



2001 SENATE BILL 258

October 2, 2001 – Introduced by Senators LAZICH, GROBSCHMIDT and HUELSMAN, cosponsored by Representatives GUNDERSON, LADWIG, PLALE, MCCORMICK, STEINBRINK, LASSA and KRAWCZYK, by request of Beverly Kraemer in memory of her father, Elmer Blundell. Referred to Committee on Insurance, Tourism, and Transportation.

1 **AN ACT to renumber** 85.01 (1); **to amend** 85.21 (3) (c) and 346.95 (4); and **to**
2 **create** 85.01 (1g), 85.01 (2m), 85.21 (3m), 85.21 (5), 341.10 (15) and 346.923 of
3 the statutes; **relating to:** the specialized transportation assistance program,
4 minimum qualifications for the operator of a human service vehicle, the
5 registration of human service vehicles, granting rule-making authority, and
6 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 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; conspicuously displays an identification card;

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complies with any applicable precautionary measures prescribed by the department of transportation (DOT); and, within the immediately preceding 12 months, has not been primarily 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 each driver of a human service vehicle to submit periodically 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 DOT to drive human service vehicles. A person who drives a human service vehicle in violation of these minimum qualifications (a violating driver) 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 it requires providers to obtain the official criminal histories of each driver.

The bill prohibits counties from entering into contracts with specialized transportation services who employed violating drivers or otherwise violated these obligations within the previous 12 months unless the violation was remedied before the contract is entered into and not later than 30 days after the specialized transportation service received notice of the violation. The bill also requires that any contract between a county and a specialized transportation service must allow the county to terminate the contract without liability if the specialized transportation service employs violating drivers or otherwise violates these obligations during the term of the contract. The bill further requires specialized transportation services to provide drivers' completed background information forms to counties.

This bill requires DOT to do all of the following:

1. Define the "serious crimes" that disqualify a convicted person from driving a human service vehicle.
2. Determine if a person convicted of a serious crime has been rehabilitated and establish procedures for making the rehabilitation determination.
3. Prescribe precautionary measures relating to the employment of persons determined to be rehabilitated.
4. 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.
5. Prescribe and provide the background information forms to be completed by drivers.
6. Establish a method of determining whether a driver was primarily at fault in an accident.
7. Hear the appeal of any driver who is disqualified because of a conviction for a serious crime.
8. Conduct training sessions throughout the state on criminal background investigations, reporting, and the investigation of abuse, neglect, or theft of the property of an elderly or disabled person.

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Current law also requires an annual inspection of the equipment and condition of human service vehicles. This bill prohibits DOT from registering a human service 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 (1) of the statutes is renumbered 85.01 (1m).

2 **SECTION 2.** 85.01 (1g) of the statutes is created to read:

3 85.01 (1g) “Background information form” means the background information
4 form prescribed by the department under s. 346.923 (4) (e).

5 **SECTION 3.** 85.01 (2m) of the statutes is created to read:

6 85.01 (2m) “Operator” has the meaning given in s. 340.01 (41).

7 **SECTION 4.** 85.21 (3) (c) of the statutes is amended to read:

8 85.21 (3) (c) To make and execute contracts with counties to ensure the
9 provision of specialized transportation service, subject to sub. (3m). Payments under
10 such contracts to eligible applicants shall not exceed the county proportionate share,
11 except as supplemented under par. (e) or (f). A contract under this paragraph shall
12 prohibit the department from making any payments under this paragraph to a
13 county that violates sub. (3m) (a). A contract under this ~~section~~ paragraph shall
14 require the county to make a matching contribution of 20% of the contract amount
15 and to furnish information determined necessary by the department for periodic
16 program monitoring and year-end auditing and evaluation. A contract may permit
17 a county to hold aids received under this section on or after July 2, 1983, in trust,
18 according to rules promulgated by the department, for the exclusive purpose of
19 acquiring or maintaining equipment used for services authorized under this section.

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1 All aids held in trust, as well as any accumulated interest, not expended for the
2 authorized purposes, shall be returned to the department for deposit in the
3 transportation fund. Nothing in this paragraph entitles a county to any investment
4 interest accumulated prior to the time the aid payment is actually received by the
5 county.

6 **SECTION 5.** 85.21 (3m) of the statutes is created to read:

7 85.21 **(3m)** CONTRACT RESTRICTIONS; SERVICE PROHIBITIONS. (a) No county may
8 enter into a contract for services under this section with a specialized transportation
9 service that has violated par. (b) within the previous 12 months unless the violation
10 has been remedied before the contract is entered into and the violation was remedied
11 no later than 30 days after the specialized transportation service received notice of
12 the violation. A contract between a county and a specialized transportation service
13 for services under this section shall provide that, if the specialized transportation
14 service violates par. (b) during the term of the contract, the county may terminate
15 the contract without liability for the uncompleted portion of the contract or the
16 county may, if the county determines that the violation of par. (b) is of a nature that
17 may be remedied, withhold payment under the contract until the specialized
18 transportation service remedies the violation.

19 (b) Notwithstanding ss. 111.321, 111.322, and 111.335, no specialized
20 transportation service may do any of the following:

21 1. Employ as an operator any person who has been convicted, within the
22 previous 5 years, of a violation of s. 346.923 other than a violation of s. 346.923 (1)
23 (d).

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

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

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

5 5. Allow an operator to operate a human service vehicle prior to the specialized
6 transportation service issuing to the operator an identification card containing the
7 information required under s. 346.923 (1) (d) and prior to designating a location for
8 conspicuous display of the identification card in clear view of passengers in each
9 human service vehicle.

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

16 7. Employ as an operator any person who has not, within the 2 previous years,
17 been fully trained in the proper use of all passenger restraint systems available in
18 the human service vehicle operated by that operator.

19 8. Employ as an operator any person who has not submitted to the specialized
20 transportation service a completed background information form.

21 9. Employ as an operator any person whose criminal history obtained under
22 par. (d) indicates a conviction for a serious crime, as defined by the department by
23 rule under s. 346.923 (4) (a), or who is otherwise convicted of a serious crime, unless
24 the department determines under s. 346.923 (2) that the person is rehabilitated.

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1 10. Allow an operator to operate a human service vehicle in violation of any
2 applicable precautionary measures established by the department under s. 346.923
3 (4) (b) or (c).

4 11. Employ as an operator any person who has been convicted of a violation of
5 s. 85.21 (5) (d).

6 (c) Notwithstanding ss. 111.321, 111.322, and 111.335, if the background
7 information form submitted by a person under par. (b) 8. indicates that the person
8 is not eligible under s. 346.923 to operate a human service vehicle transporting any
9 passengers, a specialized transportation service may not employ the person as an
10 operator pending the receipt of the information sought under par. (d).

11 (d) Notwithstanding ss. 111.321, 111.322, and 111.335, within 60 days of receipt
12 of a completed background information form from a person specified in sub. (5) (a)
13 or (b) or a person seeking employment by a specialized transportation service as an
14 operator who would otherwise be hired as an operator by the specialized
15 transportation service, a specialized transportation service shall obtain from the
16 records maintained by the department of justice, and the department of justice shall
17 provide, a criminal history search of the person. Notwithstanding ss. 111.321,
18 111.322, and 111.335, if the person who is the subject of the criminal history search
19 is not a resident of this state, or if at any time within the 3 years preceding the date
20 of the search that person has not been a resident of this state, the specialized
21 transportation service shall make a good faith effort to obtain promptly from any
22 state in which the person is a resident, or was a resident within the 3 years preceding
23 the date of the search, information that is equivalent to a criminal history.

24 (e) Any person who knowingly violates par. (b) or (c) shall be fined not more than
25 \$1,000 for the first offense and shall be fined not less than \$1,000 nor more than

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1 \$5,000 for each subsequent offense. Each day of violation after the first conviction
2 shall constitute a separate offense.

3 (f) Any person who violates par. (d) may be required to forfeit not more than
4 \$200. Each failure to obtain a criminal history search under par. (d) constitutes a
5 separate offense.

6 **SECTION 6.** 85.21 (5) of the statutes is created to read:

7 **85.21 (5) OPERATOR BACKGROUND CHECKS.**

8 (a) Every specialized transportation service that contracts with a county for
9 services under this section shall, within 30 days of entering into the contract, provide
10 to the county a background information form completed by each person who, at the
11 time the contract was entered into, was employed as an operator by the specialized
12 transportation service. The completed form for each person hired as an operator
13 after the contract was entered into shall be provided to the county within 10 days of
14 the person's hiring.

15 (b) Every specialized transportation service shall require any person employed
16 as an operator who has not completed a background information form within the
17 prior 4 years to complete an updated background information form. The specialized
18 transportation service shall, within 10 days of completion of the form, provide this
19 updated form to any county with which the specialized transportation service has
20 contracted for services under this section.

21 (c) At least annually, each specialized transportation service shall send to the
22 department copies of all background information forms completed pursuant to pars.
23 (a) and (b).

24 (d) A person who provides false or incomplete information with respect to any
25 material fact on a background information form required to be completed under this

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1 subsection may be required to forfeit not more than \$1,000 and may be subject to
2 other sanctions specified by the department by rule.

3 **SECTION 7.** 341.10 (15) of the statutes is created to read:

4 341.10 (15) The vehicle is required to be inspected under s. 110.05 and any of
5 the following applies:

6 (a) The vehicle has not been inspected.

7 (b) The most recent inspection of the vehicle indicates noncompliance with ss.
8 110.05 and 110.075 or ch. 347 or rules promulgated under those sections or ch. 347.

9 **SECTION 8.** 346.923 of the statutes is created to read:

10 **346.923 Human service vehicles; minimum operator qualifications. (1)**

11 Notwithstanding ss. 111.321, 111.322, and 111.335, no person may operate a human
12 service vehicle transporting any passenger unless all of the following apply:

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

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

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

22 (d) The operator conspicuously displays an identification card issued by the
23 specialized transportation service that identifies the bearer as an operator, states his
24 or her name, and contains his or her photograph.

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1 (e) The operator has, within the 2 previous years, been fully trained in the
2 proper use of all passenger restraint systems available in the human service vehicle
3 and, when requested by a passenger to do so, properly restrains the passenger.

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

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

10 (g) The operator complies with any applicable precautionary measures
11 established by the department under sub. (4) (b) or (c).

12 (h) The operator has not been convicted of a violation of s. 85.21 (5) (d).

13 **(2)** A person employed as an operator by a specialized transportation service
14 shall report to the specialized transportation service in writing within 10 days of the
15 occurrence of any of the following:

16 (a) Any conviction for a violation of this section or s. 85.21 (5) (d).

17 (b) Any accident in which the person was involved as the operator of a motor
18 vehicle, regardless of whether the person was primarily at fault or whether the
19 person was operating a human service vehicle.

20 (c) Any conviction for a serious crime.

21 (d) Any conviction for a violation of s. 346.63 (1), (2m), or (5) or a local ordinance
22 in conformity therewith, or for a violation of s. 346.63 (2) or (6), 940.09 (1), or 940.25.

23 (e) Any finding by a unit of government or state agency, as defined in s. 16.61
24 (2) (d), that the person has abused or neglected an elderly person or disabled person
25 or misappropriated the property of an elderly person or disabled person.

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1 (f) Any suspension or revocation of the person's operating privilege by this state
2 or another jurisdiction.

3 **(3)** (a) Notwithstanding sub. (1) (f) 1., the department may authorize a person
4 who is convicted of a serious crime to operate a human service vehicle transporting
5 a passenger if the person demonstrates to the department by clear and convincing
6 evidence that he or she has been rehabilitated. No person who has been convicted
7 of any of the following offenses may demonstrate that he or she has been
8 rehabilitated:

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

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

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

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

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

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

24 **(4)** The department shall do all of the following:

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1 (a) Establish by rule a definition of “serious crime” for the purpose of this
2 section. The definition shall include only crimes or acts that are substantially related
3 to transporting an elderly person or disabled person. The definition shall include the
4 offenses specified in sub. (3) (a).

5 (b) Establish by rule procedures to be used by the department in determining
6 under sub. (3) (a) whether a person who has been convicted of a serious crime has
7 been rehabilitated, and prescribe precautionary measures to be taken by a
8 specialized transportation service in relation to operators who have been convicted
9 of serious crimes and who have been found by the department to be rehabilitated.

10 (c) Establish by rule a list of crimes or acts that are not included in the
11 definition established under par. (a), that are substantially related to the transport
12 of an elderly person or disabled person and the commission of which warrants a less
13 stringent measure than a bar on employment as an operator. The rule shall be
14 consistent with federal law and regulations and shall include a description of the
15 precautionary measures to be taken by a specialized transportation service in
16 relation to operators who have been convicted of the crimes or acts that the
17 department lists under this paragraph.

18 (d) Conduct periodic training sessions throughout the state on criminal
19 background investigations; on reporting and investigating misappropriation of
20 property or abuse or neglect of an elderly person or disabled person; and on any other
21 material that the department determines will better enable specialized
22 transportation services to comply with the requirements of this section.

23 (e) Prescribe a background information form that directs a person seeking
24 employment as an operator to state whether any of the circumstances described in
25 sub. (1) (f) 1 or s. 85.21 (3m) (b) 1. to 3., or in rules promulgated under sub. (4) (a),

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1 apply to the person. The department shall provide counties and specialized
2 transportation services with copies of the form upon request.

3 (f) Establish by rule a method of determining whether an operator was
4 primarily at fault in a motor vehicle accident for purposes of this section and s. 85.21
5 (3m) (b) 2. to 4.

6 **SECTION 9.** 346.95 (4) of the statutes is amended to read:

7 346.95 (4) Any person violating s. 346.923, 346.925, or 346.94 (8) or (8m) may
8 be required to forfeit not to exceed more than \$20 for the first offense or not to exceed
9 and not more than \$50 for each subsequent offense.

10 **SECTION 10. Initial applicability.**

11 (1) The treatment of section 85.21 (3m) (a) and (5) (a) of the statutes first applies
12 to contracts that are entered into on the effective date of this subsection.

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

16 **SECTION 11. Effective date.**

17 (1) This act takes effect on the first day of the 4th month beginning after
18 publication.

19 (END)