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Cloutier, Ennis, Lopez

HOUSE OF REPRESENTATIVES  
148th GENERAL ASSEMBLY

HOUSE BILL NO. 350

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO EDUCATOR LICENSES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1           Section 1. Amend §1218, Title 14 of the Delaware Code by making deletions as shown by strike through and  
2     insertions as show by underline as follows:

3           § 1218. Limitation, suspension and revocation of licenses.

4           (a) The Secretary may suspend, revoke, or limit a license that has been issued to any person pursuant to this  
5     chapter, for the following causes:

6                     (1) Obtaining or attempting to obtain a license or certificate by fraudulent means or through misrepresentation  
7     of material facts;

8                     (2) Falsifying official school records, documents, statistics, or reports;

9                     (3) Knowingly violating any of the provisions of the state assessment system set forth in § 172 of this title;

10                    (4) Pleading guilty or nolo contendere, being placed on probation before judgment, or entering the first  
11     offenders domestic violence diversion program with respect to, or is convicted of, any crime against a child  
12     constituting a misdemeanor, except for unlawful sexual contact in the third degree [§ 767 of Title 11];

13                    (5) Pleading guilty or nolo contendere, or entering the first offenders controlled substances diversion program  
14     with respect to, or is convicted of, possession of a controlled substance or a counterfeit controlled substance classified  
15     as such in Schedule I, II, III, IV or V of Chapter 47 of Title 16;

16                    (6) ~~Being terminated or dismissed for immorality~~ Immorality, incompetence, misconduct in office, wilful  
17     neglect of duty, disloyalty, or misconduct involving any cause for suspension or revocation of a license provided for in  
18     this section;

19                    (7) ~~Resigning or retiring pending for immorality, provided that clear and convincing evidence establishes the~~  
20     underlying misconduct occurred; or

21                    (87) Having had a license or certificate suspended, revoked, or voluntarily surrendered in another jurisdiction  
22     for cause which would be grounds for suspension or revocation under this section.

(b) Notwithstanding the provisions of subsection (a) of this section, the Secretary shall revoke a license if the license holder:

(1) Pleads guilty or nolo contendere with respect to, or is convicted of:

a. Any crime constituting the manufacture, delivery, possession with intent to manufacture or deliver a controlled substance or a counterfeit controlled substance classified as such in Schedule I, II, III, IV or V of Chapter 47 of Title 16;

b. Any crime constituting a violent felony as defined in § 4201(c) of Title 11;

c. Any crime against a child constituting a felony, or unlawful sexual contact in the third degree [§ 767 of Title 11];

d. Any crime constituting a felony sexual offense; or

e. Any crime constituting a felony offense against public administration involving bribery, improper influence or abuse of office; or

(2) Is terminated or dismissed for a sexual offense against a child; or

(3) Resigns or retires after official notice of allegations of a sexual offense against a child, provided that ~~clear~~ and convincing the preponderance of the evidence establishes the underlying misconduct ~~reasons~~ occurred.

(c) The Secretary may automatically suspend any license without a prior hearing if the license holder is arrested or indicted by a grand jury for a violent felony as defined in § 4201(c) of Title 11 or for any crime against a child constituting a felony. A suspension under this subsection is effective on the date of the arrest or grand jury indictment.

(1) For a suspension under this subsection, the Secretary shall issue a written temporary order of suspension to the license holder at that license holder's last known address.

(2) The chief school officer or head of school, on behalf of the local board of education or charter school board of directors, shall report to the Secretary the name and last known address of any license holder employed by the district or charter school who it knows to have been arrested or indicted by a grand jury for a violent felony as defined in § 4201(c) of Title 11 or for any crime against a child constituting a felony.

(3) A license holder whose license has been suspended pursuant to this subsection may request an expedited hearing before the Standards Board within 20 calendar days from the date the notice of the Secretary's decision to temporarily suspend the license holder's license was mailed. In the event that the license holder requests an expedited hearing in a timely manner, the Standards Board shall convene a hearing within 90 days of the receipt of such a request.

(4) If the license holder pleads guilty or nolo contendere with respect to, or is convicted of, a violent felony as defined in § 4201(c) of Title 11, or for any crime against a child constituting a felony, the Secretary shall proceed with revocation under subsection (b) of this section.

(5) If the license holder is found not guilty of the underlying criminal charges, a nolle prosequi is entered on the record by the State, or the charges are otherwise dismissed by the court, the license holder may file a written request for license reinstatement, including documentation of the final status of the judicial proceeding, and their license ~~shall~~may be reinstated. If the license expired during the period of suspension, the holder of the former license may reapply for the same tier license that was suspended, but shall meet the license requirements that are in effect at the time of the application for license.

(6) An order of suspension under this subsection shall remain in effect until the final order of the Secretary or the Standards Board becomes effective.

(d) The Secretary may take an action under subsection (a), (b), or (c) of this section on the basis of substantially comparable conduct occurring in a jurisdiction outside this state or occurring before a person applies for or receives any license.

(e) Any license holder who has pled guilty or nolo contendere with respect to, is placed on probation before judgment with respect to, entered the first offenders domestic violence diversion program with respect to, entered the first offenders controlled substances diversion program with respect to, or has been convicted of, a crime in a court of law which would constitute grounds for revocation, suspension or limitation of license under subsection (a) or (b) of this section or has been arrested or indicted by a grand jury for a violent felony as defined in § 4201(c) of Title 11, or for any crime against a child constituting a felony shall notify the Secretary of such action in writing within 20 days of such conviction, arrest or indictment, whether or not a sentence has been imposed. Failure to do so shall be grounds on which the Secretary may limit, suspend, or revoke the holder's license.

(f) Any license holder who has surrendered an educator license or any professional license or certificate or who has had such a license or certificate revoked, suspended, or limited in any jurisdiction or by any agency shall notify the Secretary of such action in writing within 30 days of such action. Failure to do so shall be grounds on which the Secretary may limit, suspend or revoke the holder's license.

(g) The chief school officer or head of school, on behalf of the local board of education or charter school board of directors, shall report to the Secretary the name and last known address of any license holder who is dismissed, resigns, retires or is otherwise separated from employment with that district or charter school after having received notice of misconduct that constitutes grounds for revocation or suspension under subsection (a), (b), or (c) of this section. Such report shall be made within 15 days of the dismissal, resignation, retirement or other separation from employment and is required notwithstanding any termination agreement to the contrary that the local board of education or charter school board of directors may enter into with the license holder. The reasons for the license holder's dismissal, resignation, retirement or other separation from employment with the district or charter school shall also be provided along with all evidence that was reviewed by or is in the possession of the district or charter school relating to the dismissal, resignation,

retirement, or other separation from employment. The Department shall give written notice to any license holder of any notification received under this subsection to the license holder's last known address. Such notification shall be made within 15 days of receipt of the district or charter school's report to the Department of misconduct under this subsection. The obligation to report also applies when a chief school officer or head of school acquires relevant information after a license holder's dismissal, resignation, retirement, or other separation from employment. Failure to make such reports shall be grounds on which the Secretary may limit, suspend, or revoke the chief school officer's or head of school's license. All information obtained from the chief school officer or head of school shall be confidential and shall not be considered public records under Delaware's Freedom of Information Act [Chapter 100 of Title 29].

(h) The Secretary may investigate any information received about a person that reasonably appears to be the basis for action under subsections (a) through (c) of this section. The Secretary shall not investigate anonymous complaints. The Department shall give written notice within a reasonable period of time to a license holder of any investigation initiated hereunder to the license holder's last known address. All information obtained during an investigation is confidential and shall not be considered public records under Delaware's Freedom of Information Act [Chapter 100 of Title 29]. The Secretary shall review the results of each investigation and shall determine whether the results warrant initiating action under subsection (a), (b), or (c) of this section.

(i) Whenever the basis of for action under subsection (a) or (b) of this section is a guilty plea, nolo contendere, being placed on probation before judgment with respect to, entering the first offenders domestic violence diversion program with respect to, entering the first offenders controlled substances diversion program with respect to, or a conviction of a crime, a copy of the record of the plea, nolo contendere, probation before judgment, first offenders domestic violence diversion program, first offenders controlled substances diversion program or conviction certified by the clerk of the court entering the plea, nolo contendere, probation before judgment, first offenders domestic violence diversion program, first offenders controlled substances diversion program or conviction shall be conclusive evidence thereof.

(j) The Secretary may enter a consent agreement with a person against whom action is being taken under subsection (a), (b), or (c) of this section.

(k) The Secretary shall not take action against a person under subsection (a) or (b) of this section without providing the person with written notice of the charges and with an opportunity for a full and fair hearing before the Standards Board. Notice shall be sent to the person's last known address. The license holder shall have 30 calendar days from the date the notice of the charges was mailed to make a written request for a hearing. Unless otherwise provided for in this section, the burden of proof in a license disciplinary action shall be on the agency taking official action to establish by preponderance of the evidence that the license holder has engaged in misconduct as defined by subsections (a) and (b) of this section or otherwise has failed to comply with the applicable laws and regulations relating to the retention of the

license. If no written request for a hearing is received by the Standards Board, the license holder's license shall be deemed to be revoked, suspended, or limited and the holder shall be so notified.

(l) A license may be suspended for a period of time not to exceed 5 years. The license may be reinstated by the Secretary, upon written request, with verification that all requirements for license renewal have been satisfied. If the license expired during the period of suspension, the holder of the former license may reapply for the same tier license that was suspended but shall meet the license requirements that are in effect at the time of the application for the license.

(m) If any of the causes listed in subsection (a) or (b) of this section are determined, the Secretary or the Standards Board after a hearing, may put limitations on a license that may include but is not limited to:

(1) Restrictions on the ages of students with whom the license holder may work;

(2) Additional supervision requirements; or

(3) Education, counseling, or psychiatric examination requirements.

(n) If a decision of license limitation, suspension or revocation is based on paragraph (a)(4), (a)(5), or (b)(1) of this section, ~~and if the plea or conviction is overturned and there is no subsequent proceeding leading to a plea or conviction,~~ the individual whose license is limited, suspended or revoked may file a written request for reinstatement, including documentation of the final status of the judicial proceeding, and the license ~~shall~~ may be reinstated for the following causes:

(1) the plea or conviction is overturned and there is no subsequent proceeding leading to a plea or conviction;

(2) the individual has completed probation before judgment;

(3) the individual has completed the first offenders controlled substances diversion program; or

(4) the individual has completed the first offenders domestic violence diversion program.

(o) An individual whose license has been revoked under subsection (a) of this section may petition the Secretary for reinstatement of the license not sooner than 5 years from the date of revocation. The individual shall submit to the Secretary a written petition showing credible evidence, by affidavit or otherwise, of the factors set forth in paragraph (o)(1) of this section.

(1) The Secretary shall consider all of the following criteria in evaluating a petition for reinstatement and shall only grant such a petition if it is in the best interest of the public schools of the State:

a. The nature and circumstances of the individual's original misconduct;

b. The individual's subsequent conduct and rehabilitation;

c. The individual's present character; and

d. The individual's present qualifications and competence to engage in the practice of instruction, administration or other related professional support services.

(2) A former license holder is entitled to a full and fair hearing before the Standards Board to challenge a denial of reinstatement pursuant to this subsection.

(3) A license revoked under subsection (b) of this section or suspended under subsection (c) of this section may not be reinstated under this subsection. A license revoked under paragraph (b)(1) of this section may only be reinstated pursuant to subsection (n) of this section and a license suspended under subsection (c) of this section may only be reinstated pursuant to paragraph (c)(5) of this section or after a hearing before the Standards Board.

(p) In any hearing before the Standards Board to challenge action taken under this section, the Standards Board shall have the power to administer oaths, order the taking of depositions, issue subpoenas, and compel attendance of witnesses and the production of books, accounts, papers, records, documents, and testimony.

(q) Notice of the limitation, revocation, suspension or reinstatement of a license shall be made by the Secretary, or the Secretary's designee, to all chief state school officers of the other states and territories of the United States.

(r) Notwithstanding any provision in this section to the contrary, public notice of limitation, revocation, suspension or reinstatement of a license shall be published by the Secretary, or the Secretary's designee, on the Department's website. The publication shall contain the educator's name, last known place of employment, license type, license status, certification description, certification type, certification status and the reason for the action.

~~(s)~~(s) All communications between a license holder and the Department or Standards Board provided for in this section shall be by certified mail, with a return receipt requested.

~~(t)~~(t) For purposes of this section only, the term "license" shall include a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, an initial license issued pursuant to § 1210 of this title, a continuing license issued pursuant to § 1211 of this title, or an advanced license issued pursuant to § 1213 of this title.

#### SYNOPSIS

This Act revises the Delaware Code relating to the limitation, suspension and revocation of educator licenses. Between September 2012 and September 2014, the Delaware Department of Education has investigated 105 cases of alleged educator misconduct, recommending revocation in 12, suspension in 10 cases, and limitation in 1 case. This Act will strengthen the ability of the Department of Education to investigate and take action against the licenses of educators who pose a threat to children. The revisions include: 1) Placing jurisdiction with regard to licensure actions with the Department as the issuer of the license rather than being dependent on action by the employer; 2) Changing the State's burden of proof from "clear and convincing" to "preponderance of the evidence." Licensure action is a civil administrative proceeding and the normal burden of proof should apply; 3) Addressing the process when educators are given probation before judgment, enter the first offenders domestic violence program, or enter the first offenders controlled substances diversion program; 4) Broadening the ability of the State to immediately suspend an educator's license; and 5) Adding a provision for the state to publicly report educator professional license action.