

1 **AN ACT** *to amend* 101.128 (1) (f), 102.07 (12m), 102.077 (1) and (2), 102.29 (8),
2 109.03 (1) (b), 118.257 (1) (d), 118.29, 440.42 (5) (a) 8., 895.035 (4a) (a) and (b),
3 895.48 (1m) and 895.515 (2) of the statutes; **relating to:** provisions relating to
4 private schools that warrant additional consideration before applying them to tribal
5 schools.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft is the 3rd in a series of 5 drafts prepared for the purpose of discussion by the working group on tribal schools of the joint legislative council's special committee on state-tribal relations at the working group's meeting on March 18, 2005. Additional background information is provided in the first draft (WLC: 0158/1).

One of the tasks of the working group is to review statutes relating to private schools to determine if similar treatment should be accorded to tribal schools. This draft lists certain statutory provisions relating to private schools that are not included in the other drafts because additional issues should be considered in determining if they should be amended to refer to tribal schools—for example, when it appears that the underlying law would not apply to a tribe and confusion might result if the statute were amended to include a reference to tribal schools. The question for the working group is whether any of the statutes in this draft should be amended to additionally apply to tribal schools.

The COMMENT following each SECTION explains the provision as it relates to private schools and comments on why special attention should be given in considering if the statute should be amended to also apply to tribal schools.

All of the preliminary bill drafts are intended to facilitate discussion by the working group to develop a proposal for consideration by the committee. They are not intended to be the final version presented to the committee. Recommendations may be made to delete or modify some of a draft's provisions or include other provisions.

6 **SECTION 1.** 101.128 (1) (f) of the statutes is amended to read:

1 101.128 (1) (f) “School” means a public or private elementary or secondary school.

COMMENT: This provision was not changed as it defines “school” for purposes of the restroom equity statute and exempts public and private schools. Because it does not appear that the state has authority to impose the restroom equity statute on tribal facilities on a reservation or on off-reservation trust land, it appears to be unnecessary to add a provision specifying that tribal schools, like private schools, are not subject to the provision.

2 **SECTION 2.** 102.07 (12m) of the statutes is amended to read:

3 102.07 (**12m**) A student of a public school, as described in s. 115.01 (1), or a private
4 school, as defined in s. 115.001 (3r), while he or she is engaged in performing services as part
5 of a school work training, work experience or work study program, and who is not on the
6 payroll of an employer that is providing the work training or work experience or who is not
7 otherwise receiving compensation on which a worker’s compensation carrier could assess
8 premiums on that employer, is an employee of a school district or private school that elects
9 under s. 102.077 to name the student as its employee.

10 **SECTION 3.** 102.077 (1) and (2) of the statutes are amended to read:

11 102.077 (**1**) A school district or a private school, as defined in s. 115.001 (3r), may elect
12 to name as its employee for purposes of this chapter a student described in s. 102.07 (12m)
13 by an endorsement on its policy of worker’s compensation insurance or, if the school district
14 or private school is exempt from the duty to insure under s. 102.28 (2), by filing a declaration
15 with the department in the manner provided in s. 102.31 (2) (a) naming the student as an
16 employee of the school district or private school for purposes of this chapter. A declaration
17 under this subsection shall list the name of the student to be covered under this chapter, the
18 name and address of the employer that is providing the work training or work experience for
19 that student and the title, if any, of the work training, work experience or work study program
20 in which the student is participating.

1 (2) A school district or private school may revoke a declaration under sub. (1) by
2 providing written notice to the department in the manner provided in s. 102.31 (2) (a), the
3 student and the employer who is providing the work training or work experience for that
4 student. A revocation under this subsection is effective 30 days after the department receives
5 notice of that revocation.

6 **SECTION 4.** 102.29 (8) of the statutes is amended to read:

7 102.29 (8) No student of a public school, as described in s. 115.01 (1), or a private
8 school, as defined in s. 115.001 (3r), who is named under s. 102.077 as an employee of the
9 school district or private school for purposes of this chapter and who makes a claim for
10 compensation under this chapter may make a claim or maintain an action in tort against the
11 employer that provided the work training or work experience from which the claim arose.

COMMENT: SECTIONS 2 to 4 relate to permitting a private school to include certain pupils working at the school under the school's worker's compensation insurance. The courts generally have held that tribes (and by extension, tribal schools) are not subject to state worker's compensation law unless a tribe voluntarily subjects itself to such.

Changing these statutes to also refer to tribal schools would cover the situation in which a tribe had subjected itself to state worker's compensation law, the tribe had a tribal school, and the tribal school had a certain type of school work training, work experience, or work study program. This situation currently does not exist in Wisconsin. Should the statutes be changed to address the situation in case it arises in the future?

COMMENT: Under federal law, tribes participate in the state's unemployment insurance program. School year employees of a tribe are dealt with in ss. 108.02 (22m) and 108.04 (17), stats. Thus, it did not appear to be necessary to amend any statutes relating to unemployment insurance to deal with employees of a tribal school.

12 **SECTION 5.** 109.03 (1) (b) of the statutes is amended to read:

13 109.03 (1) (b) School district and private school employees who voluntarily request
14 payment over a 12-month period for personal services performed during the school year,

1 unless such employees are covered under a valid collective bargaining agreement which
2 precludes this method of payment.

NOTE: The statutes require wage payments at least monthly while employed with certain exceptions, including this exception. It is not clear that the underlying statute applies to tribal employees, therefore, it does not seem necessary to add a reference to tribal school employees.

3 **SECTION 6.** 118.257 (1) (d) of the statutes is amended to read:

4 118.257 (1) (d) "School" means a public, parochial or private school which provides
5 an educational program for one or more grades between grades 1 and 12 and which is
6 commonly known as an elementary school, middle school, junior high school, senior high
7 school or high school.

COMMENT: This provision exempts from liability certain staff at private schools for referring a pupil to police or for removing a pupil from school premises or from school-sponsored activities for suspicion of certain activities relating to controlled substances. If the liability of tribal school staff is determined by tribal and federal law, is there a need to add a reference to tribal schools in state law?

COMMENT: If the definition in s. 118.257 (1) (d) were amended to add tribal schools, unless other changes were made, it would have the effect of adding tribal schools to the definition of school in s. 134.66 (1) (h), stats., which cross-references this definition. This would prohibit a retailer from placing a vending machine that dispenses cigarettes within 500 feet of a tribal school.

8 **SECTION 7.** 118.29 of the statutes is amended to read:

9 **118.29 Administration of drugs to pupils and emergency care. (1) DEFINITIONS.**

10 In this section:

11 (a) "Administer" means the direct application of a drug or prescription drug, whether
12 by injection, ingestion or other means, to the human body.

13 (b) "Drug" has the meaning specified in s. 450.01 (10).

1 (bm) "Epinephrine auto-injector" means a device used for the automatic injection of
2 epinephrine into the human body.

3 (c) "Health care professional" means a person licensed as an emergency medical
4 technician under s. 146.50, a person certified as a first responder under s. 146.50 (8) or any
5 person licensed, certified, permitted or registered under chs. 441 or 446 to 449.

6 (d) "High degree of negligence" means criminal negligence, as defined in s. 939.25 (1).

7 (e) "Practitioner" means any physician, dentist, optometrist, physician assistant,
8 advanced practice nurse prescriber, or podiatrist licensed in any state.

9 (f) "Prescription drug" has the meaning specified in s. 450.01 (20).

10 **(2) AUTHORITY TO ADMINISTER DRUGS; CIVIL LIABILITY EXEMPTION.** (a) Notwithstanding
11 chs. 441, 447, 448 and 450, a school bus operator validly authorized under ss. 343.12 and
12 343.17 (3) (c) to operate the school bus he or she is operating, any school employee or
13 volunteer, county children with disabilities education board employee or volunteer or
14 cooperative educational service agency employee or volunteer authorized in writing by the
15 administrator of the school district, the board or the agency, respectively, or by a school
16 principal, and any private school employee or volunteer authorized in writing by a private
17 school administrator or private school principal:

18 1. May administer any drug which may lawfully be sold over the counter without a
19 prescription to a pupil in compliance with the written instructions of the pupil's parent or
20 guardian if the pupil's parent or guardian consents in writing.

21 2. May administer a prescription drug to a pupil in compliance with the written
22 instructions of a practitioner if the pupil's parent or guardian consents in writing.

23 2m. Except for epinephrine administered under subd. 2., may use an epinephrine
24 auto-injector to administer epinephrine to any pupil who appears to be experiencing a severe

1 allergic reaction if, as soon as practicable, the school bus operator, employee or volunteer
2 reports the allergic reaction by dialing the telephone number “911” or, in an area in which the
3 telephone number “911” is not available, the telephone number for an emergency medical
4 service provider.

5 2r. Except for glucagon administered under subd. 2., may administer glucagon to any
6 pupil who appears to be experiencing a severe hypoglycemic event if, as soon as practicable,
7 the school bus operator, employee, or volunteer reports the event to an emergency medical
8 service provider.

9 3. Is immune from civil liability for his or her acts or omissions in administering a drug
10 or prescription drug to a pupil under subd. 1., 2., 2m., or 2r. unless the act or omission
11 constitutes a high degree of negligence. This subdivision does not apply to health care
12 professionals.

13 (b) Any school district administrator, county children with disabilities education board
14 administrator, cooperative educational service agency administrator, public or private school
15 principal or private school administrator who authorizes an employee or volunteer to
16 administer a drug or prescription drug to a pupil under par. (a) is immune from civil liability
17 for the act of authorization unless it constitutes a high degree of negligence.

18 **(3) EMERGENCY CARE; CIVIL LIABILITY EXEMPTION.** Any school bus operator validly
19 authorized under ss. 343.12 and 343.17 (3) (c) to operate the school bus he or she is operating
20 and any public or private school employee or volunteer, county children with disabilities
21 education board employee or volunteer or cooperative educational service agency employee
22 or volunteer, other than a health care professional, who in good faith renders emergency care
23 to a pupil of a public or private school is immune from civil liability for his or her acts or

1 omissions in rendering such emergency care. The immunity from civil liability provided
2 under this subsection is in addition to and not in lieu of that provided under s. 895.48 (1).

3 (4) WRITTEN POLICIES. Any school board, county children with disabilities education
4 board, cooperative educational service agency or governing body of a private school whose
5 employees or volunteers may be authorized to administer drugs or prescription drugs to pupils
6 under this section shall adopt a written policy governing the administration of drugs and
7 prescription drugs to pupils. In developing the policy, the school board, board, agency or
8 governing body shall seek the assistance of one or more appropriate health care professionals
9 who are employees of the school board, board, agency or governing body or are providing
10 services or consultation under s. 121.02 (1) (g). The policy shall include procedures for
11 obtaining and filing in the school or other appropriate facility the written instructions and
12 consent required under sub. (2) (a), for the periodic review of such written instructions, for
13 the storing of drugs and prescription drugs, for record keeping and for the appropriate
14 instruction of persons who may be authorized to administer drugs or prescription drugs to
15 pupils under this section.

16 (5) EXEMPTION. No employee except a health care professional may be required to
17 administer a drug or prescription drug to a pupil under this section by any means other than
18 ingestion.

COMMENT: This provision, in pertinent part, allows private school employees and volunteers to administer certain drugs to pupils under certain circumstances and exempts them from liability for doing so or when acting in certain emergency situations. If the liability of tribal school staff and volunteers is determined by tribal and federal law, is there a need to add a reference to tribal schools? If this provision were amended, should the tribal school be required to develop a written policy as in sub. (4)?

SECTION 8. 118.295 of the statutes is amended to read:

1 **118.295 Suicide intervention; civil liability exemption.** Any school board, private
2 school, county children with disabilities education board or cooperative educational service
3 agency, and any officer, employee or volunteer thereof, who in good faith attempts to prevent
4 suicide by a pupil is immune from civil liability for his or her acts or omissions in respect to
5 the suicide or attempted suicide. The civil liability immunity provided in this section is in
6 addition to and not in lieu of that provided under s. 895.48 (1).

COMMENT: This provision, in pertinent part, specifies that private school staff and volunteers who in good faith attempt to prevent suicide by a pupil are exempt from civil liability for their acts or omissions. If the liability of tribal school staff and volunteers is determined by tribal and federal law, is there a need to add a reference to tribal schools?

7 **SECTION 9.** 440.42 (5) (a) 8. of the statutes is amended to read:

8 440.42 **(5)** (a) 8. A private school, as defined in s. 118.165.

COMMENT: This provision exempts private schools from the requirement to register as a charitable organization before contributions are solicited in the state. Because the registration provision does not appear to apply to tribal schools, it does not appear to be necessary to add a reference to tribal schools to exempt them from the requirement.

9 **SECTION 10.** 895.035 (4a) (a) and (b) of the statutes are amended to read:

10 895.035 **(4a)** (a) The maximum recovery under this section by a school board or a
11 governing body of a private school from any parent or parents with custody of a minor child
12 may not exceed \$20,000 for damages resulting from any one act of the minor child in addition
13 to taxable costs and disbursements and reasonable attorney fees, as determined by the court,
14 for damages caused to the school board or the governing body of a private school by any of
15 the following actions of the minor child:

16 1. An act or threat that endangers the property, health or safety of persons at the school
17 or under the supervision of a school authority or that damages the property of a school board

1 or the governing body of a private school and that results in a substantial disruption of a school
2 day or a school activity.

3 2. An act resulting in a violation of s. 943.01, 943.02, 943.03, 943.05, 943.06 or
4 947.015.

5 (b) In addition to other recoverable damages, damages under par. (a) may include the
6 cost to the school board or the governing body of a private school in loss of instructional time
7 directly resulting from the action of the minor child under par. (a).

COMMENT: This provision limits, in pertinent part, the amount of
damages the parent of a minor child is liable to a private school for in
connection with certain acts of the child.

8 **SECTION 11.** 895.48 (1m) of the statutes is amended to read:

9 895.48 (1m) Any physician or athletic trainer licensed under ch. 448, chiropractor
10 licensed under ch. 446, dentist licensed under ch. 447, emergency medical technician licensed
11 under s. 146.50, first responder certified under s. 146.50 (8), physician assistant licensed under
12 ch. 448, registered nurse licensed under ch. 441, or a massage therapist or bodyworker issued
13 a certificate under ch. 460 who renders voluntary health care to a participant in an athletic
14 event or contest sponsored by a nonprofit corporation, as defined in s. 66.0129 (6) (b), a private
15 school, as defined in s. 115.001 (3r), a public agency, as defined in s. 46.856 (1) (b), or a school,
16 as defined in s. 609.655 (1) (c), is immune from civil liability for his or her acts or omissions
17 in rendering that care if all of the following conditions exist:

18 (a) The health care is rendered at the site of the event or contest, during transportation
19 to a health care facility from the event or contest, or in a locker room or similar facility
20 immediately before, during or immediately after the event or contest.

1 (b) The physician, athletic trainer, chiropractor, dentist, emergency medical technician,
2 first responder, physician assistant, registered nurse, massage therapist or bodyworker does
3 not receive compensation for the health care, other than reimbursement for expenses.

COMMENT: This provision specifies, in pertinent part, that certain health care providers who render free health care at an athletic event at a private school are immune from liability for acts and omissions. Should immunity be similarly provided if care is rendered at a tribal school's athletic event?

Adding immunity under this provision also permits the health care provider who has been significantly exposed to the emergency victim to get the results of HIV tests.

4 **SECTION 12.** 895.515 (2) of the statutes is amended to read:

5 895.515 (2) Any person engaged in the sale or use of commercial equipment or
6 technology, for profit or not for profit, who donates any commercial equipment or technology
7 to a public or private elementary or secondary school or an institution of higher education or
8 who accepts reimbursement in an amount not to exceed overhead and transportation costs for
9 any commercial equipment or technology provided to a public or private elementary or
10 secondary school or to an institution of higher education is immune from civil liability for the
11 death of or injury to an individual caused by the commercial equipment or technology.

COMMENT: This provision specifies, in pertinent part, that certain individuals who donate commercial equipment or technology to a private school are immune from civil liability for death or injury caused by the donated equipment or technology. Should immunity be similarly provided if the donation is made to a tribal school?

12 (END)