

1999 SENATE BILL 456

March 8, 2000 – Introduced by Senators LAZICH and HUELSMAN, cosponsored by Representatives MUSSER and URBAN, by request of Beverly Kraemer in memory of her father, Elmer Blundell. Referred to Committee on Insurance, Tourism, Transportation and Corrections.

1 **AN ACT to amend** 85.21 (3) (c) and 346.95 (4); and **to create** 85.01 (2m), 85.21
2 (3m), 85.21 (5), 341.10 (13) and 346.923 of the statutes; **relating to:** the
3 specialized transportation assistance program, minimum qualifications for the
4 operator of a human service vehicle, inspection and registration of human
5 service vehicles, granting rule-making authority and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, any vehicle used to transport elderly or disabled persons in connection with a transportation assistance program that is administered or funded by this state is called a “human service vehicle”. No person may drive a human service vehicle unless the vehicle is insured with property damage liability coverage of not less than \$10,000 and bodily injury liability coverage with limits of not less than \$75,000 per person. Current law establishes no minimum qualifications for the driver of a human service vehicle.

This bill establishes minimum qualifications for the driver of a human service vehicle. Under the bill, no person may drive a human service vehicle transporting passengers unless the person possesses a valid driver’s license; has not been convicted of, or is not currently charged with, a serious crime; has not abused or neglected an elderly or disabled person; has recently been trained in the proper use of passenger restraint systems and, within the immediately preceding 12 months, has not been at fault in any motor vehicle accident or found guilty of any offense involving a motor vehicle and alcohol or a controlled substance. The bill requires

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each driver of a human service vehicle periodically to submit a completed background information form to his or her employer to demonstrate the driver's eligibility to operate human service vehicles. The bill allows a driver convicted of certain serious crimes to demonstrate that he or she is rehabilitated and may be authorized by the department of transportation (DOT) to drive human service vehicles. A person who drives a human service vehicle in violation of these minimum qualifications may be required to forfeit not more than \$20 for a first violation and not more than \$50 for each subsequent violation.

The bill prohibits a provider of specialized transportation services from employing drivers who have committed these offenses or who refuse to submit completed background information forms as required; and requires providers to obtain the official criminal histories of each driver.

The bill prohibits counties from contracting for specialized transportation services with providers who employ such violators and requires counties to obtain the drivers' completed background information forms.

The bill requires DOT to define the "serious crimes" that disqualify a convicted person from driving a human service vehicle; to establish a list of other crimes that are substantially related to the transport of elderly or disabled persons and prescribe precautionary measures less stringent than a complete bar on employment as a driver; to prescribe and provide the background information forms to be completed by drivers; to hear the appeal of any driver who is disqualified because of a conviction for a serious crime; and to conduct training sessions throughout the state on criminal background investigations, reporting and investigating abuse, neglect, or theft of the property of an elderly or disabled person.

Current law also requires an annual inspection of the equipment and condition of human service vehicles. This bill prohibits DOT from registering a vehicle that has not passed a required annual inspection.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

- 1 **SECTION 1.** 85.01 (2m) of the statutes is created to read:
- 2 85.01 **(2m)** "Operator" has the meaning given in s. 340.01 (41).
- 3 **SECTION 2.** 85.21 (3) (c) of the statutes is amended to read:
- 4 85.21 **(3)** (c) To make and execute contracts with counties to ensure the
- 5 provision of specialized transportation service, subject to sub. (3m). Payments under
- 6 such contracts to eligible applicants shall not exceed the county proportionate share,

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1 except as supplemented under par. (e) or (f). A contract under this section shall
2 require the county to make a matching contribution of 20% of the contract amount
3 and to furnish information determined necessary by the department for periodic
4 program monitoring and year–end auditing and evaluation. A contract may permit
5 a county to hold aids received under this section on or after July 2, 1983, in trust,
6 according to rules promulgated by the department, for the exclusive purpose of
7 acquiring or maintaining equipment used for services authorized under this section.
8 All aids held in trust, as well as any accumulated interest, not expended for the
9 authorized purposes, shall be returned to the department for deposit in the
10 transportation fund. Nothing in this paragraph entitles a county to any investment
11 interest accumulated prior to the time the aid payment is actually received by the
12 county. A contract under this section shall prohibit the department from making any
13 payments under this section to a county that violates sub. (3m) (a).

14 **SECTION 3.** 85.21 (3m) of the statutes is created to read:

15 **85.21 (3m) CONTRACT RESTRICTIONS; SERVICE PROHIBITIONS.** (a) No county may
16 enter into a contract for services under this section with a specialized transportation
17 service that has violated par. (b) within the previous 12 months.

18 (b) No specialized transportation service may do any of the following:

19 1. Employ as an operator any person who has been convicted, within the
20 previous 5 years, of a violation of s. 346.923.

21 2. Employ as operators persons who, individually or in the aggregate, have
22 been at fault in more than a total of 10 accidents in the previous 3 years.

23 3. Employ any number of operators, more than 10% of whom have been at fault
24 in accidents in the previous 3 years.

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1 4. Employ any number of operators less than the number of accidents for which
2 operators of that specialized transportation service have been at fault.

3 5. Employ as operators persons who, individually or in the aggregate, are
4 responsible for more than a total of 25 unrelated violations of s. 346.923 within the
5 previous 5 years.

6 6. Allow any operator to operate a human service vehicle for more than 10 hours
7 in any 18-hour period or, if the specialized transportation service does not operate
8 human service vehicles every day of the week, for any time exceeding 60 hours in one
9 week or, if the specialized transportation service operates human service vehicles
10 every day of the week, for any time exceeding 70 hours in any period of 8 consecutive
11 days.

12 7. Employ as an operator any person who has not, within the 2 previous years,
13 been fully trained in the proper use of any passenger restraint system available in
14 the human service vehicle operated by that operator.

15 8. Employ as an operator any person who has not submitted to the specialized
16 transportation service a completed background information form prescribed by the
17 department under s. 346.923 (3) (d).

18 9. Except as provided in par. (c), employ as an operator any person whose
19 criminal history obtained under par. (d) indicates a conviction for a serious crime,
20 unless the department determines under s. 346.923 (2) that the person is
21 rehabilitated.

22 (c) If the background information form submitted by a person under par. (b) 8.
23 indicates that the person is not eligible under s. 346.923 to operate a human service
24 vehicle transporting any passengers, a specialized transportation service may

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1 employ the person as an operator for not more than 60 days pending the receipt of
2 the information sought under par. (d).

3 (d) Every specialized transportation service shall obtain from the records
4 maintained by the department of justice a criminal history search of each person who
5 is or may be employed by the specialized transportation service as an operator. If the
6 person who is the subject of the criminal history search is not a resident of this state,
7 or if at any time within the 3 years preceding the date of the search that person has
8 not been a resident of this state, the specialized transportation service shall make
9 a good faith effort to obtain from any state in which the person is a resident, or was
10 a resident within the 3 years preceding the date of the search, information that is
11 equivalent to a criminal history.

12 (e) Any person who violates par. (b) shall be fined not more than \$1,000 for the
13 first offense and shall be fined not less than \$1,000 nor more than \$5,000 for each
14 subsequent offense. Each day of violation after the first conviction shall constitute
15 a separate offense.

16 **SECTION 4.** 85.21 (5) of the statutes is created to read:

17 **85.21 (5) OPERATOR BACKGROUND CHECKS.** (a) Each county that receives aids
18 under this section shall obtain a background information form completed by each
19 person employed as an operator by a specialized transportation service with which
20 the county contracts for services described in this section.

21 (b) Every 4 years each specialized transportation service shall require each
22 person employed by the specialized transportation service as an operator to complete
23 a background information form that is provided to the specialized transportation
24 service by the department. At least annually, each specialized transportation service

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1 shall send to the department copies of the background information forms completed
2 during the previous year.

3 (c) A person who provides false information on a background information form
4 required under this subsection may be required to forfeit not more than \$1,000 and
5 may be subject to other sanctions specified by the department by rule.

6 **SECTION 5.** 341.10 (13) of the statutes is created to read:

7 **341.10 (13)** The vehicle is required to be inspected under s. 110.05 and any of
8 the following applies:

9 (a) The vehicle has not been inspected.

10 (b) The most recent inspection of the vehicle indicates noncompliance with ss.
11 110.05 and 110.075, ch. 347 or rules promulgated under those sections or ch. 347.

12 **SECTION 6.** 346.923 of the statutes is created to read:

13 **346.923 Human service vehicles; minimum operator qualifications. (1)**

14 No person may operate a human service vehicle transporting any passenger unless
15 all of the following apply:

16 (a) The operator possesses a valid operator's license issued under ch. 343 or by
17 another jurisdiction that authorizes the operation of the human service vehicle.

18 (b) The operator has not been at fault in any motor vehicle accident during the
19 12 months immediately preceding the operation of the human service vehicle.

20 (c) The operator has not been convicted of a violation of s. 346.63 (1), (2m) or
21 (5) or a local ordinance in conformity therewith, or of a violation of s. 346.63 (2) or
22 (6), 940.09 (1) or 940.25, during the 12 months immediately preceding the operation
23 of the human service vehicle.

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1 (d) The operator prominently displays an identification card issued by the
2 specialized transportation service that identifies the bearer as an operator, states his
3 or her name and contains his or her photograph.

4 (e) The operator has, within the 2 previous years, been fully trained in the
5 proper use of any passenger restraint system available in the human service vehicle
6 and, when requested by the passenger to do so, properly restrains the passenger.

7 (f) 1. The operator has not been convicted of a serious crime, has not been
8 adjudicated delinquent on or after his or her 12th birthday for committing a serious
9 crime, and does not have pending against him or her a charge for a serious crime.

10 2. No unit of government or a state agency, as defined in s. 16.61 (2) (d), has
11 made a finding that the operator has abused or neglected any elderly person or
12 disabled person or misappropriated the property of any elderly person or disabled
13 person.

14 **(2)** (a) Notwithstanding sub. (1) (f) 1., the department may authorize a person
15 who is convicted of a serious crime to operate a human service vehicle transporting
16 a passenger if the person demonstrates to the department by clear and convincing
17 evidence, and in accordance with procedures established by the department by rule,
18 that he or she has been rehabilitated. No person who has been convicted of any of
19 the following offenses may demonstrate that he or she has been rehabilitated:

20 1. First-degree intentional homicide under s. 940.01.

21 2. First-degree sexual assault under s. 940.225 (1).

22 3. First-degree sexual assault of a child under s. 948.02 (1).

23 4. Second-degree sexual assault of a child under s. 948.02 (2) if the person was,
24 at the time of the sexual contact or sexual intercourse, more than 4 years older than
25 the child with whom the person had the sexual contact or sexual intercourse.

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1 5. Repeated acts of sexual assault of the same child under s. 948.025 if the child
2 had not attained the age of 13, or if the child had attained the age of 13 and had not
3 attained the age of 16 and the person was, at the time of the sexual contact or sexual
4 intercourse, more than 4 years older than the child with whom the person had the
5 sexual contact or sexual intercourse.

6 (b) Any person who fails under par. (a) to demonstrate to the department that
7 he or she has been rehabilitated may appeal to the secretary or his or her designee.
8 Any person who is adversely affected by a decision of the secretary or his or her
9 designee under this paragraph has a right to a contested case hearing under ch. 227.

10 **(3)** The department shall do all of the following:

11 (a) Establish by rule a definition of “serious crime” for the purpose of this
12 section. The definition shall include only crimes or acts that are substantially related
13 to transporting an elderly person or disabled person. The definition shall include the
14 offenses specified in sub. (2) (a).

15 (b) Establish by rule a list of crimes or acts that are not included in the
16 definition established under par. (a), that are substantially related to the transport
17 of an elderly person or disabled person and the commission of which warrants a less
18 stringent measure than a bar on employment as an operator. The rule shall be
19 consistent with federal law and regulations and shall include a description of the
20 measures to be taken for the crimes or acts that the department lists under this
21 paragraph.

22 (c) Conduct periodic training sessions throughout the state on criminal
23 background investigations; on reporting and investigating misappropriation of
24 property or abuse or neglect of an elderly person or disabled person; and on any other

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1 material that the department determines will better enable specialized
2 transportation services to comply with the requirements of this section.

3 (d) Prescribe a background information form that directs the respondent to
4 state whether any of the factors described in sub. (1) (f) 1., or in rules promulgated
5 under sub. (3) (a) apply to the person. The department shall provide counties and
6 specialized transportation services with copies of the form upon request.

7 **SECTION 7.** 346.95 (4) of the statutes is amended to read:

8 346.95 (4) Any person violating s. 346.923, 346.925 or 346.94 (8) or (8m) may
9 be required to forfeit not to exceed \$20 for the first offense or not to exceed \$50 for
10 each subsequent offense.

11 **SECTION 8. Initial applicability.**

12 (1) The treatment of section 85.21 (3m) (a) of the statutes first applies to
13 contracts that are entered into, extended, modified or renewed on the effective date
14 of this subsection.

15 (2) The treatment of section 341.10 (13) of the statutes first applies to
16 applications for registration submitted on the first day of the 4th month beginning
17 after publication.

18 **SECTION 9. Effective date.**

19 (1) This act takes effect on July 1, 2000, or on the first day of the 4th month
20 beginning after publication, whichever is later.

21 (END)