

Polling Vote Record
**Committee on Transportation and Information
Infrastructure**

Date: Tuesday, October 21, 2003

Ballot Deadline: Tuesday, October 21, 2003 by 2:00 PM

** The 2:00 PM ballot deadline is due to an effort to have the bill available for a Rules Committee meeting later this afternoon.*

Bill Number: Senate Amendment 1 (LRBa0936/1)

Moved by: Senate Committee on Transportation and Information Infrastructure

Motion: *Introduction and Adoption of Senate Amendment 1
(LRBa00936/1) to Senate Bill 3.*

Committee Member

Senator Joseph Leibham

Aye **No** **Not Voting**

Signature:

Joe Leibham

Ballot Rec'd:

Date: 21-OCT-03 **Time:** 1301 **Signature:**

D. G. Wistful

Polling Vote Record
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Bill Number: Senate Bill 3

Moved by: Senate Committee on Transportation and Information Infrastructure

Motion: *Passage of Senate Bill 3 as amended.*

Committee Member

Senator Joseph Leibham

Aye **No** **Not Voting**

Signature:

J. Leibham

Ballot Rec'd:

Date: 21-OCT-03 **Time:** 1301

Signature:

al. G. Hfstalt

Polling Vote Record
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Motion: *Introduction and Adoption of Senate Amendment 1
(LRBa00936/1) to Senate Bill 3.*

Committee Member
Senator Ted Kanavas

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature:



Ballot Rec'd:

Date: 21-OCT-03 **Time:** 1245P **Signature:**



Polling Vote Record
Committee on Transportation and Information Infrastructure

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Bill Number: Senate Bill 3

Moved by: Senate Committee on Transportation and Information Infrastructure

Motion: *Passage of Senate Bill 3 as amended.*

Committee Member

Senator Ted Kanavas

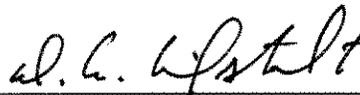
Aye **No** **Not Voting**

Signature:



Ballot Rec'd:

Date: 21-OCT-03 **Time:** 1245P **Signature:**



Polling Vote Record
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Moved by: Senate Committee on Transportation and Information Infrastructure

Motion: *Introduction and Adoption of Senate Amendment 1 (LRBa00936/1) to Senate Bill 3.*

Committee Member
Senator Neal Kedzie

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature:



Ballot Rec'd:

Date: 21-OCT-03 **Time:** 1348

Signature:



Polling Vote Record
Committee on Transportation and Information Infrastructure

Date: Tuesday, October 21, 2003

Ballot Deadline: Tuesday, October 21, 2003 by 2:00 PM*

** The 2:00 PM ballot deadline is due to an effort to have the bill available for a Rules Committee meeting later this afternoon.*

Bill Number: Senate Bill 3

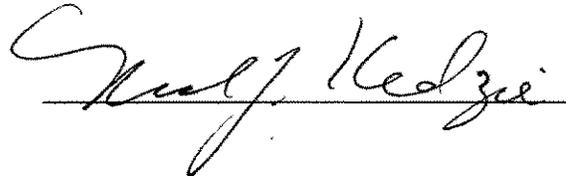
Moved by: Senate Committee on Transportation and Information Infrastructure

Motion: *Passage of Senate Bill 3 as amended.*

Committee Member
Senator Neal Kedzie

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature:



Ballot Rec'd:

Date: 21-OCT-03 **Time:** 1348 **Signature:**



Polling Vote Record
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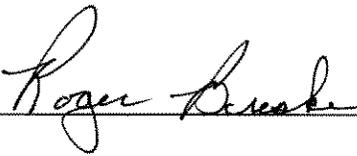
Moved by: Senate Committee on Transportation and Information Infrastructure

Motion: *Introduction and Adoption of Senate Amendment 1
(LRBa00936/1) to Senate Bill 3.*

Committee Member
Senator Roger Breske

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature:



Ballot Rec'd:

Date: 23 OCT 03 **Time:** 1426 **Signature:**



Polling Vote Record
**Committee on Transportation and Information
Infrastructure**

Date: Tuesday, October 21, 2003

Ballot Deadline: Tuesday, October 21, 2003 by 2:00 PM*

** The 2:00 PM ballot deadline is due to an effort to have the bill available for a Rules Committee meeting later this afternoon.*

Bill Number: Senate Bill 3

Moved by: Senate Committee on Transportation and Information Infrastructure

Motion: *Passage of Senate Bill 3 as amended.*

Committee Member
Senator Roger Breske

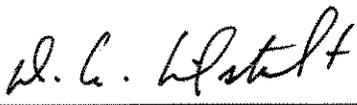
<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Signature:



Ballot Rec'd:

Date: 21-OCT-03 **Time:** 1420 **Signature:**



Polling Vote Record
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Bill Number: Senate Amendment 1 (LRBa0936/1)

Moved by: Senate Committee on Transportation and Information Infrastructure

Motion: *Introduction and Adoption of Senate Amendment 1
(LRBa00936/1) to Senate Bill 3.*

Committee Member
Senator Mark Meyer

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature:

Mark Meyer

Ballot Rec'd:

Date: 21-OCT-03 **Time:** 1359

Signature:

D.C. Wfstedt

Polling Vote Record
Committee on Transportation and Information Infrastructure

Date: Tuesday, October 21, 2003

Ballot Deadline: Tuesday, October 21, 2003 by 2:00 PM*

** The 2:00 PM ballot deadline is due to an effort to have the bill available for a Rules Committee meeting later this afternoon.*

Bill Number: Senate Bill 3

Moved by: Senate Committee on Transportation and Information Infrastructure

Motion: *Passage of Senate Bill 3 as amended.*

Committee Member
Senator Mark Meyer

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature: Mark Meyer

Ballot Rec'd:

Date: 21-OCT-03 **Time:** 1359 **Signature:** al. G. W. Stahl

Senate Bill 3 – Questions and Answers

Answers provided by the Legislative Council and Legislative Reference Bureau.

- 1. A question was raised about whether waiting time is counted toward the ten-hour driving time restrictions when an HSV driver is transporting a patient to a medical appointment.**

The time a driver is waiting for a patient does not count against an operators driving time limits, and the ten-hour driving time restriction matches the current driving time restrictions on motor carriers. The rationale is that a person transporting potentially vulnerable passengers should have at least the same restrictions as those placed on a person transporting cargo. Federal law dictates the driving time restrictions on motor carriers, and the federal law is adopted by rule by the state DOT. Under federal law, "driving time" is defined as time behind the wheel, while "on-duty" time is all time from the start of a shift until the end of a shift. Federal law places different limitations on driving time and on-duty time. If this were a motor carrier situation, "waiting" time would be included as "on-duty" time but not as "driving" time. See 49 CFR 395.2 and Trans 327.01 (2) (b) and (f). The provisions in SB-3 are modeled after the "driving time" restrictions in 49 CFR 395.3. **Accordingly, since the provisions of the bill relate to the driving time restriction, waiting in the doctor's office does *not* count toward the 10 hour limit on p. 7 lines 3-4 of SB-3; the limit is 10 hours of actually driving the vehicle.**

- 2. HSV providers raised an issue regarding a formal training program for HSV drivers on acceptable passenger restraint. Besides the training, there were questions regarding mandatory restraint and how this would apply to different vehicles, situations, etc.**

The specific details of the training were left vague in response to numerous discussions with the HSV industry. The language contemplates that not all HSV providers will have the same restraint systems. HSV providers expressed that they were not in favor of a day of classroom instruction provided by the state, but would rather 30-60 minutes of specific vehicle training completed by a supervisor or HSV owner who is familiar with the safety restraint systems in their fleet.

The Legislative Reference Bureau has stated that, as drafted, the bill simply requires that a driver of an HSV be trained on how to properly use each type of restraint system on the vehicle, including seat belts, child safety seats, wheelchair lifts, and restraints. Such training must occur at least every two years. The bill was drafted in this way at the request of HSV providers in order to limit the high costs often associated with formalized training.

- 3. Some HSV providers stated that requiring the DOT to withhold payment would add another layer of red tape and be costly to the state.**

The Secretary of the Wisconsin Department of Transportation wrote in a letter dated January 15, 2004, that "this bill requires the Department to withhold a county's allocation if that county is found noncompliant with the provisions of SB 3. Currently, one lump sum payment is made to each county at the beginning of each fiscal year. Based on our interpretation of this bill, if a county was found noncompliant in year one, the Department would withhold year two's payment until the county has rectified the noncompliance. **Our interpretation is that the Department would not change its payment process.**"

If a county is notified of a violation, such as an operator driving with a suspended license, it is to the county's advantage to rectify the situation as soon as possible.

4. An HSV provider implied that SB 3 would require providers to track and maintain driving records of HSV drivers in their private vehicles.

SB3 bill requires HSV drivers to report to their employer any accident, including accidents in a personal vehicle. **The bill does not require HSV companies (or county operated HSVs) to maintain complete driving records of employees in their personal vehicles.** What the bill does is require HSV drivers to report the accident, thereby giving notice to the HSV Company. The HSV Company may choose whether it will or will not keep a record of the notice provided by the driver. **There is no specific requirement that such a record be maintained,** unless either DOT or the county mandates that records of the notice be kept under s. 85.21 (3m) (e). This provision is actually an advantage to the HSV providers for having notice of a drivers record vs. no notice. If the HSV company chooses, it can follow up and order an "interim" operating record updated or do further investigation to determine whether the circumstances of the accident might merit further scrutiny of the driver, such as if alcohol were alleged to be involved. **This provision is not intended to impose further burden on the employer, but to give the employer greater access to information** and more current information that simply running a driver record check once every four years to make a determination on the fitness of the driver to continuing operating HSVs. The original language in SB 3 did require the HSV providers to track the accidents of drivers, but at the request of HSV providers the Senate amendment changed this language, which places the responsibility of reporting accidents on the driver.

5. Questions were raised as to why SB 3 is not consistent with the caregiver law.

The original language in SB 3 was consistent with the standards established for caregivers. However, in response to testimony given by HSV providers before the Senate Transportation Committee, the bill was amended. HSV providers did not want to be held to a higher standard than school bus drivers. In addition, the Wisconsin School Bus Association has drivers that drive both school buses and HSVs, and the association did not want two standards for a driver who holds both jobs. SB 3 is written in a way that it will stay in compliance with school bus laws as they change. In addition, a bill has been introduced to require HSV, school vans, and school buses to have identical standards similar to the caregiver law.

Coalition of Wisconsin Aging Groups

March 19, 2003

Senator Mary Lazich
127 South State Capitol
PO Box 7882
Madison, WI 53707-7882

Dear Senator Lazich,

I am writing as a follow-up to our meeting on March 11. Thank you for meeting with me. As we discussed, SB 3 is a very worthwhile idea, however, given the fact that the bill is directed specifically to the 85.21 Program I have reservations that this bill may not accomplish the task you have set forth. The issue that has precipitated this action is actually a problem stemming from HSV and SMV providers funded by Medical Assistance Funds.

The 85.21 Program is a County Aids Program and is very well run. In most cases the 85.21 Program operators already do the criminal background checks, the training required and the certification of insurance. If this bill is signed into law and we find that it hinders service for counties and does not correct the problem that you are intending to address, then I would recommend that a different look be taken at this problem.

I applaud you for your efforts in trying to rectify this horrendous problem, however, as I discussed with you, I am not convinced that the language in SB3 is the answer.

Sincerely,

A handwritten signature in black ink, appearing to read "Barbara Thoni", is written over the typed name.

Barbara Thoni
Director
Member Services

Cc: ✓ Senator Leibham
Senator Kanavas
Senator Kedzie
Senator Breske
Senator Meyer



WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: SENATORS MARY LAZICH AND JOSEPH LEIBHAM

FROM: Joyce L. Kiel, Senior Staff Attorney

RE: 2003 Senate Bill 3, as Amended by Senate Amendment __ (LRBa0936/P2), Relating to Background Checks for Operators of Human Service Vehicles

DATE: September 25, 2003

This memorandum, prepared at the request of Senator Lazich's Chief of Staff Tom Van Ess, describes 2003 Senate Bill 3, relating to the specialized transportation assistance program, minimum qualifications for the operator of a human service vehicle (HSV), and the registration of HSVs, as amended by Senate Amendment __ (LRBa0936/P2). Senate Bill 3 was introduced by Senator Lazich and others; cosponsored by Representative Gundrum and others. The Senate Committee on Transportation and Information Infrastructure held a hearing on the bill on February 18, 2003. The amendment has not yet been introduced.

This memorandum: (1) describes current law; (2) describes Senate Bill 3, as amended by Senate Amendment __ (LRBa0936/P2); and (3) lists changes made to the bill by LRBa0936/P2.

A. CURRENT LAW

An HSV is a motor vehicle (other than a school bus) used to transport elderly or disabled persons in connection with a transportation assistance program, such as s. 85.21, Stats., which provides state funding to assist counties in providing transportation services for elderly and disabled persons. Some counties operate a specialized transportation service (STS) to provide such transportation assistance, and some counties contract with an STS to provide such transportation assistance.

Current statutes require that an HSV have a minimum of \$10,000 property damage liability coverage and \$75,000 per person bodily injury liability coverage. Current statutes require an annual inspection of the equipment and condition of HSVs. Provisions relating to the operation, equipment standards, and inspection of HSVs are set forth in ch. Trans 301, Wis. Adm. Code.

However, neither current statutes nor current rules establish minimum qualifications for an HSV operator, for example, there is no requirement for a special operator's license or endorsement.

B. 2003 SENATE BILL 3, AS AMENDED BY SENATE AMENDMENT — (LRBa0936/P2)

2003 Senate Bill 3, as amended by Senate Amendment __ (LRBa0936/P2) to the bill (hereinafter, referred to as the amended bill) provides that the Department of Transportation (DOT) must refuse to register an HSV that has not been inspected or that has failed its inspection. In addition, the amended bill includes: (1) provisions regarding the minimum qualifications for an HSV operator, which, in general, relate to the person's criminal record; and (2) provisions about certain prohibited activities. These provisions are discussed below.

1. Provisions Relating to STS

The amended bill includes the following provisions relating to an STS that is operated by a county under s. 85.21, Stats., or that contracts with a county for transportation services under s. 85.21, Stats.:

a. Background Check Requirements

The amended bill generally requires that an HSV operator's background be checked with respect to the DOT operating record and criminal convictions before employment and every four years thereafter. An exception to the requirement for a criminal background check applies if the HSV operator holds an "S" endorsement issued or renewed by DOT within the previous four years. (An "S" endorsement is required to operate a school bus; "S" endorsements are discussed in item (4), below.) The time by which the background checks must be completed varies depending on whether the person: (1) would be hired on or after the effective date of the amended bill (that is, the beginning of the fourth month after publication); or (2) is already employed by the STS on the effective date (existing employee). Both are discussed below.

(1) New Employees

An STS must obtain the DOT *operating* record before hiring a person as an HSV operator after the effective date of the bill. If the operating record has already been obtained by another entity, the STS may obtain the operating record from that entity if there are reasonable grounds to believe that the operating record is accurate and was furnished by DOT to that entity not more than two months previously.

Unless a person seeking employment as an HSV operator holds a valid "S" endorsement that was issued or renewed within four years prior to employment, an STS must request that the person complete the background information form that will be prescribed by DOT. If the form is required, the STS may not employ the person until the form has been completed. Within 60 days after receipt of this form, the STS must conduct a *criminal history search* by obtaining records maintained by the Department of Justice (DOJ). If the person is not a resident of Wisconsin or if at any time within the three years preceding the date of the DOJ search the person has not been a resident of Wisconsin, the STS must make a good faith effort to promptly obtain criminal history records from the state in which the person resides or resided.

If the completed background information form indicates that the STS would be prohibited from employing the person as an HSV operator because of his or her conviction record as discussed in item b., below, the STS may not employ the person pending receipt of the criminal history records.

(2) Existing Employees

For a person who is employed as an HSV operator on the effective date of the amended bill, the amended bill essentially provides a 12-month delay in applicability with respect to background checks and disqualification because of conviction record. Specifically, the STS must require that the person complete the DOT background information form not later than the first day of the 13th month after the amended bill's effective date (the beginning of the fourth month after publication). Within 60 days after receiving this form, the STS must obtain the criminal history records and DOT operating records as discussed above. The prohibitions on employment discussed in item b., below, do not apply to existing employees until the first day of the 13th month after the amended bill's effective date.

(3) Periodic Background Checks and Updates

At least every four years, an STS must obtain an updated DOT operating record for each of its HSV operators. Also, if an HSV operator is involved as the operator of a motor vehicle in any accident, the person must report this, in writing, to the STS within 10 days after the occurrence, regardless of whether the person was issued a traffic citation or charged with an offense and regardless of whether the person was operating an HSV at the time of the accident. An HSV operator also must report to the STS, within 10 days, any suspension or revocation of the person's operating privilege or cancellation of an "S" endorsement.

In addition, at least every four years, each HSV operator who does not hold a valid "S" endorsement that was issued or renewed in the previous four years must complete an updated DOT background information form and provide it to the STS. Within 60 days of receiving this form, the STS must again obtain the criminal history records as discussed above.

(4) Exception for Those Holding an "S" Endorsement Issued by DOT

To operate a school bus in Wisconsin, a Wisconsin resident must have an "S" endorsement to his or her operator's license or commercial driver's license (CDL) issued by DOT. [s. 343.04 (2) (e), Stats.] With certain limited exceptions, a Wisconsin operator's license or CDL is issued for eight years. An "S" endorsement is issued only after testing of knowledge and skills and only if certain medical and nonmedical requirements are met, as described in s. 343.12, Stats., and ch. Trans 112, Wis. Adm. Code. Before issuing an "S" endorsement, DOT conducts a criminal background check. As a matter of practice, DOT sends an inquiry to DOJ. This criminal background check is conducted when the "S" endorsement is applied for and when the license is renewed at eight-year intervals. According to DOT staff, DOT also conducts the criminal background check in the interim if there is any activity on a license that has an "S" endorsement, such as an address change. The statutes and administrative code specify the disqualifying crimes and time periods of disqualification for an "S" endorsement, as set forth in the *Attachment* and discussed in item b., below.

b. Prohibition on Employing

The amended bill provides that, notwithstanding the statutes relating to employment discrimination, an STS may not employ as an HSV operator any person to whom any of the following applies:

- (1) *Convictions.* The STS knows or should have known that the person does not meet the requirements for an "S" endorsement with respect to criminal background under statutes and DOT rules. The crimes and periods of disqualification under current law are shown in the *Attachment*. (Should those crimes or periods of disqualification be changed in the future, under the amended bill, these changes would apply to HSV operators.)

If an applicant holds a valid "S" endorsement issued or renewed within four years prior to employment, the STS may employ the person. For other individuals, as noted above, the STS must require the DOT background information form and conduct the investigation to make the determination that the person would meet the same requirements about criminal background that apply to those holding an "S" endorsement.

- (2) *No Operator's License.* The STS knows or should have known that the person does not possess a valid operator's license that would permit operation of an HSV.

- (3) *Conviction for False or Incomplete Information on Background Form.* The STS knows or should have known that the person has been convicted of providing false or incomplete information with respect to a material fact on the DOT background information form.

These prohibitions do not apply to existing employees until the first day of the 13th month after the amended bill's effective date.

c. Prohibition on Certain Activities

The amended bill includes the following provisions relating to certain activities:

- (1) An STS must issue a photo identification card to an HSV operator. The STS must designate a location for the card to be conspicuously displayed in clear view of the passengers in the HSV. The STS must not allow a person to operate an HSV without displaying this identification card. (These provisions apply on the amended bill's effective date.)

- (2) An STS may not allow an HSV operator to drive more than 10 hours in any 18-hour period. If an STS does not operate every day of the week, the STS may not allow an operator to drive any time exceeding 60 hours in any period of seven consecutive days. If an STS operates every day of the week, the STS may not allow an operator to drive any time exceeding 70 hours in any period of eight consecutive days. (These provisions apply on the amended bill's effective date.)

- (3) An STS may not employ a person as an HSV operator unless the person has been fully trained, within the previous 24 months, in the proper use of all passenger restraint systems available in the HSV operated by that person. (This provision applies on the first day of the 13th

month after the amended bill's effective date for existing employees and applies on the effective date for new employees.)

d. Records Maintenance Requirements

An STS that is operated by a county must maintain and furnish all records determined necessary by DOT to determine compliance with s. 85.21, Stats., and the minimum HSV operator qualifications requirements of proposed s. 346.923 in the amended bill, as discussed in item 2., below. If an STS contracts with a county to provide transportation services under s. 85.21, Stats., the STS must maintain all records and furnish all information determined necessary by the county or DOT for purposes of program or contract monitoring, auditing, or evaluation, or to determine compliance with s. 85.21, Stats., or proposed s. 346.923.

e. Penalties for Noncompliance

The amended bill provides the following penalties for noncompliance with these provisions:

- (1) For violation of any requirement or prohibition listed in items b. or c., above; for employing as an HSV operator any person for whom a DOT operating record has not been obtained; and for employing as an HSV operator, pending receipt of the criminal history records, a person whose background information form indicates that the STS would be prohibited from employing: a person must be fined not more than \$1,000 for the first offense and not less than \$1,000 nor more than \$5,000 for each subsequent offense. Each day of violation after the first conviction constitutes a separate offense.
- (2) For violation of the requirement to timely obtain a DOT operating record and criminal history record search as listed in item a., above: a person may be required to forfeit not more than \$200. Each failure to obtain the DOT operating record and criminal history record constitutes a separate offense.

In addition to any criminal penalties and civil forfeitures, the amended bill provides that if a county operates an STS and violates a provision in items b. or c., above, or employs as an HSV operator any person for whom a DOT operating record has not been obtained, DOT may not make transportation assistance payments under s. 85.21, Stats., to the county.

Also, a county may not enter into a contract with an STS that has violated any of the provisions in items b. or c., above, or employed as an HSV operator any person for whom a DOT operating record has not been obtained, within the previous 12 months, unless the violation has been remedied no later than 30 days after the STS received notice of the violation. The amended bill also provides that a contract between a county and STS for services under s. 85.21, Stats., must provide that if the STS violates any of the provisions in items b. or c., above, or employs as an HSV operator any person for whom a DOT operating record has not been obtained during the term of the contract, the county may terminate the contract without liability for the uncompleted portion of the contract or, if the county, determines that the violation may be remedied, may withhold payment until the STS remedies the violation. If a county does not comply with these provisions, DOT may not make transportation assistance payments under s. 85.21, Stats., to the county.

2. Provisions Relating to HSV Operators

In addition to provisions applicable to STSs, the amended bill includes parallel provisions relating to HSV operators and penalties applicable to HSV operators for failure to comply with these provisions. The requirements and penalties applicable to HSV operators are as follows:

- a. Prohibition against operating an HSV without a valid operator's license. (Penalty: In addition to any penalties applicable to operating without a license--forfeiture of not more than \$20 for the first offense and not more than \$50 for each subsequent offense.)
- b. Requirement to hold a valid "S" endorsement or meet the requirements for an "S" endorsement with respect to criminal background, that is, not having any of the convictions in the *Attachment* within the specified time periods. (Penalty: Forfeiture of not more than \$20 for the first offense and not more than \$50 for each subsequent offense.)
- c. Prohibition against providing false or incomplete information with respect to any material fact on the DOT background information form. (Penalty: Forfeiture of not more than \$1,000.)
- d. Prohibition against operating an HSV if convicted of providing false or incomplete information of any material fact on the DOT background information form used by an STS. (Penalty: Forfeiture of not more than \$20 for the first offense and not more than \$50 for each subsequent offense.)
- e. If employed by an STS that is operated by a county or contracts with a county for services under s. 85.21, Stats., requirement to timely report to STS all motor vehicle accidents and any suspension or revocation of operating privileges or cancellation of an "S" endorsement as noted in item 1. a. (3), above. (Penalty: Forfeiture of not more than \$20 for the first offense and not more than \$50 for each subsequent offense.)
- f. Requirement to conspicuously display in the HSV any identification card issued by an STS. (Penalty: Forfeiture of not more than \$20 for the first offense and not more than \$50 for each subsequent offense.)
- g. Requirement to be fully trained, within the two previous years, in the proper use of all passenger restraint systems available in the HSV; requirement to properly restrain all passengers required by statute or rule to be restrained; and requirement to respond to requests from passengers with respect to being properly restrained. (Penalty: Forfeiture of not more than \$20 for the first offense and not more than \$50 for each subsequent offense.)

These provisions, other than the provision in item f., do not apply to existing employees of an STS until the first day of the 13th month after the amended bill's effective date. Item f. applies to all employees of an STS on the amended bill's effective date.

3. Provisions Relating to DOT

The amended bill requires DOT to do the following:

- a. Prescribe a background information form to be completed by a person employed or seeking employment as an HSV operator. DOT must provide counties and STSs with copies of the form upon request.
- b. Prepare and make available to counties and STSs informational materials in printed or electronic form about compliance with the provisions of the amended bill, and establish a method of communication, which may include a statewide, toll-free telephone hotline, to respond to questions about compliance with provisions in the amended bill.
- c. Refuse to register a vehicle as an HSV if a vehicle inspection was required and the vehicle has not been inspected or if that inspected vehicle is in noncompliance.

As discussed in item 1. e., above, the amended bill prohibits DOT from making transportation assistance program payments under s. 85.21, Stats, to a county that operates an STS in violation of the provisions in items 1. b. or c., above, or employs as an HSV operator any person for whom a DOT operating record has not been obtained. The amended bill also prohibits DOT from making transportation assistance payments under s. 85.21, Stats., to a county that either: (a) contracts with an STS that has, within the previous 12 months, violated the provisions in items 1. b. or c., above, or employed as an HSV operator any person for whom a DOT operating record has not been obtained, unless the violation has been remedied no later than 30 days after the STS received notice of the violation; or (b) does not include provisions in its contract with an STS permitting termination of the contract for violation of the provisions in items 1. b. or c., above, or employing as an HSV operator any person for whom a DOT operating record has not been obtained during the term of the contract without liability for the uncompleted portion of the contract or permitting withholding payments until the STS remedies the violation if the county determines the violation may be remedied.

4. Provisions Relating to DOJ

In addition to performing the DOJ criminal background record check, the amended bill requires DOJ to prepare and make available to counties and STSs informational materials, in print or electronic form, about criminal background record checks. DOJ must establish a method of communication, which may include a statewide, toll-free telephone hotline, to respond to questions about criminal background information specified in the amended bill.

C. DESCRIPTION OF SENATE AMENDMENT — (LRBa0936/P2)

The description above is of Senate Bill 3, as amended by Senate Amendment ___ (LRBa0936/P2) to the bill. This part of the memorandum lists the major features of LRBa0936/P2 (the amendment). The amendment would do the following:

1. Delete the listing in Senate Bill 3 of certain crimes and various time periods of disqualification as an HSV operator and substitute the crimes and periods of disqualification that apply to eligibility for an "S" endorsement to operate a school bus.

2. Exempt the holder of an "S" endorsement issued or renewed within the previous four years from the requirement to complete the DOT background information form before being employed by an STS that is operated by a county, or that contracts with a county for transportation services under s. 85.21, Stats.; and eliminate the requirement that the STS conduct a criminal history search if the person holds a valid "S" endorsement issued within the previous four years. (The DOT would have conducted a criminal history search before issuing the "S" endorsement.)
3. Add a provision that an STS that is operated by a county or that contracts with a county for transportation services under s. 85.21, Stats., may not employ as an HSV operator any person who the STS knows or should have known has been convicted for providing false or incomplete information of any material fact on the DOT background information form used by the STS.
4. Add a requirement that an HSV operator employed by an STS must inform the STS within 10 days of the cancellation of an "S" endorsement.
5. Delete the provision in the bill disqualifying a person from operating an HSV if the person was involved in two traffic accidents that resulted in convictions for violations of laws relating to motor vehicle use or operation during the immediately preceding 12 months.

If you have any questions about this matter, please feel free to contact me at the Legislative Council staff offices.

JLK:tlu:ksm;jal;tlu;wu

Attachment

**Current Law Regarding Criminal Background Disqualification
of Wisconsin Residents for "S" Endorsement to Operate a School Bus**

<p>Disqualifying Crimes and Time Periods of Disqualification--Non-Driving-Related Offenses</p>	<p>Subject to the employment discrimination laws (that is, if the circumstances of the crime substantially relate to operating a school bus) within the <i>past five years</i>, has not been convicted of a "felony or offense against public morals" in Wisconsin, or by an American Indian tribe in Wisconsin, or in "another jurisdiction."¹ [s. 343.12 (2) (e), Stats.] DOT has promulgated s. Trans 112.15, Wis. Adm. Code, which defines this as the following crimes:</p> <ol style="list-style-type: none"> a. Felonies, under ch. 940 (crimes against life or bodily security). b. Fourth-degree sexual assault under s. 940.225 (3m). c. Obstructing a highway, tampering with traffic signals, and related intentional acts creating unreasonable risks and high probability of causing death or great bodily harm under s. 941.03, 1985 Stats.² d. Endangering safety by use of dangerous weapon under s. 941.20. e. Recklessly endangering safety under s. 941.30. f. Possession of explosives for unlawful purposes under s. 941.31. g. Administering a dangerous or stupefying drug under s. 941.32. h. Placing foreign objects in edibles under s. 941.325. i. Criminal damage to property under s. 943.01. j. Arson under ss. 943.02 to 943.05. k. Possessing, manufacturing, selling, or transferring Molotov cocktails under s. 943.06. l. Robbery under s. 943.32. m. All crimes under ch. 944 (crimes against sexual morality). n. Violation of ch. 961 (Uniform Controlled Substances Act). o. Any other felony not specified above that has an element of the use or threat of use of force or the causing or the threat of causing injury to the life or bodily security of another person. p. An attempt or being a party to any offense specified above.
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¹ "Another jurisdiction" is defined as another state, District of Columbia, Puerto Rico, any U.S. territory or possession of the United States, any federal military installation in Wisconsin, and any province in Canada. [s. 340.01 (41m), Stats.]

² Because of the five-year provision, this crime is no longer pertinent.

Disqualifying Crimes and Time Periods of Disqualification--Driving-Related Offenses

Notwithstanding the employment discrimination laws, within the *two-year period immediately preceding the date of application* for the "S" endorsement, has not been convicted of any of the following [s. 343.12 (2) (d), Stats.]:

1. Conviction, suspension, or revocation that would be counted under s. 343.307 (2), that is:

- a. s. 346.63 (1) (operating while intoxicated (OWI)).³
- b. s. 346.63 (2) (OWI--causing injury).
- c. s. 346.63 (5) (OWI--commercial motor vehicle (CMV)).³
- d. s. 346.63 (6) (OWI (.04 to .1) and causing injury with CMV).
- e. Conviction in another jurisdiction of law in substantial uniformity with 49 C.F.R. s. 383.51 (b) (2) (i) or (ii) (disqualification of drivers who hold a commercial driver's license (CDL)).⁴
- f. Conviction in another jurisdiction of OWI or conviction, suspension, or revocation in another jurisdiction for refusal for testing for OWI.
- g. s. 343.305 (10) (revocation for refusal for testing for OWI).
- h. s. 940.09 (1) (OWI--homicide).⁵
- i. s. 940.25 (OWI--causing great bodily harm).⁵

2. Conviction for offense listed in s. 343.31 (1) or (2), that is:

- a. s. 346.62 (4) (causing great bodily harm by negligent driving).³
- b. s. 940.06 (second-degree reckless homicide) if vehicle involved.³
- c. s. 940.09 (homicide by intoxicated use of vehicle).^{3, 5}
- d. s. 940.10 (homicide by negligent operation of vehicle).³
- e. s. 940.25 (injury by intoxicated use of vehicle).^{3, 5}
- f. s. 346.63 (2) (OWI--causing injury).³
- g. s. 346.63 (6) (OWI--(.04 to .1) and causing injury with CMV).³
- h. Conviction for OWI.³
- i. Any felony in which a motor vehicle is used.³

³ Including convictions in Wisconsin under a local ordinance or by a Wisconsin Indian tribe.

⁴ 45 C.F.R. s. 383.51 relates to disqualification of drivers who have a CDL. However, s. 383.51 (b) (2) (i) or (ii) do not exist.

⁵ Sections 940.09 (1) and 940.25, Stats., are also included as felonies under ch. 940 and are also subject to the five-year provision listed above.

	<p>j. Failure to stop to render aid in a motor vehicle accident if required by state law.³</p> <p>k. Operating a motor vehicle without proof of financial responsibility, if proof required.³</p> <p>l. s. 343.44 (1) (a), (b), or (d) (operating vehicle while suspended, revoked, or disqualified) if three or more such violations within the five years preceding the violation.³</p> <p>m. s. 346.04 (3) (knowingly fleeing or attempting to elude traffic officer).³</p> <p>n. Any offense under this item 2. committed in another jurisdiction.</p>
	3. Conviction under s. 343.44 (1) (operating while license revoked or suspended). ³
	4. Conviction under s. 346.62 (reckless driving). ³
	5. Two or more convictions under s. 346.63 (7) (operating CMV after drinking or while possessing intoxicant). ³
	6. Conviction for reckless or careless driving in another jurisdiction.

JLK:wu:ksm:jal;wu



Mary Lazich

Wisconsin State Senator
Senate District 28

January 26, 2004

Representative John Ainsworth
Chair, Assembly Committee on Transportation
Room 309 North, State Capitol
Madison, Wisconsin 53707

****HAND DELIVERED****

Dear Chairman Ainsworth:

Thank you for promptly scheduling a public hearing on Senate Bill 3 (SB 3) before the Assembly Transportation Committee on December 16, 2003. Prior to the committee voting on passage of SB 3 in executive session on Thursday, January 29, 2004, I would like to correct some misinformation provided to members at the hearing. The attached question and answer sheet provides detailed answers on the important issues raised at the hearing.

As you may know, I have been actively working on SB 3 for two sessions with bipartisan support. During this time, I have met with human service vehicle (HSV) providers, the Wisconsin School Bus Association, the Wisconsin Department of Transportation, the Wisconsin Council on Aging, the Wisconsin Council on Physical Disabilities, and other interested parties and organizations. I have worked diligently to address each and every concern that has been raised in regard to SB 3. In fact, the Senate Transportation Committee amended SB 3 considerably to accommodate the concerns raised by HSV providers.

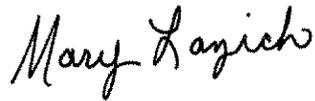
I was very disappointed to hear statements made by HSV providers at the Assembly Transportation Committee in opposition to SB 3 as amended, because the bill was amended in direct response to concerns raised before the Senate Transportation Committee. SB 3 was originally drafted to align HSV standards with caregiver standards. However, HSV providers expressed concerns about aligning the bill with the caregiver laws, because this would place higher standards on HSV drivers than school bus drivers and would ban some drivers from operating an HSV due to crimes committed



earlier in life. Consequently, SB 3 was amended to include the same standards for HSV drivers as school bus drivers.

Thank you for your consideration and support of SB 3. I would appreciate it if you would review the attached information before voting on the bill. In addition, someone from my staff will be in contact with your office within a few days to answer any questions or concerns that you may have about SB 3. If you have any immediate questions, comments, or concerns, please contact me.

Sincerely,



Mary Lazich
State Senator
Senate District 28

cc: Assembly Transportation Committee Members

MAL/tve