

JLK:tlu

03/15/2005

1 **AN ACT** *to amend* 28.06 (1) and (2), 30.74 (1) (a), 51.45 (4) (d), 115.343, 118.025,
2 252.02, 252.03 and 252.04, 252.21 and 948.51 of the statutes; **relating to:** provisions
3 relating generically to 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 4th 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 sets forth statutes that refer generically to schools without referring explicitly to public schools, private schools, or tribal schools. However, these statutes apply to private schools.

With one exception, discussed below, these statutes provide benefits or protections to all schools or school pupils, and arguably include tribal schools and tribal school pupils. Thus, it may not be necessary to change these statutes to refer to tribal schools. However, the working group should review the statutes to determine if it would be useful to refer explicitly to tribal schools.

The exception is ch. 252, stats., relating to communicable diseases. Several sections of that chapter refer generically to schools and impose requirements on schools and school staff, for example, with respect to immunizations, reporting a communicable disease, permitting inspection of a school, and complying with orders to deal with or prevent the spread of communicable diseases. These requirements apply to private schools. The working group should carefully examine the provisions of ch. 252 which are set forth in this draft to determine if it would be useful to refer explicitly to tribal schools or remain silent on the issue.

Again, this draft sets forth statutes that relate to schools but does not amend them to explicitly refer to tribal schools.

The COMMENT following each SECTION explains the provision.

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.

1 **SECTION 1.** 28.06 (1) and (2) of the statutes are amended to read:

2 **28.06 (1) LIMITATION.** Only planting stock of species and sizes suitable for forest and
3 woodlot planting and for planting by school pupils to celebrate arbor day under s. 118.025
4 shall be produced in state forest nurseries. The department may employ labor at prevailing
5 local wages for nursery operation or reforestation.

6 **(2) DISTRIBUTION.** In addition to use of planting stock on state lands, the department may
7 distribute stock for growing forest products, for establishing windbreaks or shelterbelts, for
8 control of soil erosion, and for game food or cover, but not for ornamental or landscape
9 planting except by school pupils celebrating arbor day. Prices of planting stock shall be
10 approved annually by the department and shall be based on the total cost of administering the
11 forest nursery program under this section, including the cost of processing applications and
12 producing, packaging and distributing nursery stock. To encourage forest planting, free stock
13 may be allotted to any nonprofit organization or any school for the celebration of arbor day
14 under s. 118.025.

COMMENT: Provides that the state forest nurseries may plant stock suitable for planting by school pupils to celebrate arbor day and authorizes distribution of the stock for arbor day plantings by school pupils.

15 **SECTION 2.** 30.74 (1) (a) of the statutes is amended to read:

16 **30.74 (1) (a)** The department shall create comprehensive courses on boating safety and
17 operation. These courses shall be offered in cooperation with schools, private clubs and
18 organizations, and may be offered by the department in areas where requested and where other

1 sponsorship is unavailable. The department shall issue certificates to persons 10 years of age
2 or older successfully completing such courses.

COMMENT: Requires the department of natural resources to create boating safety courses and offer them in cooperation with schools.

3 **SECTION 3.** 51.45 (4) (d) of the statutes is amended to read:

4 **51.45 (4) (d)** Cooperate with the department of public instruction, local boards of
5 education, schools, police departments, courts, and other public and private agencies,
6 organizations and individuals in establishing programs for the prevention of alcoholism and
7 treatment of alcoholics and intoxicated persons, and preparing curriculum materials thereon
8 for use at all levels of school education.

COMMENT: Requires the department of health and family services (DHFS) to cooperate with various entities, including schools, to establish alcoholism prevention and treatment programs and to prepare curriculum materials.

9 **SECTION 4.** 115.343 of the statutes is amended to read:

10 **115.343 Wisconsin school day milk program.** (1) The department shall establish a
11 school day milk program. A school participating in the program shall offer each eligible child
12 one half-pint of Wisconsin-produced whole milk, 2% milk, 1.5% milk, one percent milk,
13 0.5% milk, skim milk or chocolate milk on each day in which school is in session. If a child
14 is allergic to milk or has metabolic disorders or other conditions which prohibit him or her
15 from drinking milk, the child shall be offered juice as a substitute. Any school that participates
16 in the program is encouraged to consider bids from local milk suppliers. The school shall keep
17 all information related to the identity of the pupils who receive a beverage under the program
18 confidential. In this subsection, "Wisconsin-produced" means that all or part of the raw milk
19 used by the milk processor was produced in this state.

1 (2) A child who is enrolled in a school in prekindergarten classes to grade 5 is eligible
2 to receive a beverage specified in sub. (1) if all of the following apply:

3 (a) The child does not receive the beverage through the federal special milk program
4 under 42 USC 1772 (b).

5 (b) The child meets the income eligibility standard for a free or reduced-price lunch in
6 the federal school lunch program under 42 USC 1758 (b).

7 (c) The child does not receive the beverage during the school's breakfast or lunch
8 period.

9 (3) The department shall pay each participating school the full cost of beverages under
10 sub. (1) served to children eligible under sub. (2) in the prior school year from the
11 appropriation under s. 20.255 (2) (cp).

12 (4) If the appropriation under s. 20.255 (2) (cp) in any fiscal year is insufficient to pay
13 the full amount of aid under this section, state aid payments shall be prorated among the
14 schools entitled to such aid.

15 (5) The department shall maintain a count of the number of children who are served
16 beverages under this section.

COMMENT: Provides aid for the school day milk program. According to
DPI staff, this statute is interpreted as applying to all schools, including
tribal schools.

17 **SECTION 5.** 118.025 of the statutes is amended to read:

18 **118.025 Arbor day observance.** A school principal may request one free tree provided
19 from state forest nurseries by the department of natural resources under s. 28.06 for each 4th
20 grade pupil in the school for planting in conjunction with an annual observance and
21 celebration of arbor day.

COMMENT: Permits schools to request trees from the state forest nursery for arbor day observance.

1 **SECTION 6.** 252.02, 252.03 and 252.04 of the statutes are amended to read:

2 **252.02 Powers and duties of department.** (1) The department may establish
3 systems of disease surveillance and inspection to ascertain the presence of any communicable
4 disease. Any agent of the department may, with a special inspection warrant issued under s.
5 66.0119, enter any building, vessel or conveyance to inspect the same and remove therefrom
6 any person affected by a communicable disease. For this purpose, the agent may require the
7 person in charge of the vessel or conveyance, other than a railway car, to stop the same at any
8 place and may require the conductor of any railway train to stop the train at any station or upon
9 any sidetrack, for such time as may be necessary.

10 (2) In an emergency, the department may provide those sick with a communicable
11 disease with medical aid and temporary hospital accommodation.

12 (3) The department may close schools and forbid public gatherings in schools,
13 churches, and other places to control outbreaks and epidemics.

14 (4) The department may promulgate and enforce rules or issue orders for guarding
15 against the introduction of any communicable disease into the state, for the control and
16 suppression of communicable diseases, for the quarantine and disinfection of persons,
17 localities and things infected or suspected of being infected by a communicable disease and
18 for the sanitary care of jails, state prisons, mental health institutions, schools, hotels and public
19 buildings and connected premises. Any rule or order may be made applicable to the whole
20 or any specified part of the state, or to any vessel or other conveyance. The department may
21 issue orders for any city, village or county by service upon the local health officer. Rules that

1 are promulgated and orders that are issued under this subsection supersede conflicting or less
2 stringent local regulations, orders or ordinances.

3 (5) If any public officer or employee or any person in charge of any building, vessel,
4 conveyance, jail, state prison, mental health institution or school fails to comply with a rule
5 promulgated or order issued under sub. (4), the department may appoint an agent to execute
6 its rules or orders. Expenses that an agent incurs shall be paid by the unit of government that
7 employs the person or of which the public officer is a member. If the building, vessel,
8 conveyance, mental health institution or school is privately owned the state shall pay the
9 expenses that the agent incurs.

10 (6) The department may authorize and implement all emergency measures necessary
11 to control communicable diseases.

12 (7) The department shall promulgate rules that specify medical conditions treatable by
13 prescriptions or nonprescription drug products for which pharmacists and pharmacies must
14 report under s. 440.142 (1).

15 **252.03 Duties of local health officers.** (1) Every local health officer, upon the
16 appearance of any communicable disease in his or her territory, shall immediately investigate
17 all the circumstances and make a full report to the appropriate governing body and also to the
18 department. The local health officer shall promptly take all measures necessary to prevent,
19 suppress and control communicable diseases, and shall report to the appropriate governing
20 body the progress of the communicable diseases and the measures used against them, as
21 needed to keep the appropriate governing body fully informed, or at such intervals as the
22 secretary may direct. The local health officer may inspect schools and other public buildings
23 within his or her jurisdiction as needed to determine whether the buildings are kept in a
24 sanitary condition.

1 (2) Local health officers may do what is reasonable and necessary for the prevention
2 and suppression of disease; may forbid public gatherings when deemed necessary to control
3 outbreaks or epidemics and shall advise the department of measures taken.

4 (3) If the local authorities fail to enforce the communicable disease statutes and rules,
5 the department shall take charge, and expenses thus incurred shall be paid by the county or
6 municipality.

7 (4) No person may interfere with the investigation under this chapter of any place or
8 its occupants by local health officers or their assistants.

9 **252.04 Immunization program.** (1) The department shall carry out a statewide
10 immunization program to eliminate mumps, measles, rubella (German measles), diphtheria,
11 pertussis (whooping cough), poliomyelitis and other diseases that the department specifies by
12 rule, and to protect against tetanus. Any person who immunizes an individual under this
13 section shall maintain records identifying the manufacturer and lot number of the vaccine
14 used, the date of immunization and the name and title of the person who immunized the
15 individual. These records shall be available to the individual or, if the individual is a minor,
16 to his or her parent, guardian or legal custodian upon request.

17 (2) Any student admitted to any elementary, middle, junior or senior high school or into
18 any day care center or nursery school shall, within 30 school days, present written evidence
19 to the school, day care center or nursery school of having completed the first immunization
20 for each vaccine required for the student's grade and being on schedule for the remainder of
21 the basic and recall (booster) immunization series for mumps, measles, rubella (German
22 measles), diphtheria, pertussis (whooping cough), poliomyelitis, tetanus and other diseases
23 that the department specifies by rule or shall present a written waiver under sub. (3).

1 **(3)** The immunization requirement is waived if the student, if an adult, or the student's
2 parent, guardian or legal custodian submits a written statement to the school, day care center
3 or nursery school objecting to the immunization for reasons of health, religion or personal
4 conviction. At the time any school, day care center or nursery school notifies a student, parent,
5 guardian or legal custodian of the immunization requirements, it shall inform the person in
6 writing of the person's right to a waiver under this subsection.

7 **(4)** The student, if an adult, or the student's parent, guardian or legal custodian shall
8 keep the school, day care center or nursery school informed of the student's compliance with
9 the immunization schedule.

10 **(5)** (a) By the 15th and the 25th school day after the student is admitted to a school, day
11 care center or nursery school, the school, day care center or nursery school shall notify in
12 writing any adult student or the parent, guardian or legal custodian of any minor student who
13 has not met the immunization or waiver requirements of this section. The notices shall cite
14 the terms of those requirements and shall state that court action and forfeiture penalty could
15 result due to noncompliance. The notices shall also explain the reasons for the immunization
16 requirements and include information on how and where to obtain the required
17 immunizations.

18 (b) 1. A school, day care center or nursery school may exclude from the school, day
19 care center or nursery school any student who fails to satisfy the requirements of sub. (2).

20 2. Beginning on July 1, 1993, if the department determines that fewer than 98% of the
21 students in a day care center, nursery school or school district who are subject to the
22 requirements of sub. (2) have complied with sub. (2), the day care center or nursery school
23 shall exclude any child who fails to satisfy the requirements of sub. (2) and the school district

1 shall exclude any student enrolled in grades kindergarten to 6 who fails to satisfy the
2 requirements of sub. (2).

3 3. Beginning on July 1, 1995, if the department determines that fewer than 99% of the
4 students in a day care center, nursery school or school district who are subject to the
5 requirements of sub. (2) have complied with sub. (2), the day care center or nursery school
6 shall exclude any child who fails to satisfy the requirements of sub. (2) and the school district
7 shall exclude any student enrolled in grades kindergarten to 6 who fails to satisfy the
8 requirements of sub. (2).

9 4. No student may be excluded from public school under this paragraph for more than
10 consecutive school days unless, prior to the 11th consecutive school day of exclusion, the
11 school board provides the student and the student's parent, guardian or legal custodian with
12 an additional notice, a hearing and the opportunity to appeal the exclusion, as provided under
13 s. 120.13 (1) (c) 3.

14 **(6)** The school, day care center or nursery school shall notify the district attorney of the
15 county in which the student resides of any minor student who fails to present written evidence
16 of completed immunizations or a written waiver under sub. (3) within 60 school days after
17 being admitted to the school, day care center or nursery school. The district attorney shall
18 petition the court exercising jurisdiction under chs. 48 and 938 for an order directing that the
19 student be in compliance with the requirements of this section. If the court grants the petition,
20 the court may specify the date by which a written waiver shall be submitted under sub. (3) or
21 may specify the terms of the immunization schedule. The court may require an adult student
22 or the parent, guardian or legal custodian of a minor student who refuses to submit a written
23 waiver by the specified date or meet the terms of the immunization schedule to forfeit not more
24 than \$25 per day of violation.

1 **(7)** If an emergency arises, consisting of a substantial outbreak as determined by the
2 department by rule of one of the diseases specified in sub. (2) at a school or in the municipality
3 in which the school is located, the department may order the school to exclude students who
4 are not immunized until the outbreak subsides.

5 **(8)** The department shall provide the vaccines without charge, if federal or state funds
6 are available for the vaccines, upon request of a school district or a local health department.
7 The department shall provide the necessary professional consultant services to carry out an
8 immunization program, under the requirements of sub. (9), in the jurisdiction of the requesting
9 local health department. Persons immunized may not be charged for vaccines furnished by
10 the department.

11 **(9)** (a) An immunization program under sub. (8) shall be supervised by a physician,
12 selected by the school district or local health department, who shall issue written orders for
13 the administration of immunizations that are in accordance with written protocols issued by
14 the department.

15 (b) If the physician under par. (a) is not an employee of the county, city, village or school
16 district, receives no compensation for his or her services under par. (a) and acts under par. (a)
17 in accordance with written protocols issued by the department, he or she is a state agent of the
18 department for the purposes of ss. 165.25 (6), 893.82 (3) and 895.46.

19 (c) The department may disapprove the selection made under par. (a) or may require
20 the removal of a physician selected.

21 **(10)** The department shall, by rule, prescribe the mechanisms for implementing and
22 monitoring compliance with this section. The department shall prescribe, by rule, the form
23 that any person immunizing a student shall provide to the student under sub. (1).

1 **(11)** Annually, by July 1, the department shall submit a report to the legislature under
2 s. 13.172 (3) on the success of the statewide immunization program under this section.

COMMENT: Section 252.02, stats., permits DHFS to close schools to control epidemics and outbreaks of communicable diseases. Subsection (5) specifies that if a school fails to comply with a rule or order, DHFS may appoint an agent to execute the rule or order. For a private school, the state pays the expenses of the agent. Section 252.03, stats., authorizes a local health officer to inspect schools. Section 252.04, stats., generally requires certain immunizations for admission to school, requires that the school provide information to the parents of unimmunized pupils, and requires school staff to report incomplete immunizations to the district attorney under certain circumstances.

The applicability of these statutes to tribal facilities and staff, including tribal schools, has not been specified by the courts. Does the working group wish to amend these statutes to refer to tribal schools?

3 **SECTION 7.** 252.21 of the statutes is amended to read:

4 **252.21 Communicable diseases; schools; duties of teachers, parents, officers. (1)**

5 If a teacher, school nurse or principal of any school or day care center knows or suspects that
6 a communicable disease is present in the school or center, he or she shall at once notify the
7 local health officer.

8 **(6)** Any teacher, school nurse or principal may send home pupils who are suspected of
9 having a communicable disease or any other disease the department specifies by rule. Any
10 teacher, school nurse or principal who sends a pupil home shall immediately notify the parents
11 of the pupil of the action and the reasons for the action. A teacher who sends a pupil home
12 shall also notify the principal of the action and the reasons for the action.

COMMENT: Section 252.21, stats., requires school staff to report communicable diseases.

The applicability of this statute to tribal school staff has not been specified by the courts. Does the working group wish to amend this statute to refer to tribal schools?

13 **SECTION 8.** 948.51 of the statutes is amended to read:

1 **948.51 Hazing.** (1) In this section “forced activity” means any activity which is a
2 condition of initiation or admission into or affiliation with an organization, regardless of a
3 student’s willingness to participate in the activity.

4 (2) No person may intentionally or recklessly engage in acts which endanger the
5 physical health or safety of a student for the purpose of initiation or admission into or
6 affiliation with any organization operating in connection with a school, college or university.
7 Under those circumstances, prohibited acts may include any brutality of a physical nature,
8 such as whipping, beating, branding, forced consumption of any food, liquor, drug or other
9 substance, forced confinement or any other forced activity which endangers the physical
10 health or safety of the student.

11 (3) Whoever violates sub. (2) is guilty of:

- 12 (a) A Class A misdemeanor if the act results in or is likely to result in bodily harm to
13 another.
- 14 (b) A Class H felony if the act results in great bodily harm to another.
- 15 (c) A Class G felony if the act results in the death of another.

16 **COMMENT:** Sets forth the elements of the crime of hazing of students.
The current language would include a tribal school.

(END)