

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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September 21, 1999

Anne:

I think that the attached amendment accomplishes the intent of this draft, as well as the intent of current law, better than simply deleting s. 118.126 (2) from the draft and leaving current law as is. Specifically:

1. The first sentence of s. 118.126 (2) provides for immunity from civil liability for two things: 1) *disclosing* pupil alcohol or drug information in good faith; and 2) *failure to disclose* that information in good faith.

2. The second sentence of s. 118.126 (2), however, provides that "this subsection," that is, the immunity from civil liability provided under the subsection, *does not apply* to information required to be reported under the child abuse reporting law or, under this bill, information required to be disclosed to the pupil's parent. In other words, because the immunity from civil liability does *not* apply, a person *would* be liable for reporting under the child abuse reporting law or for disclosing information to a pupil's parent under the bill.

3. Of course, that outcome does not make a bit of sense. What does make sense, though, is to say that the immunity provided under the subsection *for failure to disclose* information in good faith does not apply to *the mandatory reporting* of child abuse or to the *mandatory disclosure* of information to a pupil's parents. Thus, if a person is legally required to report, that person should not be immune from liability for failure to report as legally required. Moreover, when a person is legally required to report, it would be difficult for that person to argue that his or her failure to report as legally required was done *in good faith*.

4. So, see what you think of this amendment. I think it clears up a puzzling ambiguity both in the bill and in current law.

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