



State of Wisconsin Department of Public Instruction

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John T. Benson
State Superintendent

Steven B. Dold
Deputy State Superintendent

DATE: February 16, 2000
TO: Members, Assembly Highway Safety Committee
FROM: Randall R. Thiel, Ph. D.
Education Consultant
SUBJECT: AB 621

I have been asked to speak in behalf of State Superintendent John Benson and the Department of Public Instruction in support of Assembly Bill 621.

As you know, AB 621 proposes to allow school bus drivers to report to a law enforcement officer the illegal passing of a school bus on the right. The officer may, after investigating the report, issue a citation for the violation to the owner of the vehicle.

The Department of Public Instruction supports this bill. We believe it makes a strong statement to the general motoring public of the importance of respect, courtesy, and safety when interacting with a school bus. The fact that a school bus driver can report an illegal action, such as illegal passing on the right in this case, and an officer may issue a citation based on a bus driver's observation may also serve as a strong deterrent.

The safety of children is of paramount importance. This bill shows that legislators place a high degree of value on the need (and desire) for high levels of pupil transportation safety.

Thank you for your time and attention. If there are any questions, I will do my best to answer them.



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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DATE: February 11, 2000

TO: REPRESENTATIVE TOM SYKORA

FROM: Don Salm, Senior Staff Attorney

SUBJECT: Analysis of 1999 Assembly Bill 621, Relating to Motor Vehicle Owner Liability for Overtaking and Passing a School Bus on the Right

This memorandum analyzes 1999 Assembly Bill 621, relating to motor vehicle owner liability for overtaking and passing a school bus on the right.

I. CURRENT LAW

A. WHEN OVERTAKING AND PASSING ON THE RIGHT PERMITTED [s. 346.08, STATS.]

Under current law, an operator of a motor vehicle is generally required to overtake and pass to the left of slower moving vehicles traveling in the same direction. There is an exception to this rule in s. 346.08, Stats. Under that section, the operator of a vehicle may overtake and pass another vehicle upon the *right* only under conditions permitting such movement in safety and only if the operator can do so without driving off the pavement or main-traveled portion of the roadway, and then only under the following conditions:

1. When the vehicle overtaken is making or about to make a left turn.
2. Upon a street or highway with unobstructed pavement of sufficient width to enable two or more lines of vehicles lawfully to proceed, at the same time, in the direction in which the passing vehicle is proceeding.
3. Upon a one-way street or divided highway with unobstructed pavement of sufficient width to enable two or more lines of vehicles lawfully to proceed in the same direction at the same time. [s. 346.08, Stats.]

B. OWNER'S LIABILITY FOR VEHICLE ILLEGALLY PASSING SCHOOL BUS [ss. 346.48 (1) AND 346.485, STATS.]

Under current law, the *owner* (as defined in s. 346.01 (2), Stats., attached) of a vehicle involved in a violation of s. 346.48 (1), Stats. (passing a school bus while it is stopped on the road and is displaying flashing red warning lights; copy attached), is liable for the violation under s. 346.485, Stats. (copy attached), Stats., as follows:

1. Report of Violation

Under that provision, the operator of a school bus who observes a violation of s. 346.48 (1), Stats., *may* prepare a written report indicating that a violation has occurred. If possible, the report must contain the following information:

- a. The time and the approximate location at which the violation occurred.
- b. The license number and color of the vehicle involved in the violation.
- c. Identification of the vehicle as an automobile, station wagon, motor truck, motor bus, motorcycle or other type of vehicle.

Within 24 hours after observing the violation, the school bus operator may deliver the report to a traffic officer of the county or municipality in which the violation occurred. A report which does not contain all the information in items a. to c., above, must nevertheless be delivered and must be maintained by the county or municipality for statistical purposes.

2. Uniform Traffic Citation; Service on Owner

Within 48 hours after receiving a report containing all the information above, the traffic officer may prepare a *uniform traffic citation* under s. 345.11, Stats., and may personally serve it upon the owner of the vehicle. If with reasonable diligence the owner cannot be served personally, service may be made by leaving a copy of the citation at the owner's usual place of abode within this state in the presence of a competent member of the family at least 14 years of age, who must be informed of the citation's contents. If with reasonable diligence the owner cannot be served under either of these methods or if the owner lives outside of the jurisdiction of the issuing authority, service may be made by *certified mail* addressed to the owner's last-known address.

3. Owner's Defenses to Liability

Except as provided below, it is *no defense* to a violation of this provision that the owner was not operating the vehicle at the time of the violation. The following are *defenses* to a violation of this provision:

- a. That a report that the *vehicle was stolen* was given to a traffic officer before the violation occurred or within a reasonable time after the violation occurred.

b. If the owner of the vehicle provides a traffic officer with the *name and address of the person operating the vehicle* at the time of the violation and the person so named admits operating the vehicle at the time of the violation, then the person operating the vehicle and not the owner shall be charged under this provision.

c. If the vehicle is owned by *a lessor of vehicles* and at the time of the violation the vehicle was in the possession of a lessee, and the lessor provides a traffic officer with the information required under s. 343.46 (3), Stats., then the lessee and not the lessor must be charged under this provision.

d. If the vehicle is owned by *a motor vehicle dealer*, and at the time of the violation the vehicle was being operated by any person on a trial run, and if the dealer provides a traffic officer with the name, address and operator's license number of the person operating the vehicle, then the person operating the vehicle, and not the dealer, must be charged under this provision.

4. Penalty for Violation

A vehicle owner or other person found liable under s. 346.485, Stats., may be required to forfeit not less than \$30 nor more than \$300. However, imposition of liability under that section does *not* result in: (a) suspension or revocation of the person's motor vehicle operating license; nor (b) demerit points being recorded on a person's driving record. [s. 346.49 (3), Stats.]

II. 1999 ASSEMBLY BILL 621

1999 Assembly Bill 621 allows a school bus driver who observes a motorist unlawfully overtake and pass a school bus *to the right* in violation of s. 346.08, Stats. (copy attached), to report the violation to a law enforcement officer in accordance with the procedures set forth in current s. 346.485, Stats., described in Part I. B., above. In other words, the officer may, after investigating the report, issue a uniform traffic citation to the owner of the vehicle for the violation.

The same exemptions (i.e., defenses) from vehicle owner liability that are applicable to the current provision for owner's liability for illegally passing a school bus also apply to this new provision relating to owner liability for overtaking and passing a school bus on the right. As noted in Part I. B. 3., above, these include exemptions from liability if the vehicle was reported within a reasonable time after the time of the violation; if the owner identifies the driver who committed the violation and the driver admits to driving the vehicle at the time of the violation; or if the owner is a lessor or dealer of vehicles and the vehicle was in another's possession at the time of the violation.

The penalty for a violation of this new provision is the same as that set forth in Part I. B. 4., above.

III. INITIAL APPLICABILITY

The bill provides that if it is enacted into law, the new law first applies to violations observed on the effective date of the new law.

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Attachment

ATTACHMENT

Sections 346.01 (2), 346.08, 346.48 (1) and 346.485, Stats.

346.01 (2) In this chapter, notwithstanding s. 340.01 (42), "owner" means, with respect to a vehicle that is registered, or is required to be registered, by a lessee of the vehicle under ch. 341, the lessee of the vehicle for purposes of vehicle owner liability under ss. 346.175, 346.195, 346.205, 346.457, 346.465, 346.485, 346.505 (3) and 346.945.

346.08 When overtaking and passing on the right permitted. The operator of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety and only if the operator can do so without driving off the pavement or main-traveled portion of the roadway, and then only under the following conditions:

- (1) When the vehicle overtaken is making or about to make a left turn; or
- (2) Upon a street or highway with unobstructed pavement of sufficient width to enable 2 or more lines of vehicles lawfully to proceed, at the same time, in the direction in which the passing vehicle is proceeding; or
- (3) Upon a one-way street or divided highway with unobstructed pavement of sufficient width to enable 2 or more lines of vehicles lawfully to proceed in the same direction at the same time.

346.48 (1) The operator of a vehicle which approaches from the front or rear any school bus which has stopped on a street or highway when the bus is equipped according to s. 347.25 (2) and when it is displaying flashing red warning lights, shall stop the vehicle not less than 20 feet from the bus and shall remain stopped until the bus resumes motion or the operator extinguishes the flashing red warning lights. The operator of any school bus which approaches from the front or rear any school bus which has stopped and is displaying flashing red warning lights shall display its flashing red lights while stopped. This subsection does not apply to operators of vehicles proceeding in the opposite direction on a divided highway.

346.485 Owner's liability for vehicle illegally passing school bus. (1) Subject to s. 346.01 (2), the owner of a vehicle involved in a violation of s. 346.48 (1) shall be liable for the violation as provided in this section.

(2) The operator of a school bus who observes a violation of s. 346.48 (1) may prepare a written report indicating that a violation has occurred. If possible, the report shall contain the following information:

- (a) The time and the approximate location at which the violation occurred.
- (b) The license number and color of the vehicle involved in the violation.
- (c) Identification of the vehicle as an automobile, station wagon, motor truck, motor bus, motorcycle or other type of vehicle.

(3) Within 24 hours after observing the violation, the school bus operator may deliver the report to a traffic officer of the county or municipality in which the violation occurred. A report

which does not contain all the information in sub. (2) shall nevertheless be delivered and shall be maintained by the county or municipality for statistical purposes.

(4) (a) Within 48 hours after receiving a report containing all the information in sub. (2), the traffic officer may prepare a uniform traffic citation under s. 345.11 and may personally serve it upon the owner of the vehicle.

(b) If with reasonable diligence the owner cannot be served under par. (a), service may be made by leaving a copy of the citation at the owner's usual place of abode within this state in the presence of a competent member of the family at least 14 years of age, who shall be informed of the contents thereof.

(c) If with reasonable diligence the owner cannot be served under par. (a) or (b) or if the owner lives outside of the jurisdiction of the issuing authority, service may be made by certified mail addressed to the owner's last-known address.

(5) (a) Except as provided in par. (b), it shall be no defense to a violation of this section that the owner was not operating the vehicle at the time of the violation.

(b) The following are defenses to a violation of this section:

1. That a report that the vehicle was stolen was given to a traffic officer before the violation occurred or within a reasonable time after the violation occurred.

1m. If the owner of the vehicle provides a traffic officer with the name and address of the person operating the vehicle at the time of the violation and the person so named admits operating the vehicle at the time of the violation, then the person operating the vehicle and not the owner shall be charged under this section.

2. If the vehicle is owned by a lessor of vehicles and at the time of the violation the vehicle was in the possession of a lessee, and the lessor provides a traffic officer with the information required under s. 343.46 (3), then the lessee and not the lessor shall be charged under this section.

3. If the vehicle is owned by a dealer as defined in s. 340.01 (11) (intro.) but including the persons specified in s. 340.01 (11) (a) to (d), and at the time of the violation the vehicle was being operated by any person on a trial run, and if the dealer provides a traffic officer with the name, address and operator's license number of the person operating the vehicle, then the person operating the vehicle, and not the dealer, shall be charged under this section.

AB621

February 14, 2000

TO WHOM IT MAY CONCERN:

My name is Cathy Steele and I have been a special needs school bus driver with Chippewa Yellow Bus for approximately 10 years. I contacted Tom Sykora with a concern that I have regarding the safe transportation of all children.

Approximately 3-4 years ago, I was in my bus that was parked behind another special needs bus in a loop located on the school grounds of Southview Elementary. This loop is located at the main doors of Southview Elementary and is designated "For Buses Only". When the buses are parked in this area there is a sidewalk that is street level next to the buses. We do not park on the sidewalk as it is the access to the rear parking lot that faces the buses.

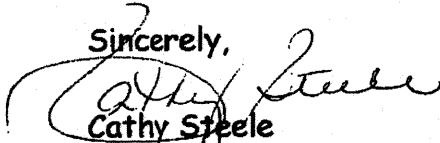
The afternoon that I am writing specifically about we arrived at the school, set our parking brakes, and lowered our lifts while waiting for the aides to bring the children that are in wheelchairs out to our buses. I should note that other children ride our buses besides those needing wheelchairs and most of those are brought out with an aide, however, this is not the rule. Not all teachers have aides available to them nor do some of the children require an aide.

There was a vehicle improperly parked in the bus loading area of the school. Once the buses entered the loop it was impossible for this vehicle to exit unless it passed the buses on the right. Most people, seeing that there are children in this area, would wait for the buses to load, then proceed safely through the loop after they have left. Apparently this person decided his time was ultimately more important than the lives of children exiting the school. I saw his vehicle approach on the sidewalk along the right side of my bus and as I radioed the driver in front of me that the vehicle was coming alongside of her bus he drove OVER the end of her extended lift.

I contacted our safety director and our dispatcher about the incident. We contacted the local police with the license plate number and were told that they had no jurisdiction in the matter because "it wasn't against the law"! I was shocked to say the least. This is the only incident I can recall where someone actually ran over a wheelchair lift but it is not the first or last time that we have had a vehicle pass us on the right (or left) at this school. We also have had cars jump the curb at the high school and pass on the right (or left) in order to pass buses unloading in the loop in front of the school.

Whenever we load or discharge our students, safety is of the utmost concern in our minds. The death of the child exiting his bus at his home this fall brought forth the memory of this incident and when I had a chance meeting with Representative Sykora I related the above story to him and asked for his help in seeing that children are afforded the safety they deserve no matter where they are when entering or exiting their bus. It is absolutely ludicrous to me that there is no legal recourse that I as a bus driver can take to protect these children. Please help me make their ride be the safest it can be.

Sincerely,



Cathy Steele

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