

Meeting w/ Tom & Joyce
(Van Es) (Kiel) - LC

7/21/03
2:30

343.12 (4) (b) → we can affect neighboring states

SB-3:

- amend : OK if you have an "S" endorsement

→ caregiver : →

→ rehab OK, I think (see below)

• record → DOT discretion OK

• keep same as photo - fingerprints

• 343.12 (4) (b) : ~~could~~ add provision
requiring DOT rule to require employer
of out-of-state school bus
driver to run background
check under sub. (7)

- who would do rehab. review for
them? just make note - don't
add in

• could do grandfather : if person has been
employed for certain # of years &
conviction was certain # of years ago,
can issue "S" notwithstanding or hire
van driver

or had
"S" endorsement

- do background check then can figure out whether want to keep

- "may employ" or "may issue" notwithstanding

~~DOT "S"~~

~~• if person held ~~DOT~~ "S" at time~~

~~employer current~~

~~• if ~~from~~ employed at least ~~1~~ $\sqrt{3}$ years~~

~~committed more than 5 years ago~~

~~same~~

~~⇒ delete rehab provisions~~

~~•~~ incentive of school districts is that they will be sued if they don't follow the law and something happens

- ~~██████~~
- "5" endorsement - 8 years renewal
- van - 4 yrs. - should it be changed? think about it

343.28(3m) → Arrow 343.28(3m)

or require DOT to check DOT database every month or so

see 343.28(1)

- Tom will check into this

- also: p. 8^{0.25} - don't use "school bus contractor";
- p. 9 - delete lines 7-10
- p. 12 - delete lines 18-19
- p. 19 - line 10 - period

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2317/P1dn
ARG:kmg:pg

April 10, 2003

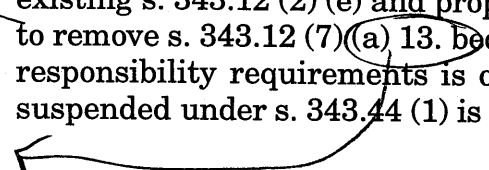
*Notes of at
Meeting of 7/21/03*

ATTN: Tom Van Ess and Joyce Kiel

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. 121.155 and 343.12 and the requirements created in 2003 SB-3 for human service vehicle operators. Because ss. 121.155 and 343.12 have their own existing statutory structure and language, I could not incorporate "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.

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 (2) (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 years" 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 years" 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)

take out



because revocation under s. 343.305 (10) is included in one of the "layers" under s. 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 years" provision of s. 343.12 (7) (c), I added the references to ss. 948.075 (enacted last session) and 948.095.

OK

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?

OK

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?

OK

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 nonresidents to meet any requirements applicable for residents (s. 343.12 (4) (b)). Do you want the bill to include any treatment of these provisions?

yes see note

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.

non-profit #2

→ add DOT ←

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? *yes*

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. 121.155 and 343.12. It also deviates slightly from the penalty provisions included in SB-3.

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

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forfeiture is OK for employees (driver) but not for school district, etc.



State of Wisconsin
2003 - 2004 LEGISLATURE

soon
turned in
7/22

LRB-2317/ PZ
ARG&PG:kmg:pg

RMK

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-Note

Gen. Cat.

1 AN ACT to repeal 121.555 (2) (c) 5., 343.12 (2) (d), 343.12 (2) (e) and 343.12 (4)
2 (a) 2.; to renumber 343.12 (5) and 343.20 (1) (d); to amend 121.52 (2) (b),
3 343.12 (2) (intro.), 343.23 (2) (a) (intro.) and 343.237 (title), (2), (3) (intro.), (a),
4 (c) (intro.) and (d), (4m), (5), (6), (7), (8) and (10); and to create 121.555 (3),
5 121.555 (4), 121.555 (5), 121.555 (6), 121.555 (7), 121.555 (8), 343.12 (2) (dm),
6 343.12 (2) (em), 343.12 (6), 343.12 (7), 343.12 (8), 343.20 (1) (d) 2. and 3. and
7 343.28 (3m) of the statutes; relating to: qualifications for endorsements
8 authorizing the operation of a school bus and for operators of certain other
9 motor vehicles transporting pupils, school board contracts for the
10 transportation of pupils, extending the time limit for emergency rule
11 procedures, providing an exemption from emergency rule procedures and from

1 rule-making procedures, granting rule-making authority, and providing
2 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 has been convicted 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.

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 five years have passed since the conviction, ~~and the applicant holds a valid school bus endorsement~~ ^{at the effective date of the bill}

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

on

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 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 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 five years have passed since the conviction.

would otherwise be disqualified from operation of the vehicle because of a conviction if the individual is employed by the person on the effective date of the bill and has been so continuously for at least three years employed

Insert Goal ✓
services
pupil

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 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.

3
3
3
Generally, 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.

7 The bill also requires the Department of Public Instruction ~~and DOT~~ 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.

7 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
12 before the individual is initially permitted to operate the vehicle and every 4 years
13 thereafter:

14 1. Notwithstanding ss. 111.321, 111.322, and 111.335, obtain from the records
15 maintained by the department of justice a criminal history search of the individual.
16 Notwithstanding ss. 111.321, 111.322, and 111.335, if the individual who is the
17 subject of the criminal history search is not a resident of this state or was not a
18 resident of this state at any time within the 3 years preceding the date of the search,
19 the person shall make a good faith effort to obtain from any state in which the
20 individual is a resident or was a resident within the 3 years preceding the date of the

1 search information that is equivalent to the criminal history provided by the
2 department of justice.

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

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

10 (b) Any person that employs or contracts with an individual to operate a motor
11 vehicle under sub. (1) to transport pupils, except an individual who holds a valid
12 school bus endorsement issued under s. 343.12, may require the individual to be
13 fingerprinted on 2 fingerprint cards, each bearing a complete set of the individual's
14 fingerprints. The department of justice may provide for the submission of the
15 fingerprint cards to the federal bureau of investigation for the purposes of verifying
16 the identity of the individual fingerprinted and obtaining records of his or her
17 criminal arrests and convictions. Except as provided in this paragraph, fingerprints
18 obtained under this paragraph shall be kept confidential.

19 (c) Notwithstanding ss. 111.321, 111.322, and 111.335, no person that employs
20 or contracts with an individual, except an individual who holds a valid school bus
21 endorsement issued under s. 343.12, to operate a motor vehicle under sub. (1) to
22 transport pupils may permit the individual to operate such a vehicle if any of the
23 following applies:

24 1. Subject to par. (d), the person knows or should know that the individual has
25 a record of conviction or operating privilege revocation that would disqualify the

1 person from issuance or renewal of a school bus endorsement under s. 343.12 (7) and
2 rules promulgated by the department of transportation under s. 343.12 (7) and (8).

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

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

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

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

15 2. The department of transportation determines, upon application and
16 demonstration by clear and convincing evidence by the individual, that the
17 individual has been rehabilitated. The department of transportation shall make its
18 determination consistent with procedures and criteria established by rule by the
19 department of transportation under s. 343.12 (8) (b) 3. If the department of
20 transportation determines that an individual has been rehabilitated and is eligible
21 to operate a vehicle under sub. (1) to transport pupils, the department of
22 transportation shall record the determination in the person's file specified in s.
23 343.23 (2) (a). No person has any right of administrative or judicial review of a
24 rehabilitation determination by the department of transportation.

Insert
7-14

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

SECTION 4

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

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

8 2. Notwithstanding ss. 111.321, 111.322, and 111.335, any conviction or
9 operating privilege revocation that, under sub. (3) (c), makes the individual ineligible
10 to operate a motor vehicle under sub. (1) to transport pupils or, if the individual holds
11 a valid school bus endorsement issued under s. 343.12, that disqualifies the
12 individual from issuance or renewal of a school bus endorsement under s. 343.12 (7)
13 and rules promulgated by the department of transportation under s. 343.12 (7) and
14 (8).

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

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

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

20 121.555 (5) ^{individual} No ~~person~~ may operate a motor vehicle under sub. (1) transporting
21 pupils unless the ~~person~~ satisfies all requirements under this section for eligibility
22 to operate such a vehicle.

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

24 121.555 (6) ^e (a) The department of public instruction shall prepare and make
25 available to school districts, private schools, and ~~school bus~~ contractors

providing pupil transportation services

1 informational materials, in printed or electronic form, relating to compliance with
 2 this section, and establish a method of communication, which may include a
 3 statewide, toll-free telephone hotline, to respond to questions regarding compliance
 4 with this section.

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

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

12 121.555 (7) Any person that employs or contracts with an individual to operate
 13 a motor vehicle under sub. (1) to transport pupils shall maintain all records and
 14 furnish all information determined necessary by the department to determine
 15 compliance with this section.

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

17 121.555 (8) (a) Any ~~person~~ individual who violates sub. ~~(3)~~ (4) (a), ^{or} (5) ~~or~~
 18 ~~may~~ may be required to forfeit not more than \$100 for the first offense and not more
 19 than \$200 for each subsequent offense.

20 (b) Any individual who violates sub. (4) (b) may be required to forfeit not more
 21 than \$1,000.

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

23 343.12 (2) (intro.) The department shall issue or, except as provided in par. (h),
 24 renew a school bus endorsement to a person only if such person meets all of the
 25 following requirements:

Insert 9-21 →

Insert 9-25 →

SECTION 10

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

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

3 343.12 (2) (dm) Notwithstanding ss. 111.321, 111.322, and 111.335, has been
4 subject to the background investigation specified in sub. (6) (a) and does not have a
5 record of conviction or operating privilege revocation that disqualifies the person
6 from issuance or renewal of a school bus endorsement under sub. (7) or rules
7 promulgated by the department under subs. (7) and (8).

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

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

10 343.12 (2) (em) Has not, based upon the person’s application and operating
11 record maintained by the department, been involved as the operator of a motor
12 vehicle in more than 2 traffic accidents occurring within the 12 months immediately
13 preceding the application that resulted in convictions for any violation of law related
14 to motor vehicle use or operation.

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

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

17 ~~SECTION 16.~~ 343.12 (6) of the statutes is created to read:

18 343.12 (6) (a) Notwithstanding ss. 111.321, 111.322, and 111.335, prior to the
19 initial issuance or renewal of a school bus endorsement, the department shall
20 conduct a background investigation of the applicant. In conducting the background
21 investigation, the department shall obtain from the records maintained by the
22 department of justice a criminal history search of the applicant. If the applicant is
23 not a resident of this state or was not a resident of this state at any time within the
24 3 years preceding the date of the search, the department shall make a good faith
25 effort to obtain from any state in which the applicant is a resident or was a resident

insert
10-15

1 within the 3 years preceding the date of the search information that is equivalent to
2 the criminal history provided by the department of justice. The department shall
3 record in the applicant's file specified in s. 343.23 (2) (a) that the background
4 investigation was made, the date on which it was completed, and the results of the
5 background investigation.

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

12 SECTION ~~17~~¹⁸. 343.12 (7) of the statutes is created to read:

13 343.12 (7) (a) Notwithstanding ss. 111.321, 111.322, and 111.335, the
14 department may not issue or renew a school bus endorsement if the applicant has
15 been convicted, within the time period specified by the department by rule, but not
16 less than 2 years immediately preceding the date of application, of a violation of any
17 of the following state laws or any local ordinance in conformity with any of the
18 following state laws or any federal law or law of a federally recognized American
19 Indian tribe or band in this state or law of another jurisdiction that would be a
20 violation of any of the following state laws if the person had committed the offense
21 in this state and been convicted of the offense under the laws of this state:

- 22 1. Reckless driving under s. 346.62.
- 23 2. Operating a motor vehicle while operating privileges are suspended or
24 revoked or while the operator is disqualified under s. 343.44 (1) (a), (b), or (d).

1 3. Second-degree reckless homicide under s. 940.06 if the offense results from
2 the operation of a motor vehicle.

3 4. Homicide by intoxicated use of a vehicle under s. 940.09 (1).

4 5. Homicide by negligent operation of a vehicle under s. 940.10.

5 6. Injury by intoxicated use of a vehicle under s. 940.25 (1).

6 7. Causing injury by operating a motor vehicle under the influence of an
7 intoxicant or other drug under s. 346.63 (2).

8 8. Causing injury by operating a commercial motor vehicle with a prohibited
9 alcohol concentration under s. 346.63 (6).

10 9. Operating a motor vehicle under the influence of an intoxicant or other drug
11 or with a prohibited alcohol concentration under s. 346.63 (1).

12 10. Operating a commercial motor vehicle with a prohibited alcohol
13 concentration under s. 346.63 (5).

14 11. Operating a motor vehicle while under the legal drinking age with a
15 prohibited alcohol concentration under s. 346.63 (2m).

16 12. Failure to stop and render assistance at the scene of a motor vehicle
17 accident under s. 346.67 (1) (c).

18 ~~13. Operating a motor vehicle without having furnished proof of financial~~
19 ~~responsibility under s. 344.29.~~

20 ~~13.~~ ~~14.~~ Fleeing from or attempting to elude a traffic officer under s. 346.04 (3).

21 ~~14.~~ ~~15.~~ Operating a commercial motor vehicle or being on duty time while having
22 any alcohol concentration, within 4 hours of consuming alcohol or being intoxicated,
23 or while possessing alcohol under s. 346.63 (7) (a) if the applicant has been previously
24 convicted of any offense under s. 346.63 (7) (a) or any local ordinance in conformity
25 with s. 346.63 (7) (a) or any federal law or law of a federally recognized American

1 Indian tribe or band in this state or law of another jurisdiction that would be a
2 violation of s. 346.63 (7) (a) if the applicant had committed the offense in this state
3 and been convicted of the offense under the laws of this state.

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

11 (c) Notwithstanding ss. 111.321, 111.322, and 111.335, the department may not
12 issue or renew a school bus endorsement if the applicant has been convicted, within
13 the time period specified by the department by rule, but not less than 5 years
14 immediately preceding the date of application, of a violation of any of the following
15 state laws or any local ordinance in conformity with any of the following state laws
16 or any federal law or law of a federally recognized American Indian tribe or band in
17 this state or law of another jurisdiction that would be a violation of any of the
18 following state laws if the person had committed the offense in this state and been
19 convicted of the offense under the laws of this state:

- 20 1. First-degree intentional homicide under s. 940.01.
- 21 2. First-degree reckless homicide under s. 940.02.
- 22 3. Felony murder under s. 940.03.
- 23 4. Second-degree intentional homicide under s. 940.05.
- 24 5. Assisting suicide under s. 940.12.
- 25 6. Felony battery under s. 940.19 (2), (3), (4), (5), or (6).

- 1 7. Sexual exploitation by a therapist under s. 940.22 (2).
- 2 8. Felony sexual assault under s. 940.225 (1), (2), or (3).
- 3 9. Abuse of a vulnerable adult under circumstances constituting a felony under
- 4 s. 940.285 (2).
- 5 10. Abuse of a resident of a penal facility under s. 940.29.
- 6 11. Abuse or neglect of a patient or resident under circumstances constituting
- 7 a felony under s. 940.295.
- 8 12. Sexual assault of a child under s. 948.02 (1) or (2).
- 9 13. Engaging in repeated acts of sexual assault of the same child under s.
- 10 948.025.
- 11 14. Physical abuse of a child under s. 948.03 (2).
- 12 15. Sexual exploitation of a child under s. 948.05.
- 13 16. Causing a child to view or listen to sexual activity under s. 948.055.
- 14 17. Incest with a child under s. 948.06.
- 15 18. Child enticement under s. 948.07.
- 16 19. Use of a computer to facilitate a child sex crime under s. 948.075.
- 17 20. Soliciting a child for prostitution under s. 948.08.
- 18 21. Sexual assault of a student by a school instructional staff person under s.
- 19 948.095.
- 20 22. Felony exposing a child to harmful material or harmful descriptions or
- 21 narrations under s. 948.11 (2) (a) or (am).
- 22 23. Possession of child pornography under s. 948.12.
- 23 24. Child sex offender working with children under s. 948.13 (2).
- 24 25. Neglecting a child under circumstances constituting a felony under s.
- 25 948.21.

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

2 27. Any felony crime in the commission of which a motor vehicle is used other
3 than those crimes specified in this paragraph or par. (b).

4 (d) Notwithstanding pars. (a) to (c), the department may ~~issue~~ ^{the} renew ~~a~~ school
5 bus endorsement ~~to~~ ^{of} (an applicant who would otherwise be disqualified ~~from issuance~~
6 ~~or renewal of a school bus endorsement~~ because of any conviction for a crime or other
7 offense specified by the department under this subsection if all of the following apply:

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

Insert
15-10

11 2. ~~The department determines, upon demonstration by clear and convincing~~
12 ~~evidence by the applicant, that the applicant has been rehabilitated. Any~~
13 ~~rehabilitation determination shall be recorded in the applicant's file specified in s.~~
14 ~~343.23 (2) (a) No applicant has any right of administrative or judicial review of a~~
15 ~~rehabilitation determination by the department.~~

16 SECTION ~~18~~ 343.12 (8) of the statutes is created to read:

17 343.12 (8) (a) The department may promulgate rules specifying crimes or other
18 offenses, in addition to those specified in sub. (7), the conviction for which
19 disqualifies the applicant from initial issuance or renewal of a school bus
20 endorsement and, for each such crime or offense, the time period within which the
21 disqualification applies. The time period may be permanent but ~~shall~~ ^{may} not be less
22 than the time period specified in sub. (7) (a) to (c) for a conviction for a crime or other
23 offense specified in sub. (7) (a) to (c). The disqualifying crimes or other offenses
24 specified by the department shall apply notwithstanding ss. 111.321, 111.322, and
25 111.335.

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

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

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

6 ~~3. Procedures and criteria for determining whether an applicant has been~~
7 ~~rehabilitated under sub. (7) (d).~~

8 ~~SECTION 19.~~ 343.20 (1) (d) of the statutes is renumbered 343.20 (1) (d) 1.

9 ~~SECTION 20.~~ 343.20 (1) (d) 2. and 3. of the statutes are created to read:

10 343.20 (1) (d) 2. The department shall cancel an operator's license that is
11 endorsed for the operation of school buses under s. 343.12, regardless of the license
12 expiration date, upon receiving a record of conviction showing that the person has
13 been convicted of a crime or other offense specified under s. 343.12 (7) or rules of the
14 department promulgated under s. 343.12 (7) and (8).

15 3. The department shall cancel an operator's license that is endorsed for the
16 operation of school buses under s. 343.12, regardless of the license expiration date,
17 upon receiving a record of conviction showing that the person has been involved as
18 the operator of a motor vehicle in a traffic accident resulting in a conviction for any
19 violation of law related to motor vehicle use or operation if, within the 12 months
20 immediately preceding the accident giving rise to the conviction, the person was
21 involved as the operator of a motor vehicle in a traffic accident that resulted in a
22 conviction for any violation of law related to motor vehicle use or operation. This
23 subdivision does not prevent the person from applying for issuance of a school bus
24 endorsement after the person satisfies the requirements of s. 343.12 (2) (em).

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

1 343.23 (2) (a) (intro.) The department shall maintain a file for each licensee or
 2 other person containing the application for license, permit or endorsement, a record
 3 of reports or abstract of convictions, the status of the person's authorization to
 4 operate different vehicle groups, a record of any out-of-service orders issued under
 5 s. 343.305 (7) (b) or (9) (am), a record of any background investigation as specified
 6 in s. 343.12 (6) (a), ~~a record of any rehabilitation determination under s. 21.355 (2)~~
 7 ~~or 343.12 (7) (a)~~ and a record of any reportable accident in which the person has
 8 been involved, including specification of any type of license and endorsements issued
 9 under this chapter under which the person was operating at the time of the accident
 10 and an indication whether or not the accident occurred in the course of any of the
 11 following:

Handwritten note: "Insert 17-11" with an arrow pointing to line 12.

12 SECTION 22. 343.237 (title) ^{and} (2) ^X (3) (intro.), (a), (c) (intro.) and (d), (4m), (5), (6),
 13 (7), (8) and (10) of the statutes ^{are} amended to read: *as affected by 2003 Wisconsin Act 36*

14 **343.237 (title) Access to license and identification card photographs**
 15 **and fingerprints.**

16 (2) Any photograph taken of an applicant under s. 343.14 (3) or 343.50 (4), and
 17 any fingerprint taken of an applicant under s. 343.12 (2) (em), may be maintained
 18 by the department and, except as provided in this section, shall be kept confidential.

19 Except as provided in this section, the department may release a photograph or
 20 fingerprint only to the person whose photograph or fingerprint was taken.

21 SEC. #. AM; 343.237(3)(intro.), *as affected by 2003 Wisconsin Act 36,*
 22 (3) (intro.) The department shall provide a Wisconsin law enforcement agency
 23 with a copy of a photograph taken on or after September 1, 1997, of an applicant
 24 under s. 343.14 (3) or 343.50 (4), or a printed or electronic copy of a fingerprint taken
of an applicant under s. 343.12 (2) (em), if the department receives a written request

or a federal law enforcement agency

Handwritten note: "Proof w/ 2003 WA 36" with an arrow pointing to the bottom of the page.

SEC. #. AM; 343.237(3)(c)(intro.), as affected by
2003 Wisconsin Act 36,

1 on the ~~Wisconsin~~ law enforcement agency's letterhead that contains all of the
2 following:

SEC. #. AM; 343.237(3)(a)

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

343.237(3) (B)

(c) (intro.) A statement signed by a division commander or higher authority

343.237(3) (B)

within the ~~Wisconsin~~ law enforcement agency that the photograph or fingerprint is

requested for any of the following purposes:

SEC. #. AM; 343.237(3)(d), (4m), (5), (6), (7), (8) and (10)

(d) ~~A~~ For requests for photographs only, a statement that the request is not

343.237(3) (B)

made solely to obtain a photograph for use as part of a photo lineup or photo array.

(4m) The department shall attach to each copy of a photograph or fingerprint

provided under this section the notation: "This photograph is subject to the

requirements and restrictions of section 343.237 of the Wisconsin Statutes." or "This

fingerprint is subject to the requirements and restrictions of section 343.237 of the

Wisconsin Statutes."

(5) Any law enforcement agency that has in its possession a copy of a
photograph or fingerprint provided to it under sub. (3) or (4) shall destroy any copies
of the photograph or fingerprint in its possession when the photograph or fingerprint
is no longer necessary for the investigatory or identification purpose specified in its
request for the copy of the photograph or fingerprint.

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

2003 WA 36

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

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

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

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

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

19 ~~SECTION 23.~~ ^{to} 343.28 (3m) of the statutes is created to read: *who holds a valid
school bus endorsement
issued under s. 343.12*

20 343.28 (3m) If a person ^{is} convicted of any crime or other offense specified
21 under s. 343.12 (7) or rules of the department promulgated under s. 343.12 (7) and
22 (8), the clerk of the court, or the justice, judge, or magistrate if the court has no clerk,
23 shall, as provided in s. 345.48, forward to the department the record of conviction.

24 ~~SECTION 24.~~ ^{to} Nonstatutory provisions.

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

5 (2) Using the emergency rules procedure under section 227.24 of the statutes,
6 the department of transportation shall promulgate rules required under section
7 343.12 (7) and (8) of the statutes, as created by this act, for purposes of implementing
8 this act, for the period before the effective date of the rules submitted under
9 subsection (1). The department shall promulgate these emergency rules no later
10 than the first day of the 7th month beginning after the effective date of this
11 subsection. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, these
12 emergency rules may remain in effect until June 30, 2005, or the date on which
13 permanent rules take effect, whichever is sooner. Notwithstanding section 227.24
14 (1) (a) and (3) of the statutes, the department is not required to provide evidence that
15 promulgating a rule under this subsection as an emergency rule is necessary for the
16 preservation of the public peace, health, safety, or welfare and is not required to
17 provide a finding of emergency for a rule promulgated under this subsection.

18 ~~25~~²⁸ **SECTION 25. Initial applicability.**

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

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

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

4 ~~23~~²⁴ **SECTION 24. Effective dates.** This act takes effect on the first day of the 7th
5 month beginning after publication, except as follows:

- 6 (1) The treatment of section 343.12 (8) of the statutes and SECTION 24 (1) and
7 (2) of this act take effect on the day after publication.

a.r. ✓ ✓

✓ a.r.

(END)

8 →
Insert
21-7 ✓

J-Note

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2317/P2ins
ARG:.....

INSERT anal: ✓

Under current law, a person who is a resident of Iowa, Illinois, Michigan, or Minnesota and who is licensed to operate a school bus in the person's state of residence may be employed to operate a school bus in this state without holding a valid school bus endorsement issued by DOT. DOT may, however, impose standards on the employment of such persons, including requiring such persons to meet qualifications applicable to resident school bus operators. This bill requires DOT to impose standards prohibiting the employment of any such person who has been convicted of any specified disqualifying crime or offense and requiring employers to conduct background investigations of such persons.

INSERT 7-14: ✓

2. The individual was employed by or under contract with the person on the effective date of this ~~paragraph~~ ... [revisor inserts date] and had been so employed continuously for at least 3 years. *subdivision*

INSERT 9-21: ✓

SECTION ~~4~~ 165.825 of the statutes is amended to read:

165.825 Information link; ~~department of health and family services.~~

The department of justice shall cooperate with the departments of regulation and licensing and, health and family services, and transportation in developing and maintaining a computer linkup to provide access to the information obtained from a criminal history search.

INSERT 10-15: ✓

SECTION ~~2~~ 343.12 (4) (b) of the statutes is amended to read:

Revisor can merge w/ 2003 WA 33

343.12 (4) (b) The department ~~may~~ shall, by rule, establish standards for the employment by an employer of a person under par. (a) 3. as an operator of a school bus in this state. The rules may require the person to meet the qualifications contained in sub. (2) or (3) and any rules of the department applicable to residents, except that the rules shall require the person to meet the qualifications contained in sub. (2) (dm). The rules shall also require the employer to satisfy the requirements specified in s. 121.555 (3) (a) 1. and 3.

INSERT 15-10:

2. The applicant held a valid school bus endorsement issued under s. 343.12, 2001 stats., on the effective date of this ~~paragraph~~ [revisor inserts date].

subdivision

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2317/P2dn

ARG:.....

kmg

ATTN: Tom Van Ess

The attached draft makes those changes discussed at our meeting on July 21, 2003. The changes are as follows:

1. The draft removes the "rehabilitation" determination provisions related to school bus endorsements and school van operator employment. Instead, the attached draft provides for a type of grandfathering for certain persons gainfully employed or licensed on the effective date of the bill. These new provisions appear in created ss. 121.555 (3) (d) 2. and 343.12 (7) (d) 2.
2. The draft amends s. 343.12 (4) (b) to require that non-resident operators licensed in adjacent states comply with certain conviction record requirements. ✓
3. The draft retains penalties imposed upon the driver of a school van but removes penalties imposed upon a school district, private school, or contractor.
4. The draft requires DOJ to cooperate with DOT in developing a computer linkup to the DOJ criminal history database.
5. The draft narrows created s. 343.28 (3m) to require conviction information to be furnished only if the offender holds a school bus endorsement. This provision is somewhat similar to the particularized information that courts are required to furnish DOT under s. 343.28 (1). As we discussed, it may be more cost-effective to simply require DOT to conduct a criminal history search monthly than to require the courts to provide DOT with this information.
6. The draft makes other minor changes discussed at our meeting.

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

and changes necessitated by the enactment of 2003 Wisconsin Acts 33 and 36

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2317/P2ins2
ARG:.....

INSERT 9-25: ✓

auto.ref. "11"
SECTION ~~11~~. 343.12 (2) (intro.) of the statutes, as affected by 2003 Wisconsin Act 33, is amended to read:

343.12 (2) (intro.) Except as provided in sub. (2m), 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:

INSERT 17-11: ✓

auto.ref. "24"
SECTION ~~21~~. 343.23 (2) (a) (intro.) of the statutes, as affected by 2003 Wisconsin Act 33, is amended to read:

343.23 (2) (a) (intro.) The department shall maintain a file for each licensee or other person containing the application for license, permit or endorsement, a record of reports or abstract of convictions, any notice received from the federal transportation security administration concerning the person's eligibility for an "H" endorsement specified in s. 343.17 (3) (d) 1m., the status of the person's authorization to operate different vehicle groups, a record of any out-of-service orders issued under s. 343.305 (7) (b) or (9) (am), a record of any background investigation as specified in s. 343.12 (6) (a), and a record of any reportable accident in which the person has been involved, including specification of any type of license and endorsements issued under this chapter under which the person was operating at the time of the accident and an indication whether or not the accident occurred in the course of any of the following:

INSERT 21-7: ✓

(2) The treatment of section 343.23 (2) (a) (intro.) (by SECTION 11) of the statutes
takes effect on November 1, 2003.

(3) The treatment of section 343.12 (2) (intro.) (by SECTION 24) of the statutes
takes effect on September 1, 2005.

a.r. "11"

a.r. "24"

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2317/P2dn
ARG:kmg:pg

August 4, 2003

ATTN: Tom Van Ess

The attached draft makes those changes discussed at our meeting on July 21, 2003. The changes are as follows:

1. The draft removes the "rehabilitation" determination provisions related to school bus endorsements and school van operator employment. Instead, the attached draft provides for a type of grandfathering for certain persons gainfully employed or licensed on the effective date of the bill. These new provisions appear in created ss. 121.555 (3) (d) 2. and 343.12 (7) (d) 2.
2. The draft amends s. 343.12 (4) (b) to require that nonresident operators licensed in adjacent states comply with certain conviction record requirements.
3. The draft retains penalties imposed upon the driver of a school van but removes penalties imposed upon a school district, private school, or contractor.
4. The draft requires DOJ to cooperate with DOT in developing a computer linkup to the DOJ criminal history database.
5. The draft narrows created s. 343.28 (3m) to require conviction information to be furnished only if the offender holds a school bus endorsement. This provision is somewhat similar to the particularized information that courts are required to furnish DOT under s. 343.28 (1). As we discussed, it may be more cost-effective to simply require DOT to conduct a criminal history search monthly than to require the courts to provide DOT with this information.
6. The draft makes other minor changes discussed at our meeting and changes necessitated by the enactment of 2003 Wisconsin Acts 33 and 36.

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

Gary, Aaron

From: Van Ess, Thomas (Legislature)
Sent: Monday, September 15, 2003 1:54 PM
To: Gary, Aaron
Cc: Kiel, Joyce
Subject: RE: "S" endorsements

Aaron, At this point I think we would like your second statement that a background check be done every four years instead of eight years, but not the paper work for the entire S endorsement.

Thomas C. Van Ess
Chief of Staff
Office of Senator Mary A. Lazich

-----Original Message-----

From: Gary, Aaron
Sent: Monday, September 15, 2003 12:48 PM
To: Van Ess, Thomas (Legislature)
Cc: Kiel, Joyce
Subject: "S" endorsements

Tom,

Do you want the redraft of 03-2317 to provide for a 4 year renewal cycle for school bus "S" endorsements (as opposed to the current 8 yr. cycle - with the background check done at each renewal) OR do you want to keep the renewal cycle at 8 yrs. but require DOT to perform a background check every 4 yrs. (so only the background check, not the rest of the application paperwork/processing , is done each 4 yrs)?

I'm sure I'll have additional questions as I proceed. Thanks. Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

~~_____~~
~~_____~~
~~_____~~
~~_____~~

→ school bus :

- keep crimes stuff ~~same~~ in draft

X - good faith effort for out-of-state

- I will talk to Joyce re Kausich mtg
& her comments & create a new P draft

X - forget court reporting stuff

X - make background check 4 years

X - no rehab

X - no accident

Meeting at Krausich ofc.

short-term v. long-term

8/28/03

Amv Kara Schwartz

- crim. background check every

8 yrs.

- other events / background checks - CDC holder
moving, etc. ^{may trigger}

• who should do the background check?

• adding FBI check to S endorsement

• school vans

• if it is school bus yellow, it is a school bus

& you need S endorsement regardless of what "type" of vehicle it is

not including
finger printing cost

• "S" : DOT

• school vans : ?

FBI check (state agency) : \$28

DOT charge : \$5

FBI check : takes 3-4 mos.

(MN: waiter til check comes back)

caregiver : conditional employment

process : can hire for

60 days prod. receipt

at int., but person

must be supervised

* good faith effort to obtain records from other jurisdictions

• FBI : statutory authority for fingerprinting

↳ if reason to wish, just do it

• could model it after the caregiver

* school buses: give DOT authority to do fingerprints
- have authority to collect a biometric under existing stat

* DOT can check other state if they want, but no mandate to do something

* school vans (alternative vehicle): want a DOT check → \$5 ~~to~~ \$13 fee
- can change fee for school districts
- a serious liability issue for school districts
- school bus assn should be entitled to same \$5 fee as school district
- school district should pay

same
for
vans

* - exempt drivers who hold "S" endorsement;
~~those that hold by DPI~~ maybe could include ~~if~~ DPI license but check certain things like OWI w/ DOT to supplement

or DPI
license?
?

• what criteria: ~~████████████████████~~
- by rule?
- not resolvable now

caregiver

- check what? abuse registry? sex offender
- yes require this check → list is on the internet
- for both "S" & vans

A

→ registry shows investigated & that it happened

x → DOT wants to make it part of the application → are you listed on the abuse registry?
(they know they are on it)
- penalty if you lie on license application now can take license away for fraudulent application

- abuse registry check - do we want to require automation integration?
- loose language & check w/ DOT
- Joyce will check w/ DOT

x - for school bus & for school van

↓ x - DOT: add to the driver application for "S"

- plus sexual predator list?

x - for school van, DPI create for #20 of consultation school board
- & require by statute that schools must use the form

DHFS,

* - DOT, DPI, (DOT collaborate on
automatic

x [- prohibit DOT for issuing S if
person answers yes or if person
convicted → not necessary if
just for being on the registry

registry: substantiated abuse

* - frequency: 4 years for both
~~should be set state~~
~~past on those~~

* - either 4 years for all CBLs
or 4 yrs as a restriction (like
"H")

- address change, name change, lost license,
add an endorsement, etc. → Reg set
extra checks

• "loose language" on the registry check

• what about sex predators list?

~~DOT~~
- notification program →

- do we want to require a DOT accident or infraction check?

- DPPA form: if non-CDL, applicant can fill it out.

- DOT driver check: long term thing, not now

* - ~~DOT~~
school vans: can they drive pending DOT results?
- need

* - DOT issues the license then verify the next day

- DOT: electronic - instantaneous

- electronic: min. of 3 checks/mo.

- need to be pretty big to do electronically

* - disqualifying offenses : do it by rule

• FOIPA :

- couldn't get it thru DOT

• school district disclose the info. ?

- DPI will check

2.

• looking for exception to open records law

"parent right to know"

* - State : so you can find driver name
so you can do your own check

- name alone →

- school w/ contract has to release
the driver's name

↓ III. 331, III. 332, "Subject to" or

* "Notwithstanding"

driver schools →

* [- convictions or adjudications of delinquents ~~held~~
back to age 12 ~~back~~ on the
disqualifying offenses

* [- any grandfathering?
- yes, except for certain offenses

~~thurs~~ ^{next} Wed. 1:30 pm 9/3

Gary, Aaron

From: Gary, Aaron
Sent: Tuesday, September 16, 2003 5:01 PM
To: Kiel, Joyce; Van Ess, Thomas (Legislature)
Subject: FW: 2317 - another question

So I can get this to you as soon as possible (I'm putting it into editing tonight), I will leave the 2317 draft "as is" on this issue (option 1.). If you decide to go with option 2., we can just delete the applicable sentence in the next iteration of the draft (as DOT would always have discretion to do such a check on its own). Aaron

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-----Original Message-----

From: Gary, Aaron
Sent: Monday, September 15, 2003 1:03 PM
To: Kiel, Joyce
Cc: Van Ess, Thomas (Legislature)
Subject: 2317 - another question

Joyce,

I have two different directives in my notes on a certain issue: 1. That DOT MUST make a good faith effort to get out-of-state records for persons who resided out-of-state within the past 3 years (the same as what is in 2317/P2), and 2. Based upon cost input from Karen, that the draft not require DOT to do anything, but simply allow DOT to get out-of-state records where it feels it should.

Was one of these adopted to the exclusion of the other - which approach should the draft take? Thanks. Aaron

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Gary, Aaron

From: Kiel, Joyce
Sent: Friday, September 12, 2003 9:21 AM
To: Gary, Aaron
Cc: Van Ess, Thomas (Legislature)
Subject: FW: Comments on LRB-2317/P2 (criminal background--school buses/vans)

Aaron:

Tom gave me permission to send this to you, in case we get time to talk about school buses/vans at the meeting today.

Joyce L. Kiel, Senior Staff Attorney
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-----Original Message-----

From: Kiel, Joyce
Sent: Tuesday, August 19, 2003 4:18 PM
To: Van Ess, Thomas (Legislature)
Subject: Comments on LRB-2317/P2 (criminal background--school buses/vans)

Tom:

Thanks for sending me a copy of the draft (LRB-2317/P2). I have reviewed it and have the following comments:

1. Page 5, lines 1 to 6: I just wanted to make sure Senator Lazich understood that the reference to fulfilling any obligation under s. 121.555 means that the school board would have to do a criminal background check for drivers of vehicles that are used as an **alternative** to a school bus (typically a **school van**), but not for a driver of a school bus (unless it were a non-resident operating a school bus). (In theory, an alternative vehicle may also be a larger vehicle used on a temporary basis in an emergency if DOT gives permission to use it, but that would be an extreme rarity--like if the school bus fleet were burned.) DOT would do the criminal background investigation for school bus drivers before issuing a school bus "S" endorsement. DOT will be doing the recheck every **eight years** (unless no intervening event occurs) for license renewal, but for school van drivers, the draft requires a recheck every **four years** (page 5, line 12).

In summary, the draft provides:

(a) For alternative vehicles, the employer (either school district, private school, or employing contractor) does the background check before allowing the person to operate the vehicle and every **4 years** after that.

(b) For school buses when the operator has a Wisconsin license--DOT does the background check before issuing the "S" endorsement and usually every **8 years** after that (for renewal).

(c) For school buses when the operator has a license from another state--DOT is required to promulgate administrative rules that appear to require the employer to do a background check before the person operates a school bus in Wisconsin and every **4 years** after that. (See comment 3., below.) (This would be in addition to whatever check was performed by the licensing state.) (I

presume this is intended to apply just to employers who are in Wisconsin, but this is not stated in the draft.)

Did Senator Lazich intend this difference in time periods for required rechecking for school bus drivers versus school van drivers and the difference in resident versus non-resident bus drivers?

2. Page 8, line 20: I thought that, at our last meeting, you wanted the sentence to stop after the word "section" and not include reference to a hotline.

3. Page 10, lines 13 to 20. I think this section needs to be shown as affected by 2003 Act 33--which means the reference on line 15 should be shown as just "par. (a)" not "par (a) 3." and on line 17, a reference to sub. (2m) should be added.

Also, s. 343.12 (4) (b) (as affected by Act 33) pertains to persons who do not reside in Wisconsin but are operating a school bus in Wisconsin. Lines 19 to 20 provide that the rules that DOT must promulgate must require the employer to satisfy the requirements specified in s. 121.555 (3) (a) 1. and 3. However, the s. 121.555 requirements apply to the employer of an alternative vehicle (**not a school bus**) and specify a criminal background check and having the person fill out a background form. There really are no requirements in s. 121.555 that apply to the employer of a school bus driver. To avoid any confusion about this, I would suggest language such as: "The rules also shall require the employer to perform the functions specified in s. 121.555 (3) (a) 1. and 3. even though the person will not operate a vehicle providing an alternative method of transportation." or some variation like that.

4. Page 11, line 17 through page 15, line 6: The draft lists certain disqualifying crimes in s. 343.12 (7) and then page 15, lines 16 to 25 authorize DOT to promulgate rules listing other disqualifying crimes under s. 343.12 (8). The analysis (item 1) indicates that the listed disqualifying crimes include those specified under current law, as well as new disqualifying crimes. Current statutes list certain driving-related crimes but for non-driving related crimes just refers to felonies and offenses against public morals. DOT has promulgated administrative rules (s. Trans 112.15, Wis. Adm. Code) listing crimes--See Attachment 2 of my 8/18/03 memo to Senator Lazich and other legislators listing these crimes.) The draft includes all of the crimes listed in current statutes (except for operating a motor vehicle without proof of financial responsibility if proof is required --you decided not to include this).

However, the draft does not include in the statutes (proposed s. 343.12 (7)) all of the crimes listed in current administrative rules, specifically:

(a) The draft includes only some of the felonies under ch. 940 (crimes against life and bodily security), whereas the current rule includes all felonies under ch. 940.

(b) The draft does not include any crimes under ch. 944 (crimes against sexual morality) or ch. 961 (uniform controlled substances act), whereas the current rule includes all of them.

(c) The draft does not include most of the separately listed crimes in the current administrative rule (see pages 2 and 3 of Attachment 2 of my 8/18 memo) or the catch-all of felonies that have the use or threat of use of force or injury or attempting or being a party to the listed crimes.)

DOT presumably will promulgate administrative rules under its authority under s. 343.12 (8) and may include many of these crimes, but DOT is not required to do so. Is the listing in proposed s. 343.12 (7) (c) sufficient for Senator Lazich's purposes?

5. Page 16, lines 7 to 12: The draft provides for cancellation of the license with an "S" endorsement if DOT receives a record of conviction for a crime specified in s. 343.12 (7) or the administrative rules that DOT will promulgate under s. 343.12 (7) and (8). Because proposed s.

343.12 (7) in particular refers to a conviction within the two years or five years "immediately preceding the date of application", I think it should be clearer in proposed s. 343.20 (1) (d) 2. that the time frame from the administrative rules also carries over to s. 343.20 (1) (d) 2. and not just the fact of the conviction. (I think you intended that if, for example, there were a conviction in the third year of an eight year "S" endorsement and the disqualification period was two years, the license would be cancelled and the person couldn't get a new "S" endorsed license for two years.

6. Page 20, lines 14 to 19: The draft requires the courts to notify DOT of any conviction for a specified crime if the person convicted holds an "S" endorsement. Tom, you were planning to ask the courts about how difficult or expensive this would be.

7. Page 21, line 3: "statues" should be changed to "statutes".

Tom: I have not sent a copy of this email to Aaron Gary as I wasn't sure if Senator Lazich wanted to make some decisions before requesting a redraft.

Let me know if you have any questions or would like to meet to discuss my comments.

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-----Original Message-----

From: Van Ess, Thomas (Legislature)
Sent: Thursday, August 07, 2003 3:46 PM
To: Kiel, Joyce
Subject:

<< File: Bus Driver Draft #2.pdf >> << File: Bus Driver drafters notes #2.pdf >>

Thomas C. Van Ess
Chief of Staff
Office of Senator Mary A. Lazich