5 insert "**solicit, seek, display**" between "...view" and "or distribute..." to read:

to download, view, **solicit, seek, display** or distribute pornographic material.

Thanks,

Christopher Kulow
Office of State Representative Steve Kestell
15 West - State Capitol
PO Box 8952; Madison, WI 53708
(608) 266-8530; 1-888-529-0027 (toll free)
<http://kestell.assembly.wisconsin.gov>

5/2/2011



580m



stays

R 1x3

ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2011 ASSEMBLY BILL 71

1 AN ACT *to amend* 19.356 (2) (a) (intro.), 115.31 (1) (c), 115.31 (3) (a) (intro.) and
2 115.31 (6) (b); *to repeal and recreate* 115.31 (6) (c); and *to create* 19.356 (2)
3 (d) of the statutes; **relating to**: revocation of a license issued by the Department
4 of Public Instruction.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Public Instruction (DPI) may, after written notice of the charges and an opportunity for defense, revoke any license granted by DPI for incompetency or immoral conduct on the part of the licensee. Current law defines "immoral conduct" as conduct that is contrary to commonly accepted moral or ethical standards and that endangers the health, safety, welfare, or education of any pupil.

This substitute amendment provides that "immoral conduct" includes the intentional use of an educational agency's equipment to download, view, or distribute pornographic material.

The substitute amendment also makes the following changes to the laws governing license revocation by DPI:

1. The substitute amendment requires an educational agency, when reporting to DPI about a licensee's conduct, to include a complete copy of the licensee's personnel file and all records related to any investigation of the licensee conducted

solicity seeks display ↑

by or for the educational agency. The substitute amendment explicitly exempts the transfer of these records from an educational agency to DPI from the provision of the open records law that requires the entity disclosing a record to notify the subject of the record that it is disclosing the record.

2. The substitute amendment requires DPI to post on its Internet site the name of the licensee under investigation.

3. The substitute amendment requires DPI to maintain a record of all of the investigations that it conducts. The record must indicate the name of the licensee, the date the investigation began, the reason for the investigation, and the result of the investigation. If DPI revokes a license, it must post on its Internet site the name of the person whose license was revoked.

4. The substitute amendment eliminates the provision that requires DPI to destroy all information pertaining to an investigation or a revocation proceeding, with certain exceptions, within three years.

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

1 **SECTION 1.** 19.356 (2) (a) (intro.) of the statutes is amended to read:

2 19.356 **(2)** (a) (intro.) Except as provided in pars. (b) and ~~(c)~~ (d) and as
3 otherwise authorized or required by statute, if an authority decides under s. 19.35
4 to permit access to a record specified in this paragraph, the authority shall, before
5 permitting access and within 3 days after making the decision to permit access, serve
6 written notice of that decision on any record subject to whom the record pertains,
7 either by certified mail or by personally serving the notice on the record subject. The
8 notice shall briefly describe the requested record and include a description of the
9 rights of the record subject under subs. (3) and (4). This paragraph applies only to
10 the following records:

11 **SECTION 2.** 19.356 (2) (d) of the statutes is created to read:

12 19.356 **(2)** (d) Paragraph (a) does not apply to the transfer of a record by the
13 administrator of an educational agency to the state superintendent of public
14 instruction under s. 115.31 (a).

1 **SECTION 3.** 115.31 (1) (c) of the statutes is amended to read:

2 115.31 (1) (c) "Immoral conduct" means conduct or behavior that is contrary to
3 commonly accepted moral or ethical standards and that endangers the health, safety,
4 welfare or education of any pupil. "Immoral conduct" includes the intentional use
5 of an educational agency's equipment to download, view, or distribute pornographic
6 material.

solicit, seek, displays

7 **SECTION 4.** 115.31 (3) (a) (intro.) of the statutes is amended to read:

8 115.31 (3) (a) (intro.) Report to the state superintendent the name of any person
9 employed by the educational agency and licensed by the state superintendent, and
10 include a complete copy of the licensee's personnel file and all records related to any
11 investigation of the licensee conducted by or on behalf of the educational agency, if
12 any of the following occurs:

13 **SECTION 5.** 115.31 (6) (b) of the statutes is amended to read:

14 115.31 (6) (b) Upon receiving a report under sub. (3) relating to a person
15 licensed by the state superintendent, the state superintendent shall investigate to
16 determine whether to initiate revocation proceedings. The state superintendent
17 shall post on the department's Internet site the name of the licensee who is under
18 investigation. During the investigation, the state superintendent shall keep
19 confidential all information pertaining to the investigation except the fact that an
20 investigation is being conducted and the date of the revocation hearing.

21 **SECTION 6.** 115.31 (6) (c) of the statutes is repealed and recreated to read:

22 115.31 (6) (c) The department shall maintain a record of all investigations
23 conducted under par. (b) that indicates the name of the licensee, the date the
24 investigation began, the reason for the investigation, and the result of the
25 investigation. Whenever an investigation results in the revocation of a license, the

1 department shall post on its Internet site the name of the person whose license was
2 revoked.

3 (END)