

**SUMMARY SUSPENSION OF
EDUCATORS FOR ANY FELONY**

House Bill 5476
Sponsor: Rep. Craig DeRoche
Committee: Education

Complete to 2-6-04

A SUMMARY OF HOUSE BILL 5476 AS INTRODUCED 2-5-04

The bill would amend the Revised School Code with regard to the process that is followed when a teacher, school administrator, or other school employee is convicted of certain crimes.

Currently, there are two levels of action for suspending educators' certificates upon conviction of a crime. For certain specified crimes, there is a procedure for a hearing and a state board determination. For certain other crimes, there is no hearing, and a summary suspension must be ordered upon conviction. House Bill 5476 would retain the hearing process for misdemeanors, but provide for a summary suspension of an educator's credentials upon conviction of any felony. This would apply to any felony conviction, regardless of whether it occurred before or after the effective date of the legislation. Further, under the bill, the authority to suspend certification and approval would shift from the state board of education to the superintendent of public instruction.

Current hearing procedure. Currently, if a person who holds a teaching certificate, administrator certificate, or school board approval is convicted of certain crimes, the state board of education notifies the person in writing that the certificate or board approval may be suspended, and of his or her right to a hearing before the state board. If the person does not exercise the right to a hearing within 30 working days, the certificate or approval is suspended. If the hearing takes place, the state board may suspend the certificate or approval based on the issues and evidence presented at the hearing. This procedure applies when the conviction is for:

- a) any felony;
- b) any of the following misdemeanors:
 - criminal sexual conduct in the fourth degree;
 - child abuse in the third or fourth degree or an attempt to commit child abuse in the third or fourth degree;
 - a misdemeanor involving cruelty, torture, or indecent exposure involving a child;
 - a misdemeanor violation of section 7410 of the Public Health Code (which concerns delivery or distribution of controlled substances);

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- a violation of sections 115, 141a, 145a, or 359 of the Michigan Penal Code (which concern breaking and entering; consumption or possession of alcohol by minors or controlled substances at social gatherings; accosting, enticing or soliciting children for immoral purposes; and, larceny from a vacant dwelling, respectively), or a misdemeanor violation of sections 81, 81a, or 145c of the Michigan Penal Code (which concern assault, assault and battery, and domestic assault; assault and infliction of serious injury; and, child sexually abusive activity and material, respectively); and,
- a misdemeanor violation of section 701 of the Michigan Liquor Control Code of 1998 (which concerns sale of alcoholic liquor to minors).

Current summary suspension process. Further, under current law, if a school employee is convicted of certain other crimes, the state board is required to find that the public health, safety or welfare requires emergency action, and must order summary suspension of the person's certificate or approval. Summary suspension of a certificate or approval must be ordered by the state board of education upon conviction of the following crimes: a) criminal sexual conduct in any degree, assault with intent to commit criminal sexual conduct, or an attempt to commit criminal sexual conduct in any degree; b) felonious assault on a child, child abuse in any degree, or an attempt to commit child abuse in any degree; c) cruelty, torture, or indecent exposure involving a child; d) a violation of section 7401(2)(a)(i), 7403(2)(a)(i), 7410, or 7416 of the Public Health Code (these four sections concern unlawful manufacture, delivery, or possession with intent to manufacture or deliver controlled substances; possession of controlled substances or controlled substance analogues; delivery or distribution to minors and students near school property of controlled substances and marihuana; and, recruiting or inducing a minor to commit a felony involving controlled substances); and, e) a violation of sections 83, 89, 91, 316, 317, and 529 of the Michigan Penal Code (these six sections concern assault with intent to commit murder; assault with intent to rob and steal, armed and unarmed; attempt to murder; first degree murder; second degree murder; and armed robbery and aggravated assault).

House Bill 5476 would amend current law to retain the hearing procedure for misdemeanors, and apply the summary suspension language to all convictions of any felony, regardless of whether the conviction occurred before or after the effective date of the bill. Under the bill, the superintendent of public instruction also would be responsible to conduct hearings in order to consider reinstatement of the teaching and administrator certificate, or school employee approval. Currently, this responsibility rests with the state board of education.

Under current law, the prosecuting attorney of the county in which a person who holds a certificate or a state board approval is convicted of a crime must notify the state board and any public school, school district, intermediate school district, or nonpublic school in which the person is employed, of that conviction and of the sentence imposed. Under the bill, this provision would be retained, except that the prosecuting attorney in charge of the case would be required to notify the superintendent of public instruction, instead of the state board of education. Likewise, the law requires school officials to notify the state board when they learn through their prosecutors or other sources about any convictions of school personnel (for the crimes specified above). Under the bill, school officials would be required instead to notify the superintendent of public instruction.

Finally, current law specifies that if a convicted person is incarcerated in a state correctional facility and the state board delays summary suspension, then the state board must contact the Department of Corrections and request notification before the person is released. Upon receiving the request, the corrections department must in turn notify the state board at least 30 work days before release from secure confinement. Under the bill, the superintendent of public instruction would be required to request and receive notification by the “correctional agency.”

Definitions. House Bill 5476 defines “correctional agency” to mean the city, county, state, or federal agency responsible for providing the secure confinement. “Prosecuting attorney” means the prosecuting attorney for a county, an assistant prosecuting attorney for a county, the attorney general, the deputy attorney general, an assistant attorney general, a special prosecuting attorney, or, in connection with the prosecution of an ordinance violation, an attorney for the political subdivision that enacted the ordinance upon which the violation is based.

Under the bill, “state board approval” is defined to mean a license, certificate, endorsement, permit, approval, or other evidence of qualifications to hold a particular position in a school district or intermediate school district, or in a nonpublic school, other than a teachers’ certificate subject to section 1535a, or a school administrator’s certificate subject to section 1539a, that is issued to a person by the state board, or superintendent of public instruction under the act or a rule promulgated under the act.

The bill defines “conviction” to mean a judgment entered by a court upon a plea of guilty, guilty but mentally ill, or nolo contendere, or upon a jury verdict or court finding that a defendant is guilty or guilty but mentally ill.

MCL 380.1535a, 380.1539a, and 380.1539b

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.