



(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Natural Resources and Transportation...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Senate

Record of Committee Proceedings

Committee on Natural Resources and Transportation

Clearinghouse Rule 04-117

Relating to medical standards for driver licensing and general standards for school bus endorsements.

Department of Transportation

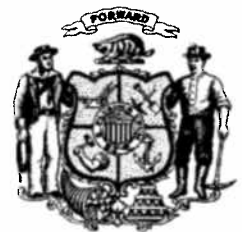
January 05, 2005 Referred to Committee on Natural Resources and Transportation.

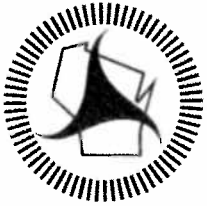
February 7, 2005 No action taken.

Matt Phillips
Committee Clerk



WISCONSIN STATE LEGISLATURE





Wisconsin Department of Transportation

www.dot.wisconsin.gov

Jim Doyle
Governor

Frank J. Busalacchi
Secretary

Office of General Counsel
4802 Sheboygan Ave., Rm. 115B
P O Box 7910
Madison, WI 53707-7910

Telephone: 608-266-8810
FAX: 608-267-6734
E-mail: ogc.exec@dot.state.wi.us

The Honorable Senator Neal Kedzie
Chairman, Senate Transportation Committee
Room 313 South
State Capitol
Madison, Wisconsin 53707

January 4, 2004

The Honorable Representative John Ainsworth
Chairman, Assembly Transportation Committee
Room 309 North, State Capitol
Madison, Wisconsin 53702

RE: Proposed Administrative Rule **TRANS 112**
Notification of Legislative Standing Committees
CLEARINGHOUSE RULE 04-117

Dear Senator Leibham and Representative Ainsworth:

In accordance with the Department of Transportation's efforts to keep you informed of its ongoing rule making actions, enclosed is a courtesy copy of Final Draft rule **Trans 112**, relating to **medical standards for driver licensing and general standards for school bus endorsements**, which is being submitted to the Legislature for committee review.

Sincerely,

A handwritten signature in cursive script that reads "Julie A. Johnson".

Julie A. Johnson
Paralegal

JAJ/dim

Enclosure

cc: Beverly Larson
Karen Schwartz
Jill Reeve

CR 04-117

The Wisconsin Department of Transportation proposes an order to repeal TRANS 112.06(3)(b)3.; amend TRANS 112.01, 112.07(3)(b)1. and 3., 112.12(3)(b)3., 112.18 and 112.20(2); repeal and recreate TRANS 112.15; and create TRANS 112.02(1m), 112.155 and 112.16(4), relating to medical standards for driver licensing and general standards for school bus endorsements

**REPORT OF THE DEPARTMENT OF TRANSPORTATION
ON THE FINAL RULE DRAFT**

This report is submitted to the presiding officers of the Senate and Assembly for referral to the appropriate standing committees. The report consists of the following parts:

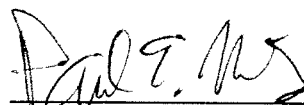
Part 1--Analysis prepared by the Department of Transportation.

Part 2--Rule text in final draft form.

Part 3--Recommendations of the Legislative Council.

Part 4--Analysis prepared pursuant to the provisions of s. 227.19(3), Stats.

Submitted by:



Paul E. Nilsen
Assistant General Counsel
Office of General Counsel
Department of Transportation
Room 115-B, Hill Farms State
Transportation Building
P. O. Box 7910
Madison, WI 53707-7910
(608) 261-0126

PART 1

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 121.555(3)(c), 121.555(4)(a), 343.12(2), 343.20(1), 343.21(3), 343.23(2), 343.237, Stats.

STATUTES INTERPRETED: ss. 121.555(3)(c), 121.555(4)(a), 343.12(2), 343.20(1), 343.21(3), 343.23(2), 343.237, Stats.

Plain Language Analysis: 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, including being free of conviction for certain crimes. 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.

2003 Wisconsin Act 280 modified the existing criminal history requirements, and imposed additional requirements, for the initial issuance or renewal of a school bus endorsement. That act prohibits DOT from issuing or renewing a school bus endorsement to an applicant if the applicant has been convicted of or adjudicated delinquent for any specified disqualifying crime or offense within a prior minimum specified time. These disqualifying crimes and offenses and minimum time periods for disqualification include those specified under current statutes, including various crimes against children. The act also authorizes DOT to specify by rule additional disqualifying crimes and offenses and the time period during which the disqualification applies.

Prior to Act 280, persons were not eligible for a school bus endorsement if he or she has been convicted of listed 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, or was convicted of specified offenses (including OWI 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. Thus, Act 280 lengthened the periods of disqualification for some offenses, and listed some offenses that arguably are not "substantially related" to the circumstances of operating a school bus.

This rule establishes three periods of disqualification from eligibility for a school bus driver endorsement for conviction of listed felonies and misdemeanors. A lifetime disqualification is imposed on any person convicted of violent crimes resulting in death or serious physical injury to another, of sex offenses involving children and other vulnerable persons, or of other crimes involving predation or victimization of children or other vulnerable persons. A five-year disqualification is imposed on any person convicted of other crimes against life and bodily security, of other crimes against

children, of crimes involving use of a motor vehicle, including operating while intoxicated (OWI), of possession of illegal weapons or of similar offenses likely to result in serious injury to others. A two-year disqualification is imposed on any person convicted of negligent operation of a motor vehicle, of obstructing emergency and rescue personnel or of other crimes.

Many of the listed offenses comprise felonies and misdemeanors. Under the rule, if a person provides evidence to the Department that his or her conviction of a listed offense is a misdemeanor conviction, the disqualification period is shortened to the next shorter disqualification period. However, there is no reduced disqualification period for misdemeanor sexual assault convictions, and the minimum period of disqualification for any listed offense (whether felony or misdemeanor) is two years.

The rule requires the Department to conduct a criminal history record search of every applicant for initial issuance or renewal to determine whether the person is convicted of disqualifying offenses. Although a school bus endorsement is renewed every eight years, DOT must conduct a criminal history search four years after the person obtains a school bus endorsement and, if appropriate, cancel the endorsement.

The rule also requires any person applying for initial issuance or renewal of a school bus endorsement to certify whether he or she has been convicted of any disqualifying offense, and allows the department to disqualify the person for the appropriate period based on that certification.

The rule requires any applicant who has resided in another state within the previous two years to notify the department of those other states, and requires the department to make a good faith effort to obtain the criminal history records from those other states, including submitting the persons fingerprints to the Department of Justice for a nationwide criminal history search.

The rule allows DOT to require every applicant a school bus endorsement to provide two sets of fingerprints, and requires each applicant who has resided in another state within the previous two years to pay fees for the two criminal history records searches that will be completed at initial issuance or renewal, and four years after the person obtains the school bus endorsement.

This rule making also makes minor changes to medical standards for school bus drivers not required under 2003 Wisconsin Act 280, including the following:

1. Allows a physician to certify whether a driver is following the treatment plan for cerebrovascular function, without such certification of the patient.
2. Shortens from 12 to 6 months the period during which a school bus driver must be free of any cerebrovascular incident.

3. Eliminates the 12 month period during which school bus driver must be free of destructive behavior or suicidal tendencies, instead making eligible a driver who is free of such behaviors or tendencies at the time of application.

4. Provides that a license restriction imposed on a physician's recommendation may be lifted only by the physician that recommended the restriction or by the Department following its evaluation of the person's ability to drive.

5. Provides that a person who does not meet minimum waiting periods following certain medical disqualifications cannot request a medical review board assessment of those disqualifications, because those waiting periods cannot be waived.

Summary of, and Preliminary Comparison with, Existing or Proposed Federal Regulation: Federal school bus driver qualifications are set forth at 49 CFR 383.123. Under federal regulations, an applicant must certify and the State must verify that, during the two-year period immediately prior to applying for the school bus endorsement, the applicant has not been convicted of any of the disqualifying offenses in 49 CFR 383.51(b) (generally, OWI, speeding, leaving the scene of an accident, serious moving violations, and offenses involving alcohol and drugs) while operating a CMV or of any offense in a non-CMV that would be disqualifying under 49 CFR 383.51(b) if committed in a CMV; has not had more than one conviction of any of the serious traffic violations defined in 49 CFR 383.5, while operating any type motor vehicle; has not had any conviction for a violation of State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident; and has not been convicted of any motor vehicle traffic violation that resulted in an accident.

No federal regulations have been proposed regarding school bus driver qualifications within the previous two years.

Comparison with Rules in Adjacent States:

Michigan: Michigan administrative rules require the driver to meet only statutory requirements, none of which relate to the driver's criminal background. Mich. Adm. Code R 340.232, 340.1252 (2004). Michigan statutes require a school to request a criminal background check prior to employing a driver, but do not appear to require the school to take any action based on the result of the search and do not appear to establish licensing qualifications based on criminal background. § 257.1853(4), Mich. Comp. Laws Svc. (2004).

Minnesota: Minnesota school bus driver qualifications are set forth at s. 7414.0400, Minn. Adm. Code. Minnesota disqualifies a person convicted of a felony or certain misdemeanors from holding a school bus endorsement for 5 years after the conviction or for 5 years after the release from incarceration, whichever occurs later. An applicant is ineligible for a school bus endorsement while he or she has felony charges pending against him or her. Minnesota requires a criminal background check at initial

issuance and renewal, but requires the school district or its contractor to complete the background check. However, an applicant who has resided in a state other than Minnesota within the preceding five years must have the background check completed by the FBI, by the state or the state's contractor. Minnesota imposes a lifetime disqualification for Head Start bus drivers convicted of certain crimes against minors. School bus driver qualifications are set forth in s. 171.3215, Minn. Stat.

Illinois: Illinois school bus driver qualifications are set forth at 92 Ill. Adm. Code 1035.15. Illinois imposes a lifetime disqualification for convictions of committing or attempting to commit listed felonies and misdemeanors, and a three year disqualification for reckless driving, OWI, or reckless homicide resulting from operation of a motor vehicle. Illinois statutes list disqualifying offenses at 625 ILCS 5/6-106.1, (2004). Illinois requires the prospective employer to collect fingerprints from the school bus permit applicant, and to submit those prints to the Secretary of State for an FBI background check. 92 Ill. Adm. Code 1035.25 (2004). Illinois requires the denial or cancellation of the school bus permit issued to any person whose criminal record check indicates is ineligible to hold the school bus permit. 92 Ill. Adm. Code 1035.35 (2004).

Iowa: Iowa school bus driver qualifications are set forth at 761 IAC 911.6(321). Iowa requires the regional transit system to conduct a **criminal** records review of each driver prior to employment and on an annual basis. This review verifies that the driver has no history of child abuse or other **criminal** activity. Each driver who transports students must have an authorization to operate a **school bus** issued by the department of education in accordance with Iowa Code section 321.376. Iowa statutes make ineligible any person convicted for a public offense as defined by the Iowa criminal code, if the offense is relevant to and affects driving ability, or if the offense includes sexual involvement with a minor student. Iowa Code § 321.375.

Summary of Factual Data and Analytical Methodologies Used and How the Related Findings Support the Regulatory Approach Chosen: 2003 Wisconsin Act 280 requires DOT to promulgate rules specifying crimes or other offenses, in addition to those specified in the statutes, the conviction for which, or adjudication of delinquency for which, disqualifies the applicant from initial issuance or renewal of a school bus endorsement and, for each such crime or offense, the time period within which the disqualification applies. The time period may be permanent but may not be less than the time period specified in the statutes. DOT first examined the statutes for every crime, and classified them by felony or misdemeanor. DOT further classified those crimes according to the threat they represented to school children or other vulnerable persons, to sexual offenses, to operation of a large motor vehicle, and that reflected on the person's trustworthiness with children. DOT established these criteria and completed the classification in consultation with the Wisconsin School Bus Association, a nonprofit organization that represents school bus companies and serves as Wisconsin's contact to the National Association of State Directors of Pupil Transportation. DOT and Wisconsin School Bus Association examined anecdotal examples known by those organizations and presented to the legislature during hearings on 2003 Senate Bill 350 (enacted as 2003 Wisconsin Act 280). Those

anecdotes presented examples of school bus drivers that committed criminal offenses while holding a school bus endorsement who were skilled operators but that had criminal histories that suggested the driver might commit the offense. DOT has no factual data to support those anecdotes.

Effect on Small Business and, If Applicable, Any Analysis and Supporting Documentation Used to Determine Effect on Small Businesses: This rule making will prohibit some skillful drivers from obtaining a school bus endorsement, and employment as a school bus driver. To the extent that this rule reduces the pool of school bus drivers, DOT expects that the cost of employing school bus drivers will rise. DOT has no factual data to determine how many bus drivers will be made ineligible by this rule. In its fiscal estimate for 2003 Senate Bill 350 prepared in January, 2004, DOT stated that it issues approximately 2,000 school bus driver endorsements each year, and projected 2,000 background checks per year. DOT has no information regarding how many applicants have resided in other states within the previous two years, or of how many school districts and school bus companies might already be employing criminal background checks as part of their ordinary employment practices.

Fiscal Effect and Anticipated Costs Incurred by Private Sector: As stated in more detail above, this rule will prohibit some skillful drivers from obtaining a school bus endorsement, and employment as a school bus driver. To the extent that this rule reduces the pool of school bus drivers, DOT expects that the cost of employing school bus drivers will rise. DOT has no information regarding how many school bus companies might already be employing criminal background checks as part of their ordinary employment practices.

Copies of Rule. Copies of the proposed rule may be obtained, without cost, by writing to Karen Schwartz, Department of Transportation, Records and Licensing Info Section, Room 351, P. O. Box 7918, Madison, WI 53707-7918. You may also contact Ms. Schwartz by phone at (608) 266-0054.

PART 2 **TEXT OF PROPOSED RULE**

SECTION 1. Trans 112.01 is amended to read:

Trans 112.01 Purpose and scope. The purpose of this chapter is to establish the department's administrative interpretation of the provisions of ch. 343, Stats., that relate to the issuance of motor vehicle operator licenses to persons who have a medical condition that may affect their ability to exercise reasonable control over a motor vehicle. This chapter specifies by licensing category the functional ability levels

necessary to exercise reasonable control of a motor vehicle for all persons applying for or holding any operator's license. This chapter also establishes non-medical requirements that relate to issuance of a school bus endorsement.

SECTION 2. Trans 112.02(1m) is created to read:

Trans 112.02(1m) "Another jurisdiction" means any state other than Wisconsin and includes the District of Columbia, the commonwealth of Puerto Rico and any territory or possession of the United States, any federal military installation located within the territorial boundaries of Wisconsin and any province of the Dominion of Canada.

SECTION 3. Trans 112.06(3)(b)3. is repealed.

SECTION 4. Trans 112.07(3)(b)1. and 3. are amended to read:

Trans 112.07(3)(b)1. Physician ~~and the person certify~~ certifies that the person is reliable in following the person's prescribed treatment program.

(b)3. Any cerebrovascular incident, such as a cerebrovascular accident or endarterectomy, occurred more than ~~42~~ 6 months ago.

SECTION 5. Trans 112.12(3)(b)3. is amended to read:

Trans 112.12(3)(b)3. There ~~have been~~ are, at the time of the application for or renewal or holding of the endorsement, no destructive behaviors or suicidal tendencies ~~within the 12 months preceding application.~~

SECTION 6. Trans 112.15 is repealed and recreated to read:

Trans 112.15 Non-medical requirements for school bus drivers. (1) The department may not issue or renew a school bus endorsement to any person convicted of any of the following state laws or any local ordinance in conformity with any of the

following state laws or any federal law or law of a federally recognized American Indian tribe or band in this state or law of another jurisdiction that would be a violation of any of the following state laws if the person had committed the offense in this state and been convicted of the offense under the laws of this state:

- (a) First-degree intentional homicide, s. 940.01, Stats.
- (b) First-degree reckless homicide, s. 940.02, Stats.
- (c) Felony murder, s. 940.03, Stats.
- (d) Second-degree intentional homicide, s. 940.05, Stats.
- (e) Second-degree reckless homicide, s. 940.06, Stats.
- (f) Homicide by intoxicated use of vehicle or firearm, s. 940.09, Stats.
- (g) Homicide by negligent operation of a vehicle, s. 940.10, Stats.
- (gd) Battery, substantial battery, or aggravated battery under s. 940.19(2), (3), (4), (5), or (6), Stats.
- (gr) Battery to a pregnant woman or unborn child, s. 940.195, Stats.
- (h) Mayhem, s. 940.21, Stats.
- (i) Sexual assault, s. 940.225(1) to (3m), Stats.
- (j) Reckless injury, s. 940.23, Stats.
- (k) Abuse of vulnerable adults, s. 940.285, Stats.
- (L) Abuse and neglect of patients and residents, s. 940.295, Stats.
- (m) Taking hostages, s. 940.305, Stats.
- (n) Kidnapping, s. 940.31, Stats.
- (o) Administering dangerous or stupefying drug, s. 941.32, Stats.
- (p) Criminal gang member solicitation and contact, s. 941.38, Stats.

- (pm) Robbery, s. 943.32, Stats.
- (q) Incest, s. 944.06, Stats.
- (r) Public fornication, s. 944.15, Stats.
- (s) Sexual gratification, s. 944.17, Stats.
- (t) Lewd and lascivious behavior, s. 944.20, Stats.
- (u) Obscene material or performance, s. 944.21, Stats.
- (v) Making lewd, obscene or indecent drawings, s. 944.23, Stats.
- (w) Sending obscene or sexually explicit electronic messages, s. 944.25, Stats.
- (x) Prostitution, s. 944.30, Stats.
- (y) Patronizing prostitutes, s. 944.31, Stats.
- (z) Soliciting prostitutes, s. 944.32, Stats.
- (aa) Pandering, s. 944.33, Stats.
- (bb) Keeping a place of prostitution, s. 944.34, Stats.
- (cc) Treason, s. 946.01, Stats.
- (dd) Sabotage, s. 946.02, Stats.
- (ee) Seditious, s. 946.03, Stats.
- (ff) Sexual assault of a child, s. 948.02(1) and (2), Stats.
- (gg) Engaging in repeated acts of sexual assault of the same child, s. 948.025,
Stats.
- (hh) Physical abuse of a child, s. 948.03, Stats.
- (ii) Causing mental harm to a child, s. 948.04, Stats.
- (jj) Sexual exploitation of a child, s. 948.05, Stats.
- (kk) Causing a child to view or listen to sexual activity, s. 948.055, Stats.

- (LL) Incest with a child, s. 948.06, Stats.
- (mm) Child enticement, s. 948.07, Stats.
- (nn) Use of a computer to facilitate a child sex crime, s. 948.075, Stats.
- (oo) Soliciting a child for prostitution, s. 948.08, Stats.
- (pp) Sexual intercourse with a child age 16 or older, s. 948.09, Stats.
- (qq) Sexual assault of a student age 16 or older by a school instructional staff person, s. 948.095, Stats.
- (rr) Exposing genitals or pubic area to child, s. 948.10, Stats.
- (ss) Exposing a child to harmful material or harmful descriptions or narrations, s. 948.11(2)(a) or (am), Stats.
- (tt) Possession of child pornography, s. 948.12, Stats.
- (uu) Child sex offender working with children, s. 948.13(2), Stats.
- (vv) Abandonment of a child, s. 948.21, Stats.
- (ww) Neglecting a child, s. 948.21, Stats.
- (xx) Concealing death of a child (at birth), s. 948.23, Stats.
- (yy) Abduction of another's child; constructive custody, s. 948.30.
- (zz) Solicitation of a child to commit a felony, s. 948.35, Stats.
- (aaa) Contributing to the delinquency of a minor, s. 948.40.
- (bbb) Leaving or storing a loaded firearm within the reach or easy access of a child, s. 948.55, Stats.
- (ccc) Possession of firearm in school zone, s. 948.605, Stats.
- (ccg) Any of the following drug-related crimes under s. 961.41, Stats.:
 1. Manufacture, distribution or delivery, s. 961.41(1)(a) to (1)(j), Stats.

2. Possession with intent to manufacture, distribute or deliver, s. 961.41(1m)(a) to (1m)(j), Stats.

3. Distribution or delivery or attempt to deliver or distribute an imitation controlled substance, s. 961.41 (4)(am), Stats.

(ccr) Keep or maintain any place for drug use, manufacture, keeping or delivering, s. 961.42(1), Stats.

(ddd) Using a child for illegal drug distribution or manufacturing, s. 961.455, Stats.

(eee) Distribution of controlled substances to persons under age 18, s. 961.46, Stats.

(2) The department may not issue or renew a school bus endorsement to any person who within the 5 years immediately preceding the date of application is convicted of any of the following state laws or any local ordinance in conformity with any of the following state laws or any federal law or law of a federally recognized American Indian tribe or band in this state or law of another jurisdiction that would be a violation of any of the following state laws if the person had committed the offense in this state and been convicted of the offense under the laws of this state:

(a) Any felony under ch. 940, Stats., not listed in sub. (1).

(b) Any conviction under ch. 948, Stats., not listed in sub. (1).

(c) Any felony in the commission of which a motor vehicle is used, except those offenses listed in sub. (1) or (3).

(d) Fleeing from or attempting to elude a traffic officer, s. 346.04(3), Stats.

(e) Operating a motor vehicle under the influence of an intoxicant or other drug or with a prohibited alcohol concentration, s. 346.63(1), Stats.

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

(f) Operating a motor vehicle with a prohibited alcohol concentration while under the legal drinking age, s. 346.63(2m), Stats.

(g) Operating a commercial motor vehicle with a prohibited alcohol concentration, s. 346.63(5), Stats.

(h) Causing injury by operating a commercial motor vehicle with a prohibited alcohol concentration, s. 346.63(6), Stats.

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

(j) Failure to stop and render assistance at the scene of a motor vehicle accident, s. 346.67(1)(c), Stats.

(k) Assisting suicide under s. 940.12, Stats.

(L) Sexual exploitation by a therapist, s. 940.22(2), Stats.

(m) Injury by intoxicated use of a vehicle under s. 940.25(1), Stats.

- (n) Unsafe burning of building, s. 941.11, Stats.
- (o) Disarming a peace officer, s. 941.21, Stats.
- (p) Machine guns and other weapons, s.941.26, Stats.
- (q) Possession of short-barreled shotgun or rifle, s. 941.28, Stats.
- (r) Possession of a firearm by felon, s. 941.29, Stats.
- (s) Possession of electric weapon, s. 941.295, Stats.
- (t) Use or possession of a handgun and an armor-piercing bullet during crime, s. 941.296, Stats.
- (u) Firearm silencers, s. 941.298, Stats.
- (v) Recklessly endangering safety, s. 941.30.
- (w) Possession of explosives, s. 941.31, Stats.
- (x) Placing foreign objects in edibles, s. 941.325, Stats.
- (y) Tampering with household products, s. 941.327, Stats.
- (aa) Arson of buildings; damage of property by explosives, s. 943.02, Stats.
- (bb) Arson of property other than buildings, s. 943.03, Stats.
- (cc) Arson with intent to defraud, s. 943.04, Stats.
- (dd) Molotov cocktails, s. 943.06, Stats.
- (ee) Burglary, s. 943.10.
- (ff) Unauthorized use of an individual's personal identifying information or documents, s. 943.201, Stats.
- (gg) Loan sharking, s. 943.28, Stats.
- (hh) Threats to injure or accuse of crime, s. 943.30.
- (jj) Forgery, s. 943.38(1) or (2), Stats.

(kk) Failure to comply with officer's attempt to take person into custody, s. 946.415, Stats.

(ll) Assaults by prisoners, s. 946.43, Stats.

(mm) Assisting or permitting escape, s. 946.44, Stats.

(nn) Harboring or aiding felons, s. 946.47, Stats.

(oo) Kidnapped or missing persons; false information, s. 946.48, Stats.

(pp) Destruction of documents subject to subpoena, s. 946.60.

(qq) Obstructing justice, s. 946.65, Stats.

(rr) Bomb scares, s. 947.015, Stats.

(ss) Any of the following drug-related crimes under s. 961.41, Stats.:

1. Possession of piperdine, s. 961.41(1n), Stats.

2. Possession – gamma-hydroxybutyric acid, gamma-butyrolactone, ketamine or flunitrazepam, s. 961.41(3g)(f), Stats.

3. Conspiracy, s. 961.41(1x), Stats.

4. Counterfeit substances, s. 961.41(2)(a) to (d), Stats.

5. Possession, s. 961.41(3g), Stats.

(uu) Acquiring or obtaining possession of controlled substance by fraud or forgery—counterfeit substance or packaging, s. 961.43(1) and (2), Stats.

(vv) Possession and disposal of waste from manufacture of methamphetamine, s. 961.437, Stats.

(ww) Any other felony not specified in this subsection or in sub. (1) or (3) that has an element of the use or threat of use of force or the causing or the threat of causing injury to the life or bodily security of another person.

(xx) An attempt to commit, or being a party to commission of, any offense enumerated in this subsection.

(3) The department may not issue or renew a school bus endorsement to any person who within the 2 years immediately preceding the date of application is convicted of any of the following state laws or any local ordinance in conformity with any of the following state laws or any federal law or law of a federally recognized American Indian tribe or band in this state or law of another jurisdiction that would be a violation of any of the following state laws if the person had committed the offense in this state and been convicted of the offense under the laws of this state:

(ae) Operating a motor vehicle while operating privileges are suspended or revoked or while the operator is disqualified, s. 343.44(1)(a), (b) or (d), Stats.

(am) Reckless driving, s. 346.62, Stats.

(as) Negligent operation of a motor vehicle, s. 941.01, Stats.

(b) Endangering safety by use of a dangerous weapon, s. 941.20, Stats.

(c) Obstructing emergency or rescue personnel, s. 941.37, Stats.

(d) Criminal damage to railroads, s. 943.07, Stats.

(4) Any person who is disqualified from obtaining or renewing a school bus endorsement because of that person's conviction for an offense listed under sub. (1) or (2) may provide evidence satisfactory to the department that the conviction was for a misdemeanor. Upon receiving the evidence, the department shall reduce the period of disqualification as follows:

(a) Notwithstanding sub. (1)(intro.), for a misdemeanor conviction for an offense listed under sub. (1), the department may not issue or renew a school bus endorsement

for that person for 5 years after the date of conviction. This paragraph does not apply to any misdemeanor conviction listed under s. Trans 112.15(1)(i).

(b) Notwithstanding sub. (2)(intro.), for a misdemeanor conviction for an offense listed under sub. (2), the department may not issue or renew a school bus endorsement for that person for 2 years after the date of conviction.

NOTE: See s. 343.12, Stats., for additional offenses or traffic violations that may prohibit issuance of a school bus endorsement.

(5) The department shall consider the law of another jurisdiction or federal law or law of a federally recognized American Indian tribe or band in this state to be in substantial conformity with an offense listed under sub. (1), (2) or (3) if the same elements of the offense listed under sub. (1), (2) or (3) must be proven under the law of another jurisdiction or under federal law or under a law of a federally-recognized American Indian tribe or band in this state.

SECTION 7. Trans 112.155 is created to read:

Trans 112.155 Condition of employment for school bus drivers. (1) The department shall require any person who applies for issuance or renewal of a school bus endorsement to certify whether he or she has been convicted of any offense listed under s. Trans 112.15(1), (2) or (3). The person shall submit the certification on a form prescribed by the department. The department shall deny or cancel a school bus endorsement based on a certification that the person has been so convicted. This certification shall be submitted to either the employer, who shall maintain it as a portion of the driver's record, or to the department on form MV3740, "School Bus or Alternative Vehicles Transporting Students Driver License Information Request."

NOTE: Form MV3740 may be obtained at any DMV customer service center or by calling (608) 266-2353.

(2) The department shall conduct a criminal history record search on each person who applies for issuance and renewal of a school bus endorsement, and on each person 4 years after the initial issuance or renewal of that person's school bus endorsement.

(3) If a person applying for a school bus endorsement has resided in another state within the 2 years preceding the date of the application, the person shall notify the department of those other states of residence and the approximate dates of the residency. Upon receiving that information, the department shall make a good faith effort to obtain the person's criminal history records from the other states of residence, including submitting the person's fingerprints to the department of justice for a nationwide criminal history records search. The department may require an applicant who has resided in another state within the previous 2 years to pay a fixed fee, in an amount not to exceed the department's costs, related to collecting fingerprints and completing the 2 criminal history records searches required at initial issuance or renewal and at 4 years after initial issuance or renewal.

(4) The department may require any applicant for a school bus endorsement to provide 2 sets of fingerprints for a criminal history records search.

SECTION 8. Trans 112.16(4) is created to read:

Trans 112.16(4) License restrictions may only be removed by the physician who recommended them, or by the department following the department's evaluation of the person's ability to drive.

SECTION 9. Trans 112.18 is amended to read:

Trans 112.18 Driving evaluation. If a physician or vision specialist recommends that the person complete a test of driving ability, and the department deems that person eligible, the driving evaluation or examination shall be in a vehicle representative of the highest licensing classification the person holds or for which the person is applying.

SECTION 10. Trans 112.20(2) is amended to read:


Trans 112.20(2) A review board may assess the person's medical history and may recommend that an exception be granted by the department if, in the review board's medical opinion, the person's medical condition does not impair the person's ability to safely operate the class or type of motor vehicle for which the person's operating privilege has been denied. No exceptions may be granted to the standards of ss. Trans 112.03(2), 112.05(3)(b)1. to 3., 112.10(3)(c)1. or 112.14(3)(e)1. and 2., and a person who does not meet those standards may not request a review board assessment.

Note: ~~See s. 343.40, Stats., regarding judicial review of department licensing actions.~~

(END OF RULE TEXT)

Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Signed at Madison, Wisconsin, this 10th day of December, 2004.


FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation



**WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE**

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

**PART 3
CLEARINGHOUSE REPORT TO AGENCY**

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 04-117

AN ORDER to repeal TRANS 112.06 (3) (b) 3.; to amend TRANS 112.01, 112.07 (3) (b) 1. and 3., 112.12 (3) (b) 3., 112.18 and 112.20 (2); to repeal and recreate TRANS 112.15; and to create TRANS 112.02 (1m), 112.155 and 112.16 (4), relating to medical standards for driver licensing and general standards for school bus endorsements.

Submitted by **DEPARTMENT OF TRANSPORTATION**

10-14-2004 RECEIVED BY LEGISLATIVE COUNCIL.

11-02-2004 REPORT SENT TO AGENCY.

RS:DLS

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]
Comment Attached YES NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 04-117

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 2002.]

1. Statutory Authority

In s. Trans 112.155 (3) and (4), the department proposes to impose two types of fees on an applicant for a school bus endorsement. The first fee applies in a situation in which the applicant has resided in another state within the two years preceding the date of application. This fee specifically is authorized in ss. 343.12 (8) (c) 2. and 343.21 (3), Stats., as created by 2003 Wisconsin Act 280. The second fee appears to apply whenever the department requires an applicant, including a Wisconsin applicant, to provide two sets of fingerprints for a criminal history records search. What statutory authority exists for this second fee?

2. Form, Style and Placement in Administrative Code

a. In s. Trans 112.12 (3) (b) 3., delete “are currently” and substitute “are, at the time of the application for or renewal or holding of the endorsement,”.

b. In s. Trans 112.15 (2) (m), the first part of the provision should read: “Battery, substantial battery, or aggravated battery under s. 940.19 (2)....” In par. (s), delete the parentheses around “by felon.” In par. (gg), delete “prohibited (extortionate means-use or threat of violence for non-payment).” In par. (oo), substitute a semicolon for the hyphen. In par. (ss) 5., delete “Distribute or deliver” and substitute “Distribution or delivery.” In par. (tt), delete “Acquire or obtain” and substitute “Acquiring or obtaining.” In par. (xx), the first part of the provisions should read: “An attempt to commit, or being a party to commission of, an offense....” In sub. (4) (a) (intro.), second sentence, substitute “the” for “such.”

c. In s. Trans 112.155 (3), first sentence, substitute "the" for "such." The second and third sentences can be combined as follows: "Upon receiving...history records from the other states of residence, including submitting the person's fingerprints to the department..." Subsection (4) states "after that date." After that date of what occurrence? This needs to be clarified.

4. Adequacy of References to Related Statutes, Rules and Forms

In s. Trans 112.15 (2) (j), the notation ", Stats.," should follow each occurrence of the reference to "s. 346.63 (7) (a)."

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. The following comments apply to the plain language analysis:
 - (1) In the first sentence of the second paragraph, a comma should be inserted after the second occurrence of the "requirements."
 - (2) On page 3 of the rule-making order, item 1. should be rewritten to read: "Allows a physician to certify whether a driver is following the treatment plan for..."
- b. In the portion of the preface relating to a comparison to federal regulation, the final semicolon in the first paragraph should be moved to precede the word "and."
- c. In the portion of the preface relating to a comparison with rules in adjacent states, the word "School" is misspelled in the last sentence of the comparison to Minnesota. In the last sentence to the comparison to Iowa, the name "Illinois" should be replaced by the name "Iowa."
- d. In s. Trans 112.15 (1) to (3), the list of offenses does not appear to include the offenses under s. 343.12 (7) (a) 1., 2., and 7., Stats., as created by 2003 Wisconsin Act 280. Is this the reason for the note following sub. (4)? Given the length of the lists in the rule, it may be helpful to include the remaining statutory offenses.
- e. In s. Trans 112.155 (1), the word "drivers" in the last sentence should be replaced by the word "driver's."
- f. In s. Trans 112.20 (2), the new clause would be clearer if it read: ", and a person who does not meet those standards may not request a review board assessment."

PART 4
CR 04-117

ANALYSIS OF FINAL DRAFT OF TRANS 112

(a) **Basis and Purpose of Rule.** 2003 Wisconsin Act 280 modified the existing criminal history requirements, and imposed additional requirements, for the initial issuance or renewal of a school bus endorsement. The Act also authorizes DOT to specify by rule additional disqualifying crimes and offenses and the time period during which the disqualification applies. This proposed rule establishes three periods of disqualification from eligibility for a school bus driver endorsement for conviction of listed felonies and misdemeanors. A lifetime disqualification is imposed on any person convicted of violent crimes resulting in death or serious physical injury to another, of sex offenses involving children and other vulnerable persons, or of other crimes involving predation or victimization of children or other vulnerable persons. A five-year disqualification is imposed on any person convicted of other crimes against life and bodily security, of other crimes against children, of crimes involving use of a motor vehicle, including operating while intoxicated (OWI), of possession of illegal weapons or of similar offenses likely to result in serious injury to others. A two-year disqualification is imposed on any person convicted of negligent operation of a motor vehicle, of obstructing emergency and rescue personnel or of other crimes.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on November 15, 2004. As a result of testimony presented by Robert W. Christian for the Wisconsin School Bus Association, the disqualification periods were increased from five years to lifetime for the following felony convictions:

- Battery to a pregnant woman or unborn child, s. 940.195, Stats.;
- Robbery, s. 943.32, Stats.;
- Manufacture, distribution or delivery of controlled substance, 961.41(1)(a) to (j), Stats.;
- Possession of controlled substance with intent to manufacture, distribute or deliver, s. 961.41(1m)(a) to (j), Stats.;
- Distributing, delivering or attempting to deliver an imitation controlled substance, s. 961.41(4)(am), Stats.;
- Keeping or maintaining any place for drug use, manufacturing, keeping or delivering, s. 961.42(1), Stats.;
- Battery, substantial battery, aggravated battery, s. 940.19(2), (3), (4), (5) or (6), Stats.

(c) **List of Persons who Appeared or Registered at Public Hearing.** The following persons appeared or registered at the hearing:

Carol Dunn, Small Business Ombudsman, Department of Commerce, 201 West Washington, Madison, WI 53702. Ms. Dunn registered for information only.

Robert W. Christian, Executive Director, Wisconsin School Bus Association, P. O. Box 168, Sheboygan, WI 53063.

Tom Westlund, Westlund Bus Lines, Inc., Wisconsin School Bus Association, P. O. Box 691, Marinette, WI 54143.

(d) **Summary of Public Comments and Agency Response to those Comments:** Mr. Christian spoke in favor of the rule and for information on the proposed rule. He suggested increasing the disqualification periods from 5 years to lifetime for the offenses listed in par. (b) above, which suggestions were accepted. He also suggested reducing the disqualification period from lifetime to 5 years for patronizing prostitutes, s. 944.31, Stats., and for soliciting prostitutes, s. 944.32, Stats., which suggestions were rejected. He also suggested creating a 10-year disqualification period for offenses he identified, including battery, substantial battery and 'intent to deliver' drug crimes, which suggestion was rejected.

Mr. Westlund spoke for information on the proposed rule. No agency response needed.

The written comment period was held open until close of business November 22, 2004. No written comments were received.

(e) **Explanation of any Changes Made to the Plain Language Analysis or Fiscal Estimate:** The analysis was revised to reflect that fingerprinting and criminal history background record search fees are charged only of applicants who have not resided within this state during the two years preceding application for a school bus endorsement, rather than of all applicants.

(f) **Response to Legislative Council Recommendations.** The Legislative Council report contained a number of recommendations, all of which have been incorporated into the proposed rule.

(g) **Final Regulatory Flexibility Analysis.** This rule making will prohibit some skillful drivers from obtaining a school bus endorsement, and employment as a school bus driver. To the extent that this rule reduces the pool of school bus drivers, DOT expects that the cost of employing school bus drivers will rise. DOT has no factual data to determine how many bus drivers will be made ineligible by this rule. In its fiscal estimate for 2003 Senate Bill 350 prepared in January, 2004, DOT stated that it issues approximately 2,000 school bus driver endorsements each year, and projected 2,000 background checks per year. DOT has no information regarding how many applicants have resided in other states within the previous two years, or of how many school districts and school bus companies might already be employing criminal background checks as part of their ordinary employment practices.