

2003 DRAFTING REQUEST

Bill

Received: **03/14/2003**

Received By: **agary**

Wanted: **Soon**

Identical to LRB:

For: **Mary Lazich (608) 266-5400**

By/Representing: **Tom Van Ess (aide)**

This file may be shown to any legislator: **NO**

Drafter: **agary**

May Contact:

Addl. Drafters: **pgrant**

Subject: **Transportation - driver licenses
Education - miscellaneous**

Extra Copies: **PJH, DAK**

Submit via email: **YES**

Requester's email: **Sen.Lazich@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

School bus endorsements and background checks for other vehicles transporting pupils (school vans)

Instructions:

See Attached

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/P1	agary 03/31/2003	kgilfoy 04/04/2003	pgreensl 04/10/2003	_____	amentkow 04/10/2003		S&L
/P2	agary 07/22/2003	kgilfoy 07/29/2003	pgreensl 08/04/2003	_____	lemery 08/04/2003		S&L

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Please send 15 out jacketed. Thanks. ARB

J 12/15 Self 12/15

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* PAs : see below

14-12/10
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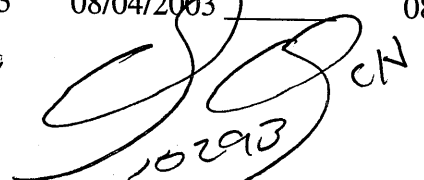
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KMG*

[Handwritten signature and date 10-27-03]

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LRB 2317

3/14/03

Meeting with Tom Van Ess and Joyce Kiel. Want a new draft covering school bus "S" endorsements and vans carrying students. Tighten up the bus driver statute re crimes under s. 343.12 (2) (d) and (e). Want everything "notwithstanding" not "subject to" s. 111.331 etc. Allow rehabilitation. Also require ch. 948 crimes in DOT rule; specify crimes that must be included in the rule. Re vans carrying pupils, exempt drivers who have "S" endorsement. For school buses, background check should remain every 8 years, but also require check of out of state background like in SB-3; same for vans. Also require check of operating record for vans like in SB-3, but not for "S" endorsement. Provide authority for fingerprinting for "S" endorsement and vans. Give DOT discretion to determine what are disqualifying crimes and how long disqualification is for, but also require that certain crimes be included. Include accident record disqualification.

ARG

soon
turned
in 3/31

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-Note

LPS: check auto refs.

GEN. CAY.

1 AN ACT ...; relating to: qualifications for endorsements authorizing the
 2 operation of a school bus and for operators of certain other motor vehicles
 3 transporting pupils, ^{LPS: Six} school board contracts for the transportation of pupils,
 4 granting rule-making authority, providing an exemption from rule-making
 5 procedures ~~from~~ from emergency rule procedures and extending the time limit
 6 for emergency rule procedures, and providing penalties.

Analysis by the Legislative Reference Bureau

Under current law, a person may not operate a school bus without a school bus endorsement issued by the Department of Transportation (DOT). DOT may issue a school bus endorsement to a person's valid motor vehicle operator's license if the person meets certain qualifications. DOT may not issue a school bus endorsement to an applicant if he or she has been convicted of specified offenses (including operating while intoxicated and operating with a suspended or revoked license) within the past two years, regardless of whether the circumstances of the offense are substantially related to the circumstances of operating a school bus, or of other offenses (including a felony or an "offense against public morals") within the past five years, if the circumstances of the offense are substantially related to the circumstances of operating a school bus. A school bus endorsement is valid for the eight-year duration of the person's operator's license. Under certain circumstances, DOT must cancel the operator's license of a person to whom a school bus endorsement has been issued.

has been convicted

This bill modifies the existing criminal history requirements, and imposes additional requirements, for the initial issuance or renewal of a school bus endorsement. The bill:

1. Prohibits DOT from issuing or renewing a school bus endorsement to an applicant if the applicant has been convicted of any specified disqualifying crime or offense within a prior minimum specified time period. These disqualifying crimes and offenses and minimum time periods for disqualification include those specified under current law as well as many new disqualifying crimes and offenses, including various crimes against children. The bill also authorizes DOT to specify by rule additional disqualifying crimes and offenses and the time period during which the disqualification applies. All disqualifying crimes and offenses provided for under the bill apply regardless of whether the circumstances of the offense are substantially related to the circumstances of operating a school bus. DOT may issue or renew a school bus endorsement to an applicant who would not otherwise be qualified for issuance or renewal of a school bus endorsement because of a conviction if DOT has determined that the applicant is rehabilitated and at least ~~5~~^{five} years have passed since the conviction.

2. Requires DOT to conduct a background investigation, including a criminal history search, of each applicant for initial issuance or renewal of a school bus endorsement, and to record the results of the investigation in DOT's files.

3. Authorizes DOT to obtain fingerprints from an applicant for initial issuance or renewal of a school bus endorsement, and to submit the fingerprints for a record check by the Federal Bureau of Investigation (FBI). If DOT takes fingerprints of an applicant, DOT must generally keep the fingerprints confidential in the same manner required of photographs taken by DOT for operator's licenses. However, as with photographs taken for operator's licenses, DOT may, under certain circumstances and with certain limitations, release copies of the fingerprints to law enforcement for law enforcement purposes.

4. Prohibits DOT from issuing or renewing a school bus endorsement to an applicant who has had more than two traffic accidents resulting in convictions in the 12 months immediately preceding the application.

5. Requires DOT to cancel a school bus endorsement upon receipt of a record of conviction for a crime or offense that would disqualify the person from holding a school bus endorsement.

Under current law, a school board or private school (or a school bus contractor providing transportation under contract with a school board) may provide for the transportation of pupils to and from school using a motor vehicle that transports no more than nine passengers (school van), or a motor vehicle that transports ~~10~~^{ten} or more passengers and that is authorized by DOT to be used temporarily under emergency circumstances (temporary school vehicle), if the vehicle and the operator meet certain requirements. Among the operator requirements is that the operator may not have been convicted of certain offenses within the past two years or certain other offenses within the past five years. These offenses are similar, but not identical, to the disqualifying offenses for a school bus endorsement under current law.

This bill modifies the existing requirements for operators of a school van or temporary school vehicle and imposes additional requirements that create more consistency between the requirements for operation of a school bus and the requirements for operation of a school van or temporary school vehicle. With respect to an individual employed by or under contract with any person (including a school district, private school, or school bus contractor) to operate a school van or temporary school vehicle, other than an individual who holds a school bus endorsement, the bill:

1. Requires the person, before permitting the individual to operate such a vehicle and every ~~4~~ ^{four} years thereafter, to obtain a criminal history search of the individual from the Department of Justice (DOJ), obtain the individual's motor vehicle operating record, and obtain a completed background information form from the individual.

2. Authorizes the person to obtain fingerprints from the individual and to submit the fingerprints for a record check by the FBI. The fingerprints must otherwise be kept confidential.

3. Prohibits the person from permitting the individual to operate such a vehicle if the person knows or should know that the individual has a record of conviction or operating privilege revocation that would disqualify the individual from issuance or renewal of a school bus endorsement. However, the person may permit operation of such a vehicle by an individual who has been determined by DOT to be rehabilitated (using procedures and criteria consistent with those established by DOT for making rehabilitation determinations with respect to applicants for a school bus endorsement) and at least ~~3~~ ^{five} years have passed since the conviction.

4. Prohibits the person from permitting the individual to operate such a vehicle if the person knows or should know that the individual has been convicted of providing materially false information on a background information form.

5. Prohibits the person from permitting the individual to operate such a vehicle if the person knows or should know that the individual has had more than two traffic accidents resulting in convictions in the 12^v months immediately preceding the proposed operation.

6. Requires the individual to inform the person of any traffic accident, conviction that would make the individual ineligible to be an operator, or suspension or revocation of the individual's operator's license or cancellation of the individual's school bus endorsement. (This requirement also applies to an individual who holds a school bus endorsement.)

7. Prohibits an individual from operating such a vehicle if the individual does not meet the eligibility requirements for operating such a vehicle.

The bill provides penalties for violation of its requirements. For most violations by an individual (operator) or a person (typically a school district, private school, or school bus contractor), the individual or person may be required to forfeit not more than \$100 for the first offense and not more than \$200 for each subsequent offense. However, an individual convicted of providing materially false or incomplete information on a background information form may be required to forfeit not more than \$1,000 and is permanently barred from subsequently operating a school van or temporary school vehicle.

The bill also requires the Department of Public Instruction (DPI) and DOJ to prepare and make available informational materials related to the requirements imposed under the bill.

Under current law, the use of privately owned motor vehicles to transport pupils must be under written contract between the owner or lessee of the vehicles and the school district for which the transportation is provided. Under this bill, the contract must require the owner or lessee to perform any action necessary for the owner or lessee or the school board to fulfill its legal obligations with respect to transporting pupils by means of school vans or temporary school vehicles.

The bill requires DOT, within approximately six months, to submit proposed rules to administer the provisions of the bill to the legislative council staff and to promulgate emergency rules to administer the provisions of the bill until the proposed rules submitted to the legislative council staff become final. The bill delays the applicability of all of its provisions, except the rule-making provisions, for approximately six months, and delays for approximately six additional months the applicability of its provisions to those individual who are employed by or under contract with a school district, private school, or school bus contractor to operate a school van or temporary school vehicle at the time of enactment of the bill.

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.** 121.52 (2) (b) of the statutes is amended to read:

2 121.52 (2) (b) The owner or lessee of all privately owned motor vehicles
3 transporting pupils for compensation shall be under written contract with the school
4 board of the district for which such transportation is provided. The contract shall
5 require the owner or lessee to perform any action necessary for the owner or lessee
6 or the school board to fulfill any obligation specified in s. 121.555.

7 **SECTION 2.** 121.555 (2) (c) 5. of the statutes is repealed.

8 **SECTION 3.** 121.555 (3) of the statutes is created to read:

9 121.555 (3) (a) Any person that employs or contracts with an individual, except
10 an individual who holds a valid school bus endorsement issued under s. 343.12, to
11 operate a motor vehicle under sub. (1) to transport pupils shall do all of the following

1 before the individual is initially permitted to operate the vehicle and every 4 years
2 thereafter:

3 1. Notwithstanding ss. 111.321, 111.322, and 111.335, obtain from the records
4 maintained by the department of justice a criminal history search of the individual.
5 Notwithstanding ss. 111.321, 111.322, and 111.335, if the individual who is the
6 subject of the criminal history search is not a resident of this state or was not a
7 resident of this state at any time within the 3 years preceding the date of the search,
8 the person shall make a good faith effort to obtain from any state in which the
9 individual is a resident or was a resident within the 3 years preceding the date of the
10 search information that is equivalent to the criminal history provided by the
11 department of justice.

12 2. Obtain the individual's operating record from the department of
13 transportation under s. 343.24 or, if the operating record has already been obtained
14 by another entity, from that entity if there are reasonable grounds to believe that the
15 operating record obtained from that entity is accurate and was furnished by the
16 department of transportation to that entity not more than 2 months previously.

17 3. Obtain a background information form, prescribed by the department of
18 transportation, completed by the individual.

19 (b) Any person that employs or contracts with an individual to operate a motor
20 vehicle under sub. (1) to transport pupils, except an individual who holds a valid
21 school bus endorsement issued under s. 343.12, may require the individual to be
22 fingerprinted on 2 fingerprint cards, each bearing a complete set of the individual's
23 fingerprints. The department of justice may provide for the submission of the
24 fingerprint cards to the federal bureau of investigation for the purposes of verifying
25 the identity of the individual fingerprinted and obtaining records of his or her

1 criminal arrests and convictions. Except as provided in this paragraph, fingerprints
2 obtained under this paragraph shall be kept confidential.

3 (c) Notwithstanding ss. 111.321, 111.322, and 111.335, no person that employs
4 or contracts with an individual, except an individual who holds a valid school bus
5 endorsement issued under s. 343.12, to operate a motor vehicle under sub. (1) to
6 transport pupils may permit the individual to operate such a vehicle if any of the
7 following ~~apply~~ ^{applies}.

8 1. Subject to par. (d), the person knows or should know that the individual has
9 a record of conviction or operating privilege revocation that would disqualify the
10 person from issuance or renewal of a school bus endorsement under s. 343.12 (7) ✓ and
11 rules promulgated by the department of transportation under s. 343.12 (7) and (8) ✓.

12 2. The person knows or should know that the individual has been convicted of
13 a violation of sub. (4) (b) ✓.

14 3. The person knows or should know that the individual was involved as the
15 operator of a motor vehicle in more than 2 traffic accidents, occurring within the 12
16 months immediately preceding the proposed operation, that resulted in convictions
17 for any violation of law related to motor vehicle use or operation.

18 (d) A person that employs or contracts with an individual to operate a motor
19 vehicle under sub. (1) to transport pupils may permit an individual who would
20 otherwise not be eligible to operate the vehicle under par. (c) 1. because of a conviction
21 or operating privilege revocation to operate the vehicle if all of the following apply:

22 1. At least 5 years have elapsed since any conviction or operating privilege
23 revocation that would cause the individual to be ineligible to operate the vehicle.

24 2. The department of transportation determines, upon application and
25 demonstration by clear and convincing evidence by the individual, that the

1 individual has been rehabilitated. The department of transportation shall make its
2 determination consistent with procedures and criteria established by rule by the
3 department of transportation under s. 343.12 (8) (b) 3. If the department of
4 transportation determines that an individual has been rehabilitated and is eligible
5 to operate a vehicle under sub. (1) to transport pupils, the department of
6 transportation shall record the determination in the person's file specified in s.
7 343.23 (2) (a). No person has any right of administrative or judicial review of a
8 rehabilitation determination by the department of transportation.

9 **SECTION 4.** 121.555 (4) of the statutes is created to read:

10 121.555 (4) (a) An individual who is employed by or under contract with a
11 person to operate a motor vehicle under sub. (1) to transport pupils shall report to
12 the person in writing within 10 days of the occurrence of any of the following:

13 1. Any accident in which the individual was involved as the operator of a motor
14 vehicle, regardless of whether the individual was issued a uniform traffic citation or
15 charged with any offense or whether the individual was operating a motor vehicle
16 under sub. (1) to transport pupils.

17 2. Notwithstanding ss. 111.321, 111.322, and 111.335, any conviction or
18 operating privilege revocation that, under sub. (3) (c), makes the individual ineligible
19 to operate a motor vehicle under sub. (1) to transport pupils or, if the individual holds
20 a valid school bus endorsement issued under s. 343.12, that disqualifies the
21 individual from issuance or renewal of a school bus endorsement under s. 343.12 (7)
22 and rules promulgated by the department of transportation under s. 343.12 (7) and
23 (8).

24 3. Any suspension or revocation of the individual's operating privilege, or
25 cancellation of a school bus endorsement, by this state or another jurisdiction.

1 (b) No individual may provide false or incomplete information with respect to
2 any material fact on a background information form specified in sub. (3) (a) 3. ✓

3 SECTION 5. 121.555 (5) of the statutes is created to read:

4 121.555 (5) No person may operate a motor vehicle under sub. (1) transporting
5 pupils unless the person satisfies all requirements under this section for eligibility
6 to operate such a vehicle.

7 SECTION 6. 121.555 (6) ✓ of the statutes is created to read:

8 121.555 (6) (a) The department of public instruction shall prepare and make
9 available to school districts, private schools, and school bus contractors
10 informational materials, in printed or electronic form, relating to compliance with
11 this section and establish a method of communication, which may include a
12 statewide, toll-free telephone hotline, to respond to questions regarding compliance
13 with this section.

14 (b) The department of justice shall prepare and make available to school
15 districts, private schools, and school bus contractors informational materials, in
16 printed or electronic form, relating to criminal background information specified
17 under this section and shall establish a method of communication, which may
18 include a statewide, toll-free telephone hotline, to respond to questions regarding
19 criminal background information specified under this section.

20 SECTION 7. 121.555 (7) of the statutes is created to read:

21 ~~121.555~~ ^{121.555} (7) Any person that employs or contracts with an individual to operate
22 a motor vehicle under sub. (1) to transport pupils shall maintain all records and
23 furnish all information determined necessary by the department to determine
24 compliance with this section.

25 SECTION 8. 121.555 (8) of the statutes is created to read:

1

~~121.174~~ (8) ^{121.555}

(a) Any person or individual who violates sub. (3) (c), (4) (a), (5), or (7) may be required to forfeit not more than \$100 for the first offense and not more than \$200 for each subsequent offense.

(b) Any individual who violates sub. (4) (b) may be required to forfeit not more than \$1000.

5

6

SECTION 9. 343.12 (2) (intro.) of the statutes is amended to read:

343.12 (2) (intro.) The department shall issue or, except as provided in par. (h), renew a school bus endorsement to a person only if such person meets all of the following requirements:

SECTION 10. 343.12 (2) (d) of the statutes is repealed.

SECTION 11. 343.12 (2) (dm) of the statutes is created to read:

343.12 (2) (dm) Notwithstanding ss. 111.321, 111.322, and 111.335, has been subject to the background investigation specified in sub. (6) (a) and does not have a record of conviction or operating privilege revocation that disqualifies the person from issuance or renewal of a school bus endorsement under sub. (7) or rules promulgated by the department under subs. (7) and (8).

SECTION 12. 343.12 (2) (e) of the statutes is repealed.

SECTION 13. 343.12 (2) (em) of the statutes is created to read:

343.12 (2) (em) Has not, based upon the person's application and operating record maintained by the department, been involved as the operator of a motor vehicle in more than 2 traffic accidents occurring within the 12 months immediately preceding the application that resulted in convictions for any violation of law related to motor vehicle use or operation.

SECTION 14. 343.12 (4) (a) 2. of the statutes is repealed.

SECTION 15. 343.12 (5) of the statutes is renumbered 343.12 (9).

25

1 **SECTION 16.** 343.12 (6) of the statutes is created to read:

2 343.12 (6) (a) Notwithstanding ss. 111.321, 111.322, and 111.335, prior to the
3 initial issuance or renewal of a school bus endorsement, the department shall
4 conduct a background investigation of the applicant. In conducting the background
5 investigation, the department shall obtain from the records maintained by the
6 department of justice a criminal history search of the applicant. If the applicant is
7 not a resident of this state or was not a resident of this state at any time within the
8 3 years preceding the date of the search, the department shall make a good faith
9 effort to obtain from any state in which the applicant is a resident or was a resident
10 within the 3 years preceding the date of the search information that is equivalent to
11 the criminal history provided by the department of justice. The department shall
12 record in the applicant's file specified in s. 343.23 (2) (a) that the background
13 investigation was made, the date ^{on which} it was completed, and the results of the background
14 investigation.

15 (b) The department may require an applicant for the initial issuance or renewal
16 of a school bus endorsement to be fingerprinted on 2 fingerprint cards, each bearing
17 a complete set of the person's fingerprints. The department of justice may provide
18 for the submission of the fingerprint cards to the federal bureau of investigation for
19 the purposes of verifying the identity of the person fingerprinted and obtaining
20 records of his or her criminal arrests and convictions.

21 **SECTION 17.** 343.12 (7) of the statutes is created to read:

22 343.12 (7) (a) Notwithstanding ss. 111.321, 111.322^v, and 111.335, the
23 department may not issue or renew a school bus endorsement if the applicant has
24 been convicted, within the time period specified by the department by rule, but not
25 less than 2 years immediately preceding the date of application, of a violation of any

1 of the following state laws or any local ordinance in conformity with any of the
2 following state laws or any federal law or law of a federally recognized American
3 Indian tribe or band in this state or law of another jurisdiction that would be a
4 violation of any of the following state laws if the person had committed the offense
5 in this state and been convicted of the offense under the laws of this state:

- 6 1. Reckless driving under s. 346.62.✓
- 7 2. Operating a motor vehicle while operating privileges are suspended or
8 revoked or while the operator is disqualified under s. 343.44 (1) (a), (b), or (d).✓✓✓✓
- 9 3. Second-degree reckless homicide under s. 940.06 if the offense results from
10 the operation of a motor vehicle.✓
- 11 4. Homicide by intoxicated use of a vehicle under s. 940.09 (1).✓
- 12 5. Homicide by negligent operation of a vehicle under s. 940.10.✓
- 13 6. Injury by intoxicated use of a vehicle under s. 940.25 (1).✓
- 14 7. Causing injury by operating a motor vehicle under the influence of an
15 intoxicant or other drug under s. 346.63 (2).✓
- 16 8. Causing injury by operating a commercial motor vehicle with a prohibited
17 alcohol concentration under s. 346.63 (6).✓
- 18 9. Operating a motor vehicle under the influence of an intoxicant or other drug
19 or with a prohibited alcohol concentration under s. 346.63 (1).✓
- 20 10. Operating a commercial motor vehicle with a prohibited alcohol
21 concentration under s. 346.63 (5).✓
- 22 11. Operating a motor vehicle while under the legal drinking age with a
23 prohibited alcohol concentration under s. 346.63 (2m).✓
- 24 12. Failure to stop and render assistance at the scene of a motor vehicle
25 accident under s. 346.67 (1) (c).✓

1 13. Operating a motor vehicle without having furnished proof of financial
2 responsibility under s. 344.29. ✓

3 14. Fleeing from or attempting to elude a traffic officer under s. 346.04 (3). ✓

4 15. Operating a commercial motor vehicle or being on duty time while having
5 any alcohol concentration, within 4 hours of consuming alcohol or being intoxicated,
6 or while possessing alcohol under s. 346.63 (7) (a) ✓ if the applicant has been previously
7 convicted of any offense under s. 346.63 (7) (a) ✓ or any local ordinance in conformity
8 with s. 346.63 (7) (a) or any federal law or law of a federally recognized American
9 Indian tribe or band in this state or law of another jurisdiction that would be a
10 violation of s. 346.63 (7) (a) if the applicant had committed the offense in this state
11 and been convicted of the offense under the laws of this state.

12 (b) Notwithstanding ss. 111.321, 111.322, ✓ and 111.335, the department may not
13 issue or renew a school bus endorsement if the applicant has had, within 2 years
14 immediately preceding the date of application, his or her operating privilege revoked
15 under s. 343.305 (10) ✓ for refusal to submit to chemical testing or has been convicted
16 in another jurisdiction or had his or her operating privilege in another jurisdiction
17 suspended or revoked under any law of that jurisdiction prohibiting refusal of
18 chemical testing that is comparable to s. 343.305.

19 (c) Notwithstanding ss. 111.321, 111.322, ✓ and 111.335, the department may not
20 issue or renew a school bus endorsement if the applicant has been convicted, within
21 the time period specified by the department by rule, but not less than 5 years
22 immediately preceding the date of application, of a violation of any of the following
23 state laws or any local ordinance in conformity with any of the following state laws
24 or any federal law or law of a federally recognized American Indian tribe or band in
25 this state or law of another jurisdiction that would be a violation of any of the

1 following state laws if the person had committed the offense in this state and been
2 convicted of the offense under the laws of this state:

- 3 1. First-degree intentional homicide under s. 940.01. ✓
- 4 2. First-degree reckless homicide under s. 940.02. ✓
- 5 3. Felony murder under s. 940.03. ✓
- 6 4. Second-degree intentional homicide under s. 940.05. ✓
- 7 5. Assisting suicide under s. 940.12. ✓
- 8 6. Felony battery under s. 940.19 (2), (3), (4), (5), or (6). ✓
- 9 7. Sexual exploitation by a therapist under s. 940.22 (2). ✓
- 10 8. Felony sexual assault under s. 940.225 (1), (2), or (3). ✓
- 11 9. Abuse of a vulnerable adult under circumstances constituting a felony under
12 s. 940.285 (2). ✓
- 13 10. Abuse of a resident of a penal facility under s. 940.29. ✓
- 14 11. Abuse or neglect of a patient or resident under circumstances constituting
15 a felony under s. 940.295. ✓
- 16 12. Sexual assault of a child under s. 948.02 (1) or (2). ✓
- 17 13. Engaging in repeated acts of sexual assault of the same child under s. ✓
18 948.025. ✓
- 19 14. Physical abuse of a child under s. 948.03 (2). ✓
- 20 15. Sexual exploitation of a child under s. 948.05. ✓
- 21 16. Causing a child to view or listen to sexual activity under s. 948.055. ✓
- 22 17. Incest with a child under s. 948.06. ✓
- 23 18. Child enticement under s. 948.07. ✓
- 24 19. Use of a computer to facilitate a child sex crime under s. 948.075. ✓
- 25 20. Soliciting a child for prostitution under s. 948.08. ✓

1 21. Sexual assault of a student by a school instructional staff person under s.
2 948.095.

3 22. Felony exposing a child to harmful material or harmful descriptions or
4 narrations under s. 948.11 (2) (a) or (am).

5 23. Possession of child pornography under s. 948.12.

6 24. Child sex offender working with children under s. 948.13 (2).

7 25. Neglecting a child under circumstances constituting a felony under s.
8 948.21.

9 26. Abduction of a child under s. 948.30.

10 27. Any felony crime in the commission of which a motor vehicle is used other
11 than those ^{crimes} specified in this ~~subsection~~ ^{paragraph} or ~~subd. 20~~ ^{par. (b)}

12 (d) Notwithstanding pars. (a) to (c), the department may issue or renew a school
13 bus endorsement to an applicant who would otherwise be disqualified from issuance
14 or renewal of a school bus endorsement because of any conviction for a crime or other
15 offense specified by the department under this subsection if all of the following apply:

16 1. At least 5 years have elapsed since any conviction for a crime or other offense
17 that would cause the applicant to be disqualified from initial issuance or renewal of
18 a school bus endorsement under this subsection.

19 2. The department determines, upon demonstration by clear and convincing
20 evidence by the applicant, that the applicant has been rehabilitated. Any
21 rehabilitation determination shall be recorded in the applicant's file specified in s.
22 343.23 (2) (a). No applicant has any right of administrative or judicial review of a
23 rehabilitation determination by the department.

24 SECTION 18. 343.12 (8) of the statutes is created to read:

1 343.12 (8) (a) The department may promulgate rules specifying crimes or other
2 offenses, in addition to those specified in sub. (7), the conviction for which
3 disqualifies the applicant from initial issuance or renewal of a school bus
4 endorsement and, for each such crime or offense, the time period within which the
5 disqualification applies. The time period may be permanent but shall not be less
6 than the time period specified in sub. (7) (a) to (c) for a conviction for a crime or other
7 offense specified in sub. (7) (a) to (c). The disqualifying crimes or other offenses
8 specified by the department shall apply notwithstanding ss. 111.321, 111.322, and
9 111.335.

10 (b) The department shall promulgate rules to implement and administer this
11 section, including all of the following:

12 1. For each disqualifying crime or offense specified in sub. (7) (a) and (c), the
13 time period within which the disqualification applies. ✓

14 2. Procedures for conducting criminal background checks under sub. (6) (a).

15 3. Procedures and criteria for determining whether an applicant has been
16 rehabilitated under sub. (7) (d). ✓

17 **SECTION 19.** 343.20 (1) (d) of the statutes [✓]is renumbered 343.20 (1) (d) 1.

18 **SECTION 20.** 343.20 (1) (d) 2. and 3. of the statutes ^{are} created to read:

19 343.20 (1) (d) 2. The department shall cancel an operator's license that is
20 endorsed for the operation of school buses under s. 343.12, regardless of the license
21 expiration date, upon receiving a record of conviction showing that the person has
22 been convicted of a crime or other offense specified under s. 343.12 (7) or rules of the
23 department promulgated under s. 343.12 (7) and (8).

24 3. The department shall cancel an operator's license that is endorsed for the
25 operation of school buses under s. 343.12, regardless of the license expiration date,

1 upon receiving a record of conviction showing that the person has been involved as
2 the operator of a motor vehicle in a traffic accident resulting in a conviction for any
3 violation of law related to motor vehicle use or operation if, within the 12 months
4 immediately preceding the accident giving rise to the conviction, the person was
5 involved as the operator of a motor vehicle in a traffic accident that resulted in a
6 conviction for any violation of law related to motor vehicle use or operation. This
7 subdivision does not prevent the person from applying for issuance of a school bus
8 endorsement after the person satisfies the requirements of s. 343.12 (2) (em).

9 **SECTION 21.** 343.23 (2) (a) (intro.) of the statutes is amended to read:

10 343.23 (2) (a) (intro.) The department shall maintain a file for each licensee or
11 other person containing the application for license, permit or endorsement, a record
12 of reports or abstract of convictions, the status of the person's authorization to
13 operate different vehicle groups, a record of any out-of-service orders issued under
14 s. 343.305 (7) (b) or (9) (am), a record of any background investigation as specified
15 in s. 343.12 (6) (a), a record of any rehabilitation determination under s. 121.555 (3)
16 (d) or 343.12 (7) (d), and a record of any reportable accident in which the person has
17 been involved, including specification of any type of license and endorsements issued
18 under this chapter under which the person was operating at the time of the accident
19 and an indication whether or not the accident occurred in the course of any of the
20 following:

21 **SECTION 22.** 343.237 (title), (2), (3) (intro.), (a), (c) (intro.) and (d), (4m), (5), (6),
22 (7), (8) and (10) of the statutes are amended to read:

23 **343.237 (title) Access to license and identification card photographs**
24 **and fingerprints.**

1 (2) Any photograph taken of an applicant under s. 343.14 (3) or 343.50 (4), and
2 any fingerprint taken of an applicant under s. 343.12 (2) (em), may be maintained
3 by the department and, except as provided in this section, shall be kept confidential.
4 Except as provided in this section, the department may release a photograph or
5 fingerprint only to the person whose photograph or fingerprint was taken.

6 (3) (intro.) The department shall provide a Wisconsin law enforcement agency
7 with a copy of a photograph taken on or after September 1, 1997, of an applicant
8 under s. 343.14 (3) or 343.50 (4), or a printed or electronic copy of a fingerprint taken
9 of an applicant under s. 343.12 (2) (em), if the department receives a written request
10 on the Wisconsin law enforcement agency's letterhead that contains all of the
11 following:

12 (a) The name of the person whose photograph or fingerprint is requested.

13 (c) (intro.) A statement signed by a division commander or higher authority
14 within the Wisconsin law enforcement agency that the photograph or fingerprint is
15 requested for any of the following purposes:

16 (d) ~~A~~ For requests for photographs only, a statement that the request is not
17 made solely to obtain a photograph for use as part of a photo lineup or photo array.

18 (4m) The department shall attach to each copy of a photograph or fingerprint
19 provided under this section the notation: "This photograph is subject to the
20 requirements and restrictions of section 343.237 of the Wisconsin Statutes" [☺] or "This
21 fingerprint is subject to the requirements and restrictions of section 343.237 of the
22 Wisconsin Statutes." ✓

23 (5) Any law enforcement agency that has in its possession a copy of a
24 photograph or fingerprint provided to it under sub. (3) or (4) shall destroy any copies
25 of the photograph or fingerprint in its possession when the photograph or fingerprint

1 is no longer necessary for the investigatory or identification purpose specified in its
2 request for the copy of the photograph or fingerprint.

3 (6) For each copy of a photograph or fingerprint provided under sub. (3) or (4),
4 the department shall record and maintain the written request for the copy of the
5 photograph or fingerprint and may not disclose any record or other information
6 concerning or relating to the written request to any person other than a court, district
7 attorney, county corporation counsel, city, village, or town attorney, law enforcement
8 agency, the applicant or identification card holder or, if the applicant or identification
9 card holder is under 18 years of age, his or her parent or guardian.

10 (7) The department may not charge a fee for providing a copy of any photograph
11 or fingerprint to a Wisconsin law enforcement agency under this section.

12 (8) (a) Any law enforcement agency that receives a photograph or fingerprint
13 provided to a law enforcement agency under this section shall keep the copy of the
14 photograph or fingerprint confidential and may disclose it only if disclosure is
15 necessary to perform a law enforcement function and the person to whom the copy
16 of the photograph or fingerprint is disclosed agrees to comply with par. (c).

17 (b) If a law enforcement agency discloses a copy of a photograph or fingerprint
18 to another person under par. (a), the copy of the photograph or fingerprint shall have
19 attached to it the notation specified in sub. (4m)

20 (c) Any person who receives a copy of a photograph or fingerprint from a law
21 enforcement agency under par. (a) shall destroy any copies of the photograph or
22 fingerprint in his or her possession when the photograph or fingerprint is no longer
23 necessary to perform the law enforcement function for which the photograph or
24 fingerprint was disclosed.

1 (10) Any person who wilfully discloses a copy of a photograph or fingerprint in
2 violation of this section may be required to forfeit not more than \$500 for each
3 violation. Each copy disclosed constitutes a separate offense.

4 SECTION 23. 343.28 (3m) of the statutes is created to read:

5 343.28 (3m) If a person is convicted of any crime or other offense specified
6 under s. 343.12 (7) or rules of the department promulgated under s. 343.12 (7) and
7 (8), the clerk of the court, or the justice, judge, or magistrate if the court has no clerk,
8 shall, as provided in s. 345.48, forward to the department the record of conviction.

9 SECTION 24. Nonstatutory provisions.

10 (1) The department of transportation shall submit in proposed form the rules
11 required under section 343.12 (7) and (8) of the statutes, as created by this act, to the
12 legislative council staff under section 227.15 (1) of the statutes no later than the first
13 day of the 7th month beginning after the effective date of this subsection.

14 (2) Using the emergency rules procedure under section 227.24 of the statutes,
15 the department of transportation shall promulgate rules required under section
16 343.12 (7) and (8) of the statutes, as created by this act, for purposes of implementing
17 this act, for the period before the effective date of the rules submitted under
18 subsection (1). The department shall promulgate these emergency rules no later
19 than the first day of the 7th month beginning after the effective date of this
20 subsection. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, these
21 emergency rules may remain in effect until June 30, 2005, or the date on which
22 permanent rules take effect, whichever is sooner. Notwithstanding section 227.24
23 (1) (a) and (3) of the statutes, the department is not required to provide evidence that
24 promulgating a rule under this subsection as an emergency rule is necessary for the

use Nonstat. Components
NS: sub

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a.r.



1 preservation of the public peace, health, safety, or welfare and is not required to
2 provide a finding of emergency for a rule promulgated under this subsection.

3 **SECTION 25. Initial applicability.**

, (4), (5), (6), (7), and

4 (1) The treatment of sections 121.555 (3) (8) of the statutes first applies on
5 the first day of the 7th month beginning after the effective date of this subsection
6 with respect to any individual who is employed or under contract to transport pupils
7 in a motor vehicle under section 121.555 (1) of the statutes immediately prior to the
8 effective date of this subsection.

9 (2) This act first applies to contracts under section 121.52 (2) (b) of the statutes
10 that are entered into, modified, or renewed on the effective date of this subsection.

11 (3) This act first applies to applications for initial issuance or renewal of a
12 school bus endorsement submitted to the department of transportation on the
13 effective date of this subsection.

14 **SECTION 26. Effective dates.** This act takes effect on the first day of the 7th
15 month ~~commencing~~ ^{beginning} after publication, except as follows:

16 (1) The ~~provisions~~ ^{treatment} of section 343.12 (8) of the statutes and ~~the provisions~~
17 SECTION 24 of this act take effect on the day after publication.

(END)

18
auto ref. "KA"
↑
(1) and (2)
↑ auto ref. "KB"
↑ auto ref. "KC"

D - Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2317/P1dn

ARG: /:...

King

ATTN: Tom Van Ess and Joyce Kiel

and 343.12

The attached preliminary draft revises the requirements for operation of school buses under s. 343.12 and school vans and temporary school vehicles under s. 121.155. I have attempted in the draft to create a similarity between the requirements under ss. ~~343.12 and 121.155~~ and the requirements created in 2003 SB-3 for human service vehicle operators. Because ss. ~~343.12 and 121.155~~ have their own existing statutory structure and language, I could not adopt "wholesale" the language of SB-3 into these statutes; I have had to make adjustments to fit the existing statutory structure and language and have also tried to simplify where possible. I have further been assisted by Attorney Peter Grant, who drafts in the area of K-12 education, including ch. 121. Please review the attached draft carefully to ensure that it is consistent with your intent.

incorporate

The attached draft includes all disqualifying offenses under s. 343.12 (2) (d) and (e), plus additional offenses, and provides that DOT may establish longer disqualification periods for these offenses under a "rule-making" provision. The existing provisions of s. 343.12 (2) (d) (containing the 2-year disqualification period) are deceptively complex, as there are essentially three "layers" of disqualifying offenses embedded in the provision (s. 343.12 (e) incorporates other provisions which in turn incorporate other provisions). All of the offenses specified in s. 343.12 (7) (a) of the attached draft (the "at least 2 years" provision) are included in the "layers" of s. 343.12 (2) (d) except that I have added the offense specified in s. 343.12 (7) (a) 11. (taken from SB-3) and I moved the offense specified in s. 343.12 (7) (c) 27. (any felony in the commission of which a motor vehicle is used, which is taken from the "layers" of s. 343.12 (2) (d) and put it under the "at least 5 year" provision of s. 343.12 (7) (c). (Existing law seems somewhat inconsistent in including "felonies in the commission of which a motor vehicle is used" and other felony offenses in the "layers" under the two-year provision of s. 343.12 (2) (d) rather than in the five-year provision of s. 343.12 (2) (e) that specifically refers to felonies.) You may want to move other offenses to the "at least 5 year" provision under s. 343.12 (7) (c) which, in the attached draft, basically tracks existing s. 343.12 (2) (e) and proposed s. 85.21 (3m) (b) 3. of SB-3. You may also want to remove s. 343.12 (7) (a) 13. because the general penalty for failing to meet financial responsibility requirements is operating privilege suspension, and operating while suspended under s. 343.44 (1) is already included in the list. I created s. 343.12 (7) (b) because revocation under s. 343.305 (10) is included in one of the "layers" under s.

years

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343.12 (2) (d). Also, operating a motor vehicle while disqualified under 49 CFR 383.51, incorporated "third layer" into s. 343.12 (2) (d) by means of s. 343.307 (2), is already subsumed under s. 343.44 (1) (d). With regard to the "at least 5 year" provision of s. 343.12 (7) (c), I added the references to ss. 948.075 (enacted last session) and 948.095.

With regard to DOT fingerprinting, the attached draft imposes the same confidentiality requirements for these fingerprints that currently apply for DOT photographs. The draft also requires school districts, private schools, and school bus contractors to keep fingerprints confidential except for purposes of submitting them to the FBI (through the DOJ) for a record check. Is this consistent with your intent? I also note that the draft does not require the report specified in s. 343.237 (9) to include any information related to fingerprints of applicants for a school bus endorsement. Is this okay?

The draft requires DOT to keep records of its background checks on applicants for school bus endorsements, but does not specify whether these records would be publicly available. Under existing law, DOT generally must make abstracts of operating records available to the public, but need not (and in many cases cannot) make all of its records publicly available. Under the federal Drivers Privacy Protection Act, 18 USC 2721, a state department of motor vehicles such as DOT may not disclose specified personal information. The Act allows disclosure of information relating to a person's driving record, including accident and driving violation history. The Act does not specifically address disclosure of a criminal history unrelated to the operation of a motor vehicle. The Act also contains a "public safety" exception for disclosure of "personal information" but not for disclosure of "highly restricted personal information." The attached draft requires DOT to maintain records but leaves it within DOT's discretion to determine how to treat these records and, in particular, whether they would be publicly available. Is this consistent with your intent?

Under s. 343.12 (4) (a) 3., a resident of Iowa, Illinois, Michigan, or Minnesota may operate a school bus in Wisconsin without meeting any of the requirements that would be imposed under this bill. However, DOT has the discretion to, by rule, require these non-residents to meet any requirements applicable for residents. (s. 343.12 (4) (b)). Do you want the bill to include any treatment of these provisions?

Under the bill, the fee for each DOJ criminal history search requested by DOT or (I believe) a school district would be \$5, and the fee for a criminal history search requested by a private school or school bus contractor would be \$13. (See s. 165.82 (1)). The statutes appear to provide a direct link up to the DOT database by DRL and DHFS (under s. 165.825), but I am uncertain of the implications of the linkup procedure. You may want to assess the interest in and the cost-effectiveness of a DOT linkup to the DOJ criminal history system. If this is an option to be pursued, s. 165.825 may have to be amended.

The attached draft provides no right of review of a DOT rehabilitation determination because of the expense involved in providing such a review procedure. (This is in contrast to the provisions of 2001 SB-258, which provided a review procedure.) It is possible that a court challenge might be attempted under the due process clause based upon lack of review of a DOT rehabilitation determination.

In SB-3, the state is prohibited from making payments to a county operating a specialized transportation service (STS) that violates the requirements of the bill or to a county that contracts with an STS that violates the requirements of the bill. The bill also prohibits certain contracts with past violators. See proposed s. 85.21 (3) (c) and (3m) of SB-3. The attached draft does not create similar provisions affecting the contracts between school districts and school bus contractors (although there may be provisions of existing law allowing reduction of school aids for violations). Is this consistent with your intent?

The imposition of forfeiture penalties against violating school districts and private schools in the attached draft is quite unusual. Do you want to retain these provisions?

Under current law, the administration and enforcement of chapter 121 is generally within the scope of DPI's responsibilities. However, I am uncertain whether DPI has the resources available to effectively monitor and enforce the provisions of this draft. (Because of this, and because DOT must already make such determinations for school bus drivers, the attached draft provides for DOT, not DPI, to make the rehabilitation determination with respect to school van and temporary school vehicle rehabilitation determinations.) Do you want to include in the attached draft any funding mechanism or enforcement provisions for DPI? Do you want to include any additional funding for DOT?

As indicated above, the attached draft includes certain language changes and changes in structure to better fit the existing provisions of ss. ~~348.12~~ and 121.155. It also deviates slightly from the penalty provisions included in SB-3.

and 343.12

As we discussed, I recommend that DOT review the attached draft. I also recommend review by DPI.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2317/P1dn
ARG:kmg:pg

April 10, 2003

ATTN: Tom Van Ess and Joyce Kiel

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