

Report From Agency

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
ADOPTING RULES**

CR 10-030

The Wisconsin Department of Transportation proposes an order to repeal TRANS 196.04(1)(d) and TRANS 250.04; and create ch. TRANS 198, Wisconsin Administrative Code, relating to motor vehicle convenience fees.

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

This report is submitted to the chief clerks 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:

/s/
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PART 1

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: s. 85.14, Stats.

Statutory authority: ss. 85.14(1)(a), 85.16 and 227.11, Stats.

Explanation of agency authority: The Wisconsin Department of Transportation is authorized to accept payment by credit card, debit card, or any other electronic payment mechanism for a fee for certain motor vehicle products or services and to establish a convenience fee charged for any transaction so paid, pursuant to s. 85.14(1)(a), Stats.

Related statute or rule: ss. 85.14(1)(b) and (c), and 85.14(2), Stats.

Plain language analysis: Section 85.14, Stats., as amended in 2009 Wis. Act 28, allows the Department to accept payments by credit card, debit card, or any other electronic payment mechanism for fees required to be paid to the Department under chs. 194, 218, 341, 342, 343, or 348, which are motor vehicle statutes.

Section 85.14, Stats., permits the Department to charge a convenience fee in an amount to be established by rule. The convenience fee shall approximate the cost to the Department for providing this service to persons who request it.

The proposed rule establishes the convenience fee. The proposed rule provides that the Department will determine the fee annually or as the Department determines necessary due to changes in fees that the Department may be required to pay the Enterprise Banking Services provider under the state Enterprise Banking Services contract. The Department will determine the convenience fee in consultation with the State Controller's Office (which is responsible for managing the state's Enterprise Banking Services contract). The Department will publish the fee on its internet web site and in relevant communication material with customers eligible to use these payment methods.

The convenience fee is established either as a percentage of the total transaction amount or as a flat fee specified for ranges of transaction amount. The convenience fee will cover the fee that the Department pays the Enterprise Banking Services provider under the state Enterprise Banking Services contract or other vendor for processing, merchant fee, and any associated cost to provide the service. The proposed rule provides that the Department may refuse to accept credit cards, debit cards, or other electronic payment mechanisms issued by or offered by certain companies. The proposed rule allows the Department to establish a minimum transaction amount that may be paid by credit or debit card or other electronic payment mechanism.

The proposed rule consolidates treatment of all Division of Motor Vehicles transactions for which credit card, debit card, and other electronic payment methods apply, and the associated convenience fee. Therefore, the proposed rule repeals the provisions that are currently established as ss. Trans 196.04(1)(d) and Trans 250.04,

and consolidates those convenience fees into the convenience fee structure applicable to all Division of Motor Vehicle products and services.

Summary of, and preliminary comparison with, existing or proposed federal regulation: No federal rules apply.

Comparison with Rules in the Following States:

Michigan: Michigan accepts Discover and MasterCard at some DMV offices for in-person transactions, and for some on-line transactions. The customer pays a 2% convenience fee.

Minnesota: Minnesota does not accept credit or debit cards.

Illinois: Illinois accepts Discover, MasterCard, and American Express for in-person transactions. For on-line transactions, Illinois accepts VISA also. The customer pays a convenience or “process” fee.

Iowa: Iowa is currently implementing credit cards at the stations. The customer will pay a convenience fee that may be a flat fee based on average transaction amount, assumed distribution of card types, and assumed number of transactions.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: The Department proposes to establish convenience fees that are as uniform as possible among different types of transactions. The convenience fee amount must approximate the cost to the Department of providing electronic payment option.

The Department’s on-line payment process is provided through the state’s Enterprise Banking Services Contract. Agencies are parties to the contract. The Department pays the Enterprise Banking Services provider a fee for processing each payment. The fee consists of both payment to the Enterprise Banking Services provider and payment to the card-issuing bank. The Department’s costs for in-person transactions may vary from on-line transactions, because the Department will require additional equipment, installation and maintenance, to accept in-person card payment. Therefore, the proposed rule allows the Department to establish a different convenience fee amount for in-person transactions and on-line transactions.

Analysis and supporting documentation used to determine effect on small businesses: The Department offers electronic transactions to most businesses using standard Automated Clearinghouse payment procedures. These procedures are currently in place and most businesses already participate. Moreover, businesses as well as individuals may continue to pay Department fees by check or cash; payment by methods that require a convenience fee is voluntary.

Effect on small business: The Department concludes that there is no effect on small business as a result of this rule. The Department’s Regulatory Review Coordinator

may be contacted by e-mail at ralph.sanders@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal effect: The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands.

Anticipated costs incurred by private sector: The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities.

Agency contact person and copies of proposed rule: Copies of the proposed rule may be obtained, without cost, by writing to Carson Frazier, Department of Transportation, Bureau of Vehicle Services, Room 253, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Frazier by phone at (608) 266-7857.

PART 2
TEXT OF PROPOSED RULE

SECTION 1. Trans 196.04(1)(d) is repealed.

SECTION 2. Trans 198 is created to read:

MOTOR VEHICLE CONVENIENCE FEES

Trans 198.01 Purpose and scope. This chapter interprets s. 85.14, Stats., which authorizes the department to accept payment by credit card, debit card, or any other electronic payment mechanism of a fee for certain motor vehicle products or services and to establish a convenience fee charged for any transaction so paid.

Trans 198.02 Definitions. The words and phrases defined in s. 340.01, Stats., have the same meaning in this chapter unless a different definition is specifically provided.

In this chapter:

(1) “In-person service” or “in-person” means transactions conducted at a division of motor vehicles customer service center and includes, for purposes of payment methods, transactions conducted with a division of motor vehicles representative other than at a customer service center, including transactions, by telephone.

(2) "On-line service" or "on-line" means transactions conducted by internet web site, including both whether the requested product is sent electronically to the customer or mailed in the US postal service to the customer.

Trans 198.03 Fee payment by credit card, debit card, or other electronic payment mechanism. (1) The department shall determine for which transaction types fees may be paid by credit card, debit card, or other electronic payment mechanism. The department shall determine which payment method will be accepted for each transaction type.

(2) The department may refuse to accept credit cards, debit cards, or other electronic payment mechanisms issued or offered by certain companies or banks.

Trans 198.04 Convenience fee for payment by credit card, debit card, or other electronic payment mechanism. The department shall charge a convenience fee for each transaction for which payment is by credit card, debit card, or other electronic payment mechanism. The convenience fee is in addition to the fee required to be paid to the department for the product or service, including the counter service fee if applicable for in-person service, or any other special or service fees applicable to the transaction.

Trans 198.05 Establishment of convenience fee. The department shall determine the convenience fee annually or as the department determines necessary due to changes in fees that the department may be required to pay the Enterprise Banking Services provider under the state Enterprise Banking Services contract. The department shall determine the convenience fee in consultation with the state controller's office in the department of administration. The department may establish a different convenience fee amount for on-line transactions and for in-person transactions.

The department may establish a minimum amount of a transaction for which payment may be made by credit or debit card, or other electronic payment mechanism.

Trans 198.06 Amount of convenience fee. (1) The convenience fee shall be charged per transaction. The convenience fee amount shall be either a percentage of the total transaction fee amount paid to the department or a flat fee specified for ranges of transaction amounts paid to the department. The transaction fee paid to the department includes the fee for product or service, and any other fee paid to the department for that transaction, such as a counter service fee.

(2) The convenience fee amount is determined based on payments that the department made to the Enterprise Banking Services provider under the state Enterprise Banking Services contract during the previous period and any known increases or decreases for the upcoming period.

Trans 198.07 Publication of convenience fee. (1) The current convenience fee and the current minimum transaction amount eligible for payment by credit or debit card or other electronic payment mechanism shall be published on the department's internet web site and in communication materials that the department distributes to persons eligible to use these payment methods.

(2) If the department refuses to accept credit cards, debit cards, or other electronic payment mechanisms issued or offered by certain companies or banks, the department shall post this information on the department's internet web site and in communication materials that the department distributes to persons eligible to use these payment methods.

(3) Because of space limitations on some types of communication materials, the department may place a notice in communication materials that refers the reader to the department's internet web site for complete convenience fee listing.

SECTION 3. Trans 250.04 is repealed.

(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 26th day of **April**, 2010.

/s/

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation

LEG. COUNCIL COMMENTS GO HERE

PART 4
CR 10-030

ANALYSIS OF FINAL DRAFT OF TRANS 198

(a) **Basis and Purpose of Rule.** 2009 Wis. Act 28 authorizes the Wisconsin Department of Transportation to accept payment by credit card, debit card, or any other electronic payment mechanism for a fee for certain motor vehicle products or services and to establish a convenience fee charged for any transaction so paid. The proposed rule establishes the convenience fee. It provides that the Department will determine the fee annually or as the Department determines necessary due to changes in fees that the Department may be required to pay the Enterprise Banking Services provider under the state Enterprise Banking Services contract.

The proposed rule consolidates treatment of all Division of Motor Vehicles transactions for which credit card, debit card, and other electronic payment methods apply, and the associated convenience fee. Therefore, it repeals the provisions that are currently established as ss. Trans 196.04(1)(d) and Trans 250.04, and consolidates those convenience fees into the convenience fee structure applicable to all Division of Motor Vehicle products and services.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on April 21, 2010. No modifications were made as a result of testimony at the hearing.

(c) **List of Persons who Appeared or Registered at Public Hearing.** No one appeared/registered at the hearing.

(d) **Summary of Public Comments and Agency Response to those Comments.** No public comments were received.

(e) **Explanation of any Changes Made to the Plain Language Analysis or Fiscal Estimate.** The Legislative Council report suggested the Department replace the cross-references to “Enterprise Bank” with more general language referring to any financial institution that the Department is dealing with or has dealt with. The term in the proposed rule is easily misunderstood to mean a bank with the name “Enterprise Bank.” However, the term refers to the bank that is the Enterprise Banking Services provider under the State’s Enterprise Banking Services Contract administered by the Department of Administration. The Department has made this change in the plain language analysis as well as in the rule text, to be clear about exactly what the term means.

(f) **Response to Legislative Council Recommendations.** The Legislative Council report contained only two comments, both of which have been incorporated into the proposed rule.

(g) **Final Regulatory Flexibility Analysis.** The Department concludes that there is no effect on small business as a result of this rule.