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## WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

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<b>2003 Wisconsin Act 297</b> [2003 Senate Bill 3]	<b>Human Service Vehicle Operator Qualifications</b>
2003 Acts: <a href="http://www.legis.state.wi.us/2003/data/acts/">www.legis.state.wi.us/2003/data/acts/</a>	Act Memos: <a href="http://www.legis.state.wi.us/lc/act_memo/act_memo.htm">www.legis.state.wi.us/lc/act_memo/act_memo.htm</a>

### **GENERAL BACKGROUND**

A human service vehicle (HSV) is a motor vehicle (other than a school bus) used to transport elderly or disabled persons in connection with a transportation assistance program, such as s. 85.21, Stats., which provides state funding to assist counties in providing transportation services for elderly and disabled persons. An HSV does not include a motor vehicle operated: by an uncompensated volunteer (even if the volunteer receives an allowance to defray vehicle operating costs); in an urban mass transit system; as a taxicab service; or as a common carrier. Some counties operate a specialized transportation service (STS) to provide such transportation assistance under s. 85.21, Stats., and some counties contract with an STS to provide such transportation assistance.

Prior law did not establish minimum qualifications for an HSV operator and did not require either a criminal background check or operating record check.

### **2003 WISCONSIN ACT 297**

2003 Wisconsin Act 297 does the following:

- Provides that the Department of Transportation (DOT) must refuse to register an HSV that has not been inspected annually or that has failed its annual inspection.
- Requires an STS to check criminal conviction and operating records as follows:
  - Generally requires that an STS check an HSV operator's background with respect to the DOT operating record and criminal convictions before employment and, for the DOT operating record, every four years thereafter. However, these provisions vary depending

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This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents.

on whether the person would be hired on or after September 1, 2004 (new employee), or is already employed by the STS on that date (existing employee).

- *New Employees.* Unless a person seeking employment as an HSV operator on or after September 1, 2004, holds a valid “S” endorsement\* that was issued or renewed within four years prior to employment, an STS must do both of the following before employing the person as an HSV operator:

(a) Conduct a criminal history search by obtaining records maintained by the Department of Justice (DOJ). If the person is not a resident of Wisconsin or if at any time within the three years preceding the date of the DOJ criminal history search the person has not been a resident of Wisconsin, the STS must make a good faith effort to promptly obtain criminal history records from the state in which the person resides or resided.

(b) Obtain the DOT operating record. If the operating record has already been obtained by another entity, the STS may obtain the operating record from that entity if there are reasonable grounds to believe that the operating record is accurate and was furnished by DOT to that entity not more than two months previously.

- *Existing Employees.* For a person who is employed as an HSV operator on September 1, 2004, the Act does not require the pre-employment background checks discussed above.
  - *Periodic Operating Record Rechecks.* At least every four years, an STS must obtain an updated DOT operating record for each of its HSV operators (or, as indicated above, may obtain it through another entity). There is no requirement to periodically conduct a criminal history search.
- Provides that, notwithstanding the Fair Employment Act, which relates to employment discrimination, an STS may not employ as an HSV operator any person to whom any of the following applies:
    - *Convictions.* The STS knows or should have known that the person does not meet the requirements for an “S” endorsement with respect to criminal background under statutes and DOT rules.

If an applicant holds a valid “S” endorsement issued or renewed within four years prior to employment, the STS may employ the person. For other individuals, as noted above, the

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\* To operate a school bus in Wisconsin, a Wisconsin resident must have an “S” endorsement to his or her operator’s license or commercial driver’s license (CDL) issued by DOT. With certain limited exceptions, a Wisconsin operator’s license or CDL is issued for eight years. An “S” endorsement is issued only after testing of knowledge and skills and only if certain medical and nonmedical requirements are met, as described in s. 343.12, Stats., and ch. Trans 112, Wis. Adm. Code. Before issuing or renewing an “S” endorsement, DOT conducts a criminal history search. The statutes and administrative code specify the disqualifying crimes and time periods of disqualification for an “S” endorsement.

STS must determine whether the person would meet the same requirements about criminal background that apply to those holding an "S" endorsement.

- *No Operator's License.* The STS knows or should have known that the person does not possess a valid operator's license that would permit operation of an HSV.
- *No Operating Record Obtained.* If required to do so, the STS has not obtained the person's DOT operating record before employment and every four years thereafter.
- Prohibits employing a person as an HSV operator unless the person has been fully trained, within the previous 24 months, in the proper use of all passenger restraint systems available in the HSV operated by that person.
- Includes parallel provisions relating to HSV operators and penalties applicable to HSV operators for failure to comply with these provisions. The requirements and penalties applicable to HSV operators who are transporting passengers on or after September 1, 2004, are as follows:
  - Prohibition against operating an HSV without a valid operator's license.
  - Requirement to hold a valid "S" endorsement or meet the requirements for an "S" endorsement with respect to criminal background, that is, not having any of the convictions within the specified time periods that would disqualify the person from holding an "S" endorsement.
  - Requirement to be fully trained, within the two previous years, in the proper use of all passenger restraint systems available in the HSV.
  - Penalty applicable to the HSV operator: Forfeiture of not more than \$20 for the first offense and not more than \$50 for each subsequent offense.

***Effective Date:*** September 1, 2004.

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May 11, 2004

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