

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
DIVISION OF DRIVER AND VEHICLE SERVICES

In the matter of the proposed amendment
to the rules of the Department of Public
Safety which govern school bus driver
licensing.

STATEMENT OF NEED
NEED REASONABLENESS

GENERAL STATEMENT

The "Pupil Transportation Safety Education Program" promulgated by the Minnesota Department of Education in 1974 contains the following introductory paragraph:

"School transportation has been a major contributing factor in implementing the philosophy of equal educational opportunities for all school children. The present degree of school district consolidation would have been impossible without the improvement and growth of school transportation. The school bus has become our integral part of the educational program for hundreds of thousands of Minnesota students. These students deserve the highest possible degree of safety in our school transportation system.

1. "Safe Student Bus Drivers" Minnesota Department of Public Safety, Appendix C, p.59.

Minnesota Statutes, section 171.321 states that it is the responsibility of the Department of Public Safety to insure that school bus drivers are competent to operate school buses safely. These amendments will help the

department fulfill its legislative mandate and will improve student safety in the school bus system. These rules do not impose unreasonable burdens on the parties affected and compliance with similar rules has been obtained in other jurisdictions.

STATUTORY AUTHORITY

Minnesota Statutes, section 171.321, subdivision 2(a) states:

"The commissioner of public safety shall prescribe rules governing the qualifications of individuals to drive school buses."

Moreover, since the regulation of school bus driver licenses directly affects the rights of and procedures available to the public, the commissioner of public safety also has authority to promulgate rules under section 14.06 of the administrative procedure act, Minnesota Statutes, chapter 14.

EFFECT OF THE RULES

These amendments will have a direct impact on all school bus drivers, school bus companies, school districts, school bus riding students, and motorists sharing the road with school buses will be affected directly by these rules.

SMALL BUSINESS CONSIDERATIONS

Small businesses will not be directly affected by these amendments. Some bus companies may be small businesses and may be indirectly affected by the amendments. Any adverse impact on these small businesses is incidental

compared to the positive effects of the amendments on public safety. These amendments are carefully drafted to impose the minimum compliance and reporting requirements consistent with public safety. The amendments would impose no schedules or deadlines. The requirements imposed by these amendments have been consolidated and simplified to the maximum extent consistent with public safety. The amendments would impose no design or operational standards. Those bus companies which are small businesses have the same responsibility for the safety of their passengers as large bus companies, therefore, small school bus companies cannot be exempted from these amendments.

FEES IMPOSED BY THE RULES

These rules do not fix any fees. The statutes authorizing promulgation of these rules do not require that any fees be fixed. Therefore no approval from the commissioner of finance is required.

RULE BY RULE ANALYSIS

Part 7414.0200 Basic Requirements

This amendment to the rule is necessary because the existing language is cumbersome and needs clarification. The amendment to the rule is reasonable because it requires no substantive changes to the rule and the amended rule is in a format which is easier to understand.

Part 7414.0400 Driver Background Check

Subpart 1. Scope. This subpart is necessary because the rule implements the legislative mandate that a rule be adopted which sets forth the

qualifications of individuals who drive school buses. It is also necessary because of the important cargo transported in school buses and the tremendous responsibility placed on the school bus driver. This subpart is reasonable because the rule clearly defined what records will be used in determining whether the Department of Public Safety will issue or renew a school bus driver's endorsement, thereby informing the public what records will be used in making this important determination.

Subpart 2. This subpart is necessary because it clearly sets forth the criteria that will be used by the Department of Public Safety in determining whether an individual will receive or retain a school bus driver's endorsement. The subpart requires that the Department of Public Safety conduct a thorough investigation of the applicant's background to determine if the individual has been convicted of certain serious crimes and/or traffic violations that may pose a threat to the safety of the children. This subpart applies to individuals requesting an initial endorsement as well as to individuals who have obtained a school bus driver's endorsement and have been convicted of serious crimes and/or traffic violations since the endorsement was issued. In general, this subpart is reasonable because it accurately informs the public of the criteria necessary to obtain and retain a school bus driver's endorsement. The subpart places the public on notice that any violation set forth in the rule may result in a cancellation or denial of the endorsement.

This subpart was adopted from two advisory committee reports that were the result of lengthy and careful consideration regarding the safety of school children in this state. Recommendations of a fourteen member School Bus Safety Review Committee are found in Safe Student Bus Riders, Minnesota Department

of Public Safety, St. Paul, Minnesota, April, 1981 (hereinafter Review Committee Report). The Committee was asked by the Department of Public Safety and Education to formulate a comprehensive set of recommendations for ensuring that school bus drivers are qualified and that school buses are made as safe as possible. Recommendations of the Task Force on School Bus Safety are found in Safety is You and What You Do, Section 50, December, 1984 (hereinafter Task Force Report). The Task Force, comprised of thirteen members, was charged by the Commissioner of Education and the Education Committee of the Legislature with studying school bus safety.

The Review Committee Report specifically states that the Committee unanimously recommends that the criteria found in this subpart be adopted for the issuance of school bus driver endorsements. Review Committee Report at 10-11. Similarly the Task Force Report recognized that concern exists with the criteria employed by the Minnesota Department of Public Safety when issuing or denying school bus driver endorsements. The lack of standard procedures for background checks and driving record checks was an issue of concern for the Task Force. Therefore, the Task Force specifically recommended that the criteria found in this subpart be adopted. Task Force Report at 14-15.

Item A is based on a recommendation of the review committee and of the Task Force. The item is necessary to prevent individuals who have been convicted of selling controlled substances from having the sole responsibility for supervising and transporting students to and from school. The advisory committees concluded that sound public policy mandates the separation of convicted of drug dealers from vulnerable young children. The Task Force noted that school bus drivers are "expected to be in good physical condition and

free from the influence [of] mood/mind modifying substances" Task Force report at 14. Item A is reasonable because a person who has been convicted of the sale of a controlled substance may be eligible to obtain a school bus driver's endorsement after a period of five years has elapsed since the applicant's release from a correctional facility or since the applicant's conviction. In this regard, a person is not subject to an indefinite denial of a school bus driver's endorsement, but is subject only to a reasonable waiting period to ensure that adequate rehabilitation has occurred.

Item B is necessary to prevent those individuals who have been convicted of felonies against others from supervising and transporting children to and from school. After careful consideration the advisory committees concluded that children must not be placed in positions of potential danger with individuals who have been convicted of felonies against others. Children are inherently vulnerable and defenseless and must be protected to the greatest extent possible from individuals who have been convicted of felonies against others. Clearly, any inconvenience that may result to the felon is outweighed by the need to adequately protect the safety of our state's children. This item is reasonable because an individual convicted of a felony against another may be eligible to obtain a school bus driver's endorsement after a period of five years has elapsed since the applicant's release from a correctional facility or since the applicant's conviction. In this regard, an individual is not indefinitely denied the opportunity to obtain a school bus driver's endorsement once a sufficient period of time has elapsed to demonstrate rehabilitation.

Item C is necessary to protect children from people who habitually commit serious crimes. Individuals convicted of felonies not against another do not pose the same immediate threat of physical harm posed by those convicted of felonies against another. However, individuals that have been convicted of two felonies have demonstrated social maladjustment and a serious lack of respect for the law. School children are in the process of adjusting to society and developing respect for the law. School children should not be exposed to the threat posed by a habitual felon. Item C is reasonable because an individual convicted of two felonies not against another may be eligible to obtain a school bus driver's endorsement after a period of five years has elapsed since the applicant's release from a correctional facility or since the applicant's conviction. In this regard, a person is not subject to an indefinite denial of a school bus driver's endorsement, but is subject only to a reasonable waiting period to ensure that adequate rehabilitation has occurred.

Item D is necessary to prevent persons who have been convicted of multiple drinking and driving incidents from obtaining or retaining a school bus driver's endorsement. A 1984 national study showed that 53 percent of the traffic fatalities in this country were alcohol related. 1985 Minnesota Motor Vehicle Crash Facts, Minnesota Department of Public Safety at 33. Furthermore, individuals convicted of multiple drinking and driving incidents may suffer from an alcohol or chemical abuse problem. As a result, the advisory committees specifically recommended that individuals who have been convicted of multiple drinking and driving incidents or who have been involved in multiple drinking and driving incidents, be prohibited from supervising and transporting children to and from school. This item is reasonable because it

allows individuals who have been involved in multiple drinking and driving incidents to obtain a school bus driver's endorsement after a reasonable period of time has elapsed since the last incident. As a result, an individual who has demonstrated control over an alcohol abuse problem may be eligible to obtain a school bus driver's endorsement.

Item E is necessary to prevent those individuals who have demonstrated poor driving behavior from transporting children to and from school. Convictions for multiple driving violations demonstrate a disregard for the traffic laws and for the safety of those individuals who are transported in the violator's vehicle. The Review Committee examined drivers involved in school bus accidents during the first part of 1980 and found 27 drivers with four or more convictions on their driving records at the time of the accident. A few of the drivers examined by the Committee had more than 15 convictions on their records. Review Committee report at 7. In addition, statistics establish that a large number of school bus accidents are due to driver error. Id. at 6, 23-24; 1985 Minnesota Crash Facts at 87. The safety of school children is a paramount concern which must not be jeopardized by allowing individuals with multiple traffic violations to operate a school bus. Item E is reasonable because it allows those individuals who have been convicted of multiple traffic violations to obtain a school bus driver's endorsement once the individual has demonstrated for a reasonable period of time that he or she can responsibly operate a motor vehicle.

Item F is necessary to prevent those individuals who have been convicted of criminal sexual conduct from supervising and transporting children to and from school. Criminal sexual conduct may irreparably damage a small child and

may traumatize the family and acquaintances of the victim. In this regard Item F is necessary to adequately protect vulnerable children and far outweighs any inconvenience that may be imposed on an individual convicted of criminal sexual conduct when that individual is denied a school bus driver's endorsement. Item F is also reasonable because once the individual demonstrates rehabilitation for a period of five years, that individual is allowed the opportunity to obtain a school bus driver's endorsement. Therefore an individual convicted of criminal sexual conduct is not indefinitely denied the opportunity to obtain a school bus driver's endorsement and may be gainfully employed as a school bus operator once a sufficient period of time has elapsed.

Subpart 3 specifies department action taken when an applicant for an initial school bus endorsement is the subject of pending felony charges and it requires action by drivers with school bus endorsements who are charged with felonies. There is evidence that these individuals have committed crimes which harm others or are intended to harm others. The requirements of this provision are necessary to protect school children from potentially dangerous situations.

Applicants for initial school bus endorsements have not been working as school bus drivers in Minnesota. Any inconvenience caused by the delay in the processing of the application is outweighed by the need to protect school children. Delaying the processing of an initial application until pending felony charges are resolved is a reasonable precaution with such an important subject.

A driver with a school bus endorsement may be earning a living and supporting a family as a school bus driver. It is not reasonable therefore to withdraw an existing school bus endorsement because of criminal charges. Some action should be taken, however, to protect the children that ride school buses. The employer is in the best position to evaluate the risks involved and take appropriate action. The employer can change the work assignment as appropriate to protect the bus riders. Requiring the bus driver, charged with a felony, to notify the employer is the most reasonable way to protect the school children in these circumstances.

Subpart 4 sets forth the requirements necessary to obtain a school bus driver's endorsement when an individual has been convicted of certain serious crimes which occurred more than five years before the application for the endorsement. This subpart allows the Department of Public Safety to issue a school bus driver's endorsement if, and only if, the superintendent in the school district in which the individual will be employed is informed of the individual's criminal background and the superintendent provides his or her informed consent for the employment of the individual. The Review Committee felt strongly that the record of an individual should be reviewed by the local school district before the person is hired. Review Committee Report at 8. Similarly, the Task Force was concerned that the convictions of those who hold school bus driver's endorsements are not readily known to their employer. Task Force report at 13. The subpart is adopted from the recommendations of the committees to remedy these concerns. Review Committee report at 10-11; Task Force Report at 15.

This subpart is necessary because it allows the school district employing the individual to make an informed decision on whether or not to employ the individual in the transportation of children to and from school in the district. In addition, this rule does not unnecessarily burden the application by preventing him or her from obtaining a school bus driver's endorsement simply because of his or her prior criminal record, but allows the individual to obtain an endorsement once the school district has acknowledged and accepted the individual's prior record.

Item A is necessary to prevent individuals who have been convicted of possession of a controlled substance, including marijuana, from transporting school children to and from school. This item is adopted from specific recommendations of the advisory committees. As in subpart 2, item A, this item is necessary to protect vulnerable children from individuals who have exhibited a propensity to possess illegal substances. As described by the Task Force, "[s]chool bus drivers, by their vocation, are expected to be ... free from the influence [of] mood/mind modifying substances ..." Task Force report at 14. This item is reasonable because it allows an individual to obtain a school bus driver's endorsement, notwithstanding a conviction, if the individual has obtained the informed consent of the employing school district.

Item B is necessary to prevent individuals who have been convicted of driving while under the influence of alcohol or a controlled substance, including marijuana, from obtaining a school bus driver's endorsement. The item was a specific recommendation of the advisory committees. As in subpart 2, item D, this subpart is necessary to protect children from individuals who have displayed a disregard for the traffic laws. This item is reasonable

because an individual who has been convicted of driving while under the influence of alcohol or a controlled substance may obtain a school bus driver's endorsement, notwithstanding the conviction, if the individual obtains the informed consent of the employing school district.

Item C is necessary to prevent those individuals who have been convicted of selling a controlled substance more than five years preceding the application for a school bus driver's endorsement from obtaining a school bus driver's endorsement without the informed consent of the employing school district. Again, the item was a specific recommendation of the advisory committees. As in subpart 2, item A, this item is necessary to protect children from those individuals who have exhibited a propensity to possess and distribute dangerous and illegal substances. This item is reasonable because an individual who has been convicted of selling a controlled substance may obtain a school bus driver's endorsement, notwithstanding the conviction, if the individual obtains the informed consent of the employing school district.

Item D is necessary to prevent an individual who has been convicted of a felony or gross misdemeanor against the property of another from obtaining a school bus driver's endorsement without the informed consent of the employing school district. This item is necessary to protect defenseless children from those individuals who have exhibited a propensity to steal and/or destroy the property of another, thus evidencing a disregard of the law. Item D adopts the recommendations of the advisory committees. This item is reasonable because an individual convicted of such a crime is not prohibited from obtaining a school bus driver's endorsement if the individual obtains the informed consent of the employing school district.

Item E is necessary to prevent an individual who has been convicted of a felony or gross misdemeanor against another from obtaining a school bus driver's endorsement without the informed consent of the employing school district, if the conviction occurred more than five years before the application but less than ten years before the application. The item, including the time frames set forth in the item, is adopted from the advisory committees' recommendations. This item demonstrates an acknowledgement by the Department of Public Safety that an individual who has been convicted of a serious crime against another may evidence rehabilitation sufficient to warrant the issuance of a school bus driver's endorsement. The item is reasonable because an individual who has been convicted of a serious crime against another may obtain a school bus driver's endorsement if the individual obtains the informed consent of the employing school district.

Item F is necessary to prevent persons convicted of criminal sexual conduct from obtaining a school bus driver's endorsement without the informed consent of the employing school district. As discussed in subpart 2, item F, this requirement is necessary to protect vulnerable children from the trauma which may result from a criminal sexual conduct incident. Item F was recommended by the advisory committees. This item is reasonable because an individual who has been convicted of criminal sexual conduct may demonstrate rehabilitation sufficient to warrant the issuance of a school bus driver's endorsement, and the endorsement may be issued, if the individual obtains the informed consent of the employing school district.

Item G is necessary to prevent those individuals who have been convicted of multiple moving traffic violations from obtaining a school bus driver's endorsement without the informed consent of the employing school district. As in subpart 2, item E, this item is necessary to prevent individuals who have demonstrated a disregard of the traffic laws from transporting children to and from school. The advisory committees recommended adoption of this item. This item is reasonable because an individual convicted of multiple traffic violations is not prohibited from obtaining a school bus driver's endorsement if the individual can demonstrate the informed consent of the employing school district.

Item H is necessary to prevent an individual convicted of a moving traffic violation resulting in the revocation or suspension of the individual's driver's license from obtaining a school bus driver's endorsement without the informed consent of the employing school district. Item H was recommended by the advisory committees. As in Item G, individuals who have been convicted of serious traffic violations evidence a disregard for the traffic laws and a disregard for the safety of their passengers. This item is reasonable because an individual convicted of such a conviction is not prohibited from obtaining a school bus driver's endorsement if the individual can obtain the informed consent of the employing school district.

Item I is necessary to prevent an individual who has had his or her driver's license revoked under the implied consent law from obtaining a school bus driver's endorsement without the informed consent of the employing school district. As discussed in Item B, a violation of the implied consent law is evidence of an alcohol abuse problem and a disregard of the traffic laws. Item I

is reasonable because an individual who has been subject to an implied consent revocation is not prohibited from obtaining a school bus driver's endorsement if the individual obtains the informed consent of the employing school district.

7414.1200 Disqualification

The first three words of item D broaden the application so it might apply to almost anything. It is necessary, therefore, to amend item D, deleting those three words, so the item is clearer, more specific, and more consistent with the policy of this part.

The proposed amendment to item H would replace the phrase "or other structural defect or limitation of movement likely to interfere with safe driving" with the phrase "or impairment". This change is reasonable because it makes the item shorter and more precise.

Item H absolutely bars some individuals from driving school buses who would be able to drive school buses safely. It is necessary, therefore, to add a provision to item H allowing individuals to have the prohibition waived if they can prove their ability to operate school buses safely. The waiver, provision this amendment would add is similar to the waiver provision in the Federal Regulations governing the physical qualification of truck drivers, 49 C.F.R. section 391.49.

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