

Clearinghouse Rule 10-070

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

The Wisconsin Department of Transportation proposes an order to repeal TRANS 100.15(5)(a) to (e), 100.18(3)(b)1. to 3. and 3.(note); to renumber TRANS 100.18(3)(b)2.(note); to amend TRANS 100.01(1), 100.08(1)(a), (b), (d), (e) and (f), 100.09(4)(intro.) and (c)(note), 100.10(10), 100.13(1)(h)(note), 100.15(5)(intro.), 100.16(4)(a), 100.18(1)(intro.), (2)(a) and (b), (3)(a) and (b)(intro.), and (4)(title); and to create TRANS 100.09(1m) and (2)(note), 100.13(1)(i) and (4), 100.18(1)(e)(note), (2)(am) and (c), and (5), and 100.25, relating to safety responsibility, damage judgment and mandatory insurance laws.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: ss. 344.25 to 344.27, 344.37, 344.61 to 344.67 and 346.70, Stats.

Statutory authority: ss. 85.16(1), 227.11, 343.02 and 344.66, Stats.

Explanation of agency authority: The Department is charged with administering the safety responsibility and damage judgment laws contained in Ch. 344. This rule making deals with reinstatement of operating privileges following suspension for nonpayment of a damage judgment. The Department is also charged with administering provisions of the mandatory insurance law, Subchapter VI to Ch. 344, Stats. This rule making implements that new law.

Related statute or rule: s. 344.01(2)(d), Subch. VI of Ch. 344, Stats.

Plain language analysis: This proposed rule making revises those provisions of Ch. Trans 100 to reflect statutory requirements and to codify DMV practices and procedures that are used in the administration of the safety responsibility and damage judgment laws. The damage judgment law provides that a driver's operating privilege may be suspended for up to 20 years if the driver fails to pay down the judgment to the same extent it would have been paid had the driver carried the minimum insurance required under Wisconsin's safety responsibility law. The safety responsibility law requires drivers involved in accidents without insurance to post a deposit with the Department to cover potential damages resulting from the accident. Failure to post the deposit results in suspension of operating privileges.

A second objective of this rule making, discussed below, is to establish standards for filings made in lieu of insurance with the Department pursuant to s. 344.63, Stats., as created by 2009 Wis. Act 28, and establish any other regulations made necessary by Wisconsin's new mandatory insurance law.

Safety Responsibility and Damage Judgment Law Related Proposed Rules

Section 344.01(2)(d), Stats., sets minimum mandatory insurance limits in Wisconsin of \$50,000 because of bodily injury to or death of one person in any one accident and, subject to such limit for one person, in the amount of \$100,000 because of bodily injury to or death of 2 or more persons in any one accident and in the amount of \$15,000 because of injury to or destruction of property of others in any one accident.¹ Section 344.26(3), Stats., provides that unpaid damage judgments in excess of those amounts are “deemed satisfied” for purposes of the damage judgment law when payments in those amounts have been credited to the judgments. Payments made in settlement of any claims because of bodily injury, death or property damage arising from a motor vehicle accident are credited in reduction of the respective amounts so specified.

It should be noted in this regard that the term “satisfied” as used in ss. 344.25 to 344.27, Stats., is not used in the commonly understood legal parlance of the term. Ordinarily, to lawyers, “satisfaction” of a judgment means the payment of all amounts due under the judgment. In s. 344.26(3), Stats., however, the different meaning described in the preceding paragraph is ascribed to the term solely for purposes of the damage judgment law. This is consistent with the safety responsibility law. Under the safety responsibility law, a person who had a contract of insurance with the minimum coverages described in s. 344.01(2)(d), Stats., would not be subject to that law’s bond requirements. s. 344.14(2)(a), Stats.

This proposed rule making would amend Ch. Trans 100 to make clear that payment of a judgment to the \$15,000 for property damage plus \$50,000 or \$100,000 level for injuries is sufficient to warrant release of any damage judgment suspension by the Division of Motor Vehicles. It also imposes a requirement that any settlement agreement between the parties state the nature of the damages involved and the amount at which the possibility of re-suspension under the DMV damage judgment law expires.

An additional proposed amendment to Ch. Trans 100 is intended to resolve a potential ambiguity in ss. 344.25 to 344.27, Stats. Since the inception of this program, DOT has interpreted those statutes as permitting release of a DMV damage judgment suspension once upon a debtor driver entering into a private repayment agreement and once upon that debtor driver obtaining a court-ordered repayment plan under s. 344.27, Stats. DMV has required satisfaction of the judgment as a condition of reinstatement following default on any judicial plan because of the s. 344.27(3), Stats., requirement that “[i]f the judgment debtor fails to pay any installment as specified by such order, the secretary, upon notice of such default, shall immediately suspend the operating privilege and registrations of the judgment debtor until such judgment is satisfied as provided in s. 344.26.” In drafting this rule, the Department considered whether it could

¹ These dollar amounts can be adjusted in accordance with variance in the consumer price index beginning in 2017. The rule text reflects this fact, but for purposes of the analysis, the current \$15,000, \$50,000 and \$100,000 amounts shall be used to simplify the text and improve the understandability of the analysis.

permit these steps to be done in a different sequence and whether multiple agreements could be permitted.

In the end, the Department concluded that the above-quoted language of s. 344.27(3), Stats., prevents DMV from permitting reinstatement of operating privileges following default on a court-ordered repayment plan unless the driver (or someone on the driver's behalf) actually pays \$15,000, \$50,000 or \$100,000, as appropriate, to the judgment creditor. DMV also concluded that it would not permit repeated private repayment agreements for a single damage judgment. The proposed rule reflects these determinations.

Amendments to s. Trans 100.08(1) are proposed merely to eliminate inconsistent use of language in the amended paragraphs. The paragraphs amended used alternatively the term "check" or the term "draft," when either a check or a draft is adequate in any of those instances and either is accepted by DMV. The amendments simply make it clear that either is acceptable in lieu of cash.

Finally, the unencumbered asset base formula amount required for self-insurance in s. Trans 100.16(4)(a) is raised from \$60,000 to \$115,000 to match the new minimum liability limits required under state law. The formula is expressed in a manner that will allow the amount to rise or fall as minimum insurance limits rise or fall under s. 344.11, Stats.

Mandatory Insurance Related Proposed Rules

As stated above, one purpose of this proposed rule making is to set interim standards for filings made in lieu of insurance with the Department pursuant to s. 344.63, Stats., as created by 2009 Wis. Act 28. The statutes require the Department to accept and release deposits made in lieu of mandatory insurance under particular circumstances, and these rules cannot modify those statutorily established requirements. The Department believes the legislature may wish to consider modifying some of those requirements in the future because the effects of some of the provisions may undermine the legislature's apparent intentions in enacting the laws. These effects are explained below.

One deposit accepted in lieu of insurance under s. 344.63, Stats., is \$60,000 cash. The \$60,000 amount is set in the statutes and is far less than the minimum insurance required under the law. U.S. currency, cashiers and certified checks, money orders, bank checks, and attorney trust fund checks may be accepted as a cash deposit by the Department. In addition to depositing cash, the depositor must prove no judgments are outstanding against the depositor in the depositor's county of residence. s. 344.37(1), Stats.

A second deposit accepted by the Department is a bond. There are two types of bonds. First, a bond issued by a surety company for the minimum liability coverage amounts required by law (currently \$15,000 property, \$50,000 personal injury to one person, \$100,000 personal injury of multiple persons). The bond will need to be in a form

approved by the Department. The other form of bond permitted under the statutes is a judicial bond. If requested, judges will have to approve or disapprove of applications to create a bond secured by \$330,000 in real estate (twice the amount of the bond).

The third mechanism available under the statute is posting securities. Securities are the most problematic from an administrative and enforcement standpoint. The value of securities can vary greatly over time. The Department cannot and will not know the value of securities after deposit. The burden will be on the depositor to be able to prove the value of any securities deposited with the Department to police when asked. Deposits of securities must be accompanied by an opinion of counsel verifying that the securities meet the statutory requirements for use in lieu of insurance. The depositor will need to provide an affidavit as to the value of the securities at the time of deposit and will need to pledge the securities in a manner that permits the Department to sell them in order to use the proceeds to satisfy damages resulting from accidents. The share or bond certificates will need to be physically deposited with the Department. The Department proposes in this rulemaking to require that the securities be of a type readily sold on a recognized market, such as the NASDAQ or New York Stock Exchange, so that DMV has a means of converting the securities to cash if the securities must be used to pay damages resulting from an accident. Securities in closely held corporations, certificates of deposit that are subject to early withdrawal penalties, and other types of securities that are not readily converted to cash would not be accepted. Minimum standards of capitalization and liquidity are suggested as mechanisms for ensuring that penny stocks and unmarketable securities that are difficult to sell will not be accepted.

As set forth at the outset of this plain language analysis, there are some issues related to the return of deposits made in lieu of mandatory insurance established by the new mandatory insurance law that may merit further legislative attention. For example, s. 344.63(3)(a) provides that any bond, cash or securities deposited in lieu of insurance with the Department would have to be returned to the depositor if the owner or operator of the vehicle for whom the deposit was made obtains insurance, dies, becomes permanently incapacitated to operate a motor vehicle, no longer holds a valid operator's license or no longer owns a motor vehicle registered with the Department. The Department lacks authority under that statute to retain any bond or deposit to satisfy damages resulting from an accident once any of those events triggering return of the deposit occurs.

Because of this statutory requirement, the person posting the bond or deposit will have ample opportunity to withdraw any deposit prior to the Department being able to apply it to any judgment for damages for the injured party's benefit. For example, if the depositor were to be involved in an accident, he or she could walk into any DMV service center, surrender his or her license and demand return of the deposit. Under the new law, DMV has a ministerial non-discretionary responsibility to return the deposit, even if the Department knows that the accident has occurred. Once the deposit is returned, the driver can request DMV reinstate his or her license, and DMV is required to do so. Similarly, if the driver who made the deposit in lieu of insurance killed himself by negligently causing an accident injuring others, the Department is required to return the deposit to the depositor's estate and cannot retain the deposit for the benefit of the persons the depositor negligently injured. In these and other foreseeable types of

situations, the deposit made in lieu of insurance would not be available to satisfy the damages suffered by those injured in the accident. The legislature may wish, at some point, to consider amending the statutory provisions that lead to such results so that deposits made in lieu of insurance could be held by the Department in order to help offset damages caused by drivers using deposits in lieu of insurance.

Summary of, and preliminary comparison with, existing or proposed federal regulation: There are no existing or proposed federal regulations on this issue.

Comparison with Rules in the Following States:

Michigan: Owners of passenger vehicles, vans, and light trucks must purchase Michigan no-fault insurance before registering their vehicle. Out-of-state insurance policies cannot be used to meet Michigan insurance requirements for registering a vehicle. Motorcycles must also be insured, but it is not no-fault insurance.

Required coverages include bodily injury/property damage, personal injury protection, and property protection insurance. These required coverages do not pay for damage to vehicles or cover theft. Drivers may carry collision coverage (damage) and comprehensive coverage (theft) at their option.

Drivers are required to keep a Michigan no-fault insurance certificate in their vehicle or carry it with them when they drive. If they cannot show proof of insurance to a law enforcement officer, their operating privilege or vehicle registration may be suspended.

Persons (usually companies) owning more than 25 vehicles may be exempt from the mandatory insurance requirement by obtaining a certificate of self insurance from the Michigan Secretary of State. Applicants must have a net worth in excess of \$20 million to be exempt from carrying insurance, or a have net worth in excess of \$5 million and carry an excess insurance policy. Section R 257.532, Michigan Admin. Code.

Department staff did not find any provision of Michigan law allowing deposits in lieu of insurance similar to those set forth in s. 344.63, Stats.

Michigan has a damage judgment law similar to Wisconsin's. If someone is driving a vehicle without insurance and is at-fault in an accident, the injured party may file a suit against the uninsured motorist in court for damages. The court may award a judgment for damages to the injured party against the uninsured motorist. Unlike Wisconsin, if the uninsured motorist cannot pay the judgment, their driver license is suspended until the judgment is paid in full. Wisconsin requires only that the minimum mandatory insurance amounts be paid before a driver may reinstate his or her license.

Michigan does not have a safety responsibility law similar to Wisconsin's.

Minnesota: The Minnesota No-Fault Act (M.S. 65B.48), requires owners of registered motor vehicles to maintain no-fault insurance. The law makes it a crime for a vehicle owner to operate or permit operation of any uninsured motor vehicle or motorcycle upon any public road, street, or highway. Violation of the law can result in fines or

imprisonment and/or loss of driving privileges.

Drivers must carry liability, personal injury protection, uninsured motorist, and underinsured motorist coverage. Collision and comprehensive coverage are optional.

Minnesota Law (M.S. 169.791) requires drivers to carry proof of insurance in the vehicle at all times and to provide it to peace officers upon demand.

Minnesota does not appear to have a safety responsibility law. Minn. Stat. 171.182 provides for revocation of operating privileges for drivers who have unpaid damage judgments resulting from automobile accidents. Unlike Wisconsin, complete payment of the judgment is required prior to reinstatement.

Illinois: All motor vehicles operated in Illinois must be covered by liability insurance. Vehicle owners are required to provide insurance information at the time of registration renewal.

Drivers operating without proof of insurance in Illinois, are subject to a five hundred dollar fine and a sixty day suspension of vehicle registration. Illinois requires drivers to carry bodily injury liability limits of \$20,000/\$40,000, property damage liability limits of \$15,000, and uninsured motorist coverage.

Illinois does not appear to have a safety responsibility law. Illinois law does provide for revocation of operating privileges for drivers who have unpaid damage judgments resulting from automobile accidents. Unlike Wisconsin, complete payment of the judgment is required prior to reinstatement.

Iowa: Iowa does not mandate that drivers or vehicle owners carry insurance. Iowa has a safety responsibility law similar to Wisconsin's, which is used to compel uninsured drivers to post deposits in order to cover damages potentially attributable to them from an accident. Any person involved in an accident in Iowa, as either the driver or owner of a motor vehicle, is subject to the requirements of the law.

Iowa does not have a compulsory insurance law. Instead, the Financial & Safety Responsibility Act provides for:

- Suspending the operating and registration privileges of a driver or owner who cannot show immediate financial responsibility following an accident; and,
- By requiring anyone whose driver's license has been suspended or revoked because of a conviction, unsatisfied judgment or violation of the OWI law to prove financial responsibility for any future damages or injuries that driver may cause.

Just as in Wisconsin, in Iowa drivers must file an accident report and must be filed with the Office of Driver Services within a set timeframe if an accident results in bodily injury, death or total property damage over a statutorily established amount. Drivers do not need to file a personal accident report if the accident was investigated by a law

enforcement agency and the investigating officer files a report.

A driver who causes personal injury or damage exceeding \$1,000 to the other party must prove his or her financial responsibility or be subject to license suspension. Similar to Wisconsin's safety responsibility law, drivers can prove financial responsibility by showing that they were covered by automobile liability insurance at the time of the accident, posting cash, getting releases from all other damaged or injured parties, being absolved of responsibility by a court judgment, filing an agreement to pay the other damaged or injured parties on an installment plan, or reaching a settlement with the injured persons. Iowa also allows the uninsured motorist to confess judgment and enter into a judicially-approved payment plan as a mechanism for resolving safety responsibility matters.

Both the owners and drivers of the vehicles involved in an accident must prove their financial responsibility. This means that the person who owns the vehicle involved in an accident has to show financial responsibility even if they weren't driving. Like Wisconsin, Iowa will suspend registrations of all the owners' vehicles if they do not comply. Similarly, the driver of the vehicle has to show financial responsibility or lose all licenses to operate motor vehicles.

Iowa does not appear to have a damage judgment law similar to Wisconsin's.

Overall, it appears that states having mandatory insurance laws do not have a safety responsibility law similar to Wisconsin's. Iowa, which has a safety responsibility law, does not mandate insurance.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: Section 344.63, Stats., as created by 2009 Wis. Act 28, provides exceptions to the requirement of having a motor vehicle liability insurance policy to operate a motor vehicle on Wisconsin highways. The exceptions defined in the statutes are nearly identical to those provided for under Wisconsin's Safety Responsibility Law. The administration of the exceptions, as defined in this proposed rule, are purposely drafted to closely mirror the procedures currently in place under the Safety Responsibility Law.

Analysis and supporting documentation used to determine effect on small businesses: This regulatory change has no impact on small business. This rule making largely codifies existing DOT policy with regard to the administration of the safety responsibility and damage judgment laws. The Department does not anticipate any fiscal effect upon small businesses from this codification.

Effect on small business: This regulatory change has no impact on small business. The safety responsibility and damage judgment portions of this rule making largely codifies existing DOT policy with regard to the administration of the safety responsibility and damage judgment laws. This proposed rule making related to filings in lieu of mandatory insurance are not expected to impact small business in any manner. The new mandatory insurance law itself may require small businesses that lack automobile coverage to obtain insurance or make a filing in lieu of insurance with the

Department. The Department does not anticipate any fiscal effect upon small businesses from this codification. 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: This rule making largely codifies existing DOT policy with regard to the administration of the safety responsibility and damage judgment laws. The Department believes any fiscal effect from this codification to be indeterminate as the number of citations issued for not carrying proof of liability insurance, failure to have liability insurance, or fraud in providing proof of liability insurance cannot be surmised at this time. The Department will incur costs for computer changes necessary to develop codes used to indicate the new types on convictions on violators driving records and an unknown amount of time spent by staff explaining insurance requirements and processing license suspensions and reinstatements for persons whose operating privilege is suspended for not paying the forfeitures associated with the violations listed above. The Department will also receive an indeterminate amount of revenue resulting from reinstatement fees collected from those persons whose operating privilege is suspended for not paying forfeitures. Local revenue has the potential to increase through collection of forfeitures and other charges related to the penalties associated with convictions for violations of the new charges.

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

Agency contact person and place where comments are to be submitted and deadline for submission: The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Reginald Paradowski, Section Chief, Division of Motor Vehicles, Driver Information Section, Room 301, P. O. Box 7983, Madison, WI 53707-7983, or by calling (608) 264-7002. You may also contact Mr. Paradowski via e-mail at: dotuninsuredmotorist@dot.wi.gov.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website: http://www.dot.wisconsin.gov/library/research/law/rule_notices.htm.

TEXT OF PROPOSED RULE

SECTION 1. Trans 100.01(1) is amended to read:

Trans 100.01(1) STATUTORY AUTHORITY. As authorized by ss. 85.16(1), 227.11 and 343.02, Stats., the purpose of this chapter is to administratively interpret s. 343.23(2), Stats., relating to department records, ss. 344.01 to 344.48, Stats., relating

to financial responsibility in accidents, ~~and~~ s. 346.70, Stats., relating to accident reporting, and ss. 344.25 to 344.27, Stats., relating to damage judgments.

SECTION 2. Trans 100.02(11m), (12m), and (13m) are created to read:

Trans 100.02(11m) "Multiple injury minimum coverage" means \$100,000 until the department publishes adjusted liability limit amounts as required by s. 344.11, Stats., and means the most recently published adjusted liability amount for multiple injuries after that date.

(12m) "Property damage minimum coverage" means \$15,000 until the department publishes adjusted liability limit amounts as required by s. 344.11, Stats., and means the most recently published adjusted liability amount for property damage after that date.

(13m) "Single injury minimum coverage" means \$50,000 until the department publishes adjusted liability limit amounts as required by s. 344.11, Stats., and means the most recently published adjusted liability amount for a single person injured in an accident after that date.

SECTION 3. Trans 100.08(1)(a), (b), (d), (e) and (f) are amended to read:

Trans 100.08(1)(a) ~~Cash~~ United States currency.

(b) A cashiers cashier's check or draft.

(d) A financial institution check or draft.

(e) A certified personal or business check or draft.

(f) An attorney trust account check or draft.

SECTION 4. Trans 100.09(1m) and (2)(note) are created to read:

Trans 100.09(1m) A person shall be presumed to own a vehicle if it is titled in the person's name. Ownership may be disputed and the presumption rebutted informally

with the department or in a hearing under this chapter. The person in whose name a vehicle is titled shall have the burden of rebutting that presumption.

Note: See *State v. Kirch*, 222 Wis. 2d 598, 587 N.W.2d 919 (Ct. App. 1998); *Young v. West Bend Mutual Ins. Co.*, 2008 WI App 147; *Kruse v. Weigand*, 204 Wis. 195 (1931); *Knutson v. Mueller*, 68 Wis. 2d 199 (1974).

(2)(note) Note: If A loans a vehicle to B, even with conditions or contractual obligations on that loan, such as not re-loaning the vehicle, and B loans the vehicle to C, C has A's implied consent to operate the vehicle notwithstanding the conditions or agreement between A and B. A's relinquishment of control of the vehicle to B makes A responsible for any accident in which B is involved or in which any person operating the vehicle with B's consent is involved. *Plevin v. WisDOT*, 267 Wis. 2d 281 (Ct. App. 2003). A is responsible for maintaining insurance on or covering damages caused by A's vehicle.

SECTION 5. Trans 100.09(4)(intro.) and (c)(note) are amended to read:

Trans 100.09(4)(intro.) The owner of a motor vehicle involved in an accident is exempt from depositing security under s. 344.14 (2) (g), Stats., if the owner or the owner's insurer produces uncontroverted proof that the motor vehicle was operated or parked without actual or implied permission at the time of the accident. Acceptable proof shall be in one of the following forms:

(c)(note) This is an exclusive list of mechanisms that may be used for proving unauthorized operation of a vehicle. See *Plevin v. WisDOT*, 267 Wis. 2d 281 (Ct. App. 2003).

SECTION 6. Trans 100.10(10) is amended to read:

Trans 100.10(10) All parties and their counsel shall be respectful of the hearing examiner and behave in a professional manner. A hearing examiner may exclude a

person or attorney from a hearing for engaging in disrespectful, contemptuous, or disruptive conduct. An attorney who is repeatedly excluded from hearings for the conduct may be barred from participating in administrative hearings before the department.

SECTION 7. Trans 100.13(1)(h)(note) is amended to read:

Trans 100.13(1)(h)(note) Note: ss. 807.10, 344.14(2)(h) and 344.18(1)(b), Stats.;

Note: Form MV 3128--Installment Agreement to Pay Damages.

SECTION 8. Trans 100.13(1)(i) and (4) are created to read:

Trans 100.13(1)(i) A statement as to whether the claim is for injury to property, injury to a person, or injury to a combination of persons or property, and that upon payment of the appropriate amount specified in s. Trans 100.18(1)(f) to (i), the judgment creditor shall report the judgment as "satisfied for purposes of s. 344.26(3), Stats.," to the division of motor vehicles.

(4) A person may not reinstate his or her operating privilege upon filing a written installment agreement if the person's operating privilege has been suspended for failure to comply with a court-ordered installment plan under s. 344.27(3), Stats., until the case is resolved under s. Trans 100.18.

Note: Section 344.27(3), Stats., provides that "[i]f the judgment debtor fails to pay any installment as specified by such order, the secretary, upon notice of such default, shall immediately suspend the operating privilege and registrations of the judgment debtor until such judgment is *satisfied* as provided in s. 344.26." Section 344.26 provides that a person whose operating privilege is suspended for a damage judgment may be reinstated if the judgment is stayed, satisfied or discharged. But, s. 344.26(3) makes clear that "satisfaction," as used in the statute, does not have its ordinary and generally understood meaning of paying a judgment in full (see, for example, s. 806.20, Stats.). Rather, "satisfaction" under the damage judgment law means to pay a creditor the same amount the creditor would have received if the judgment debtor had held insurance in the minimum mandatory amounts required to avoid responsibility under the safety responsibility laws. Trans 100.18 deals with the process of resolving a damage judgment suspensions, including paying off the amount required to "satisfy" a judgment under s. 344.26(3), Stats.

SECTION 9. Trans 100.15(5)(intro.) is amended to read:

Trans 100.15(5) RESOLVING CLAIM IN DAMAGE JUDGMENT CASES. A person whose operating privilege or motor vehicle registration was suspended or revoked for failure to pay a damage judgment ~~shall meet one of the following conditions as a prerequisite to reinstating the~~ may not reinstate an operating privilege or motor vehicle registration until the person resolves the damage judgment case in a manner permitted under s. Trans 100.18.

Note: Section 128.21, Stats., voluntary proceeding orders do not stay Ch. 344 license suspension or revocation actions, and are therefore inadequate to resolve a damage judgment suspension or revocation under sub. (5)(b). See s. Trans 100.18 regarding the effect of a bankruptcy on a damage judgment revocation.

SECTION 10. Trans 100.15(5)(a) to (e) are repealed.

SECTION 11. Trans 100.16(4)(a) is amended to read:

Trans 100.16(4)(a) A person shall be considered to have the ability to pay judgments arising out of motor vehicle accidents if the person has unencumbered assets of at least ~~\$60,000~~ the sum of multiple injury minimum coverage plus property damage minimum coverage times the square root of the total number of motor vehicles owned by the person and operated on Wisconsin highways, is paying creditors as the person's debts become due, and does not have any judgment, fine or forfeiture that has remained unpaid more than 30 days.

NOTE: The sum of multiple injury minimum coverage plus property damage minimum coverage is \$115,000 until the Department publishes adjusted amounts pursuant to s. 344.11, Stats.

SECTION 12. Trans 100.18(1)(intro.) is amended to read:

Trans 100.18(1)(intro.) SUSPENSION. Upon receipt of a certified damage judgment from a Wisconsin court, the department shall immediately suspend the judgment debtor's operating privilege and the registration of the judgment debtor's

motor vehicles. The suspension shall remain in effect until ~~the person pays all fees required for operating privilege and motor vehicle registration reinstatement, files any required proof of financial responsibility for the future~~ the person meets the criteria of sub. (5), and until one of the following conditions is met:

SECTION 13. Trans 100.18(1)(e)(note), (f) to (i) and (1m) are created to read:

Trans 100.18(1)(e)(note) Note: See s. 893.40, Stats.

(f) If the judgment is for property damage, the person files proof of payment of an amount equal to the property damage minimum coverage level described in s. Trans 100.02(12m) to the judgment creditor, including payments made in settlement or partial settlement of the property damage claim or payments made to the court for application to the judgment. Payments on the claim made by the judgment debtor, an insurance carrier, or any other person may be aggregated to reach that amount.

Note: See the note following s. Trans 100.18(1)(i).

(g) If the judgment is for injury to a single person, the person files proof of payment of an amount equal to the single injury minimum coverage level described in s. Trans 100.02(13m) to the judgment creditor, including payments made in settlement or partial settlement of the injury claim or payments made to the court for application to the judgment. Payments on the claim made by the judgment debtor, an insurance carrier, or any other person may be aggregated to reach that amount.

Note: See the note following Trans s. 100.18(1)(i).

(h) If the judgment is for injury to more than one person, the person files proof of payment of an amount equal to the multiple injury minimum coverage level described in s. Trans 100.02(11m) to the judgment creditor, including payments made in settlement or partial settlement of the injury claim or payments made to the court for application to

the judgment. Payments on the claim made by the judgment debtor, an insurance carrier, or any other person may be aggregated to reach that amount.

Note: See the note following s. Trans 100.18(1)(i).

(i) If the judgment results from any combination of property damage, injury to one person, or injury to more than one person, the person files proof of payment of the amount applicable under par. (f) plus the amount applicable under par. (g) or (h), whichever is applicable, to the judgment creditor, including payments made in settlement or partial settlement of the property damage or injury claims or payments made to the court for application to the judgment. Payments on the judgment creditor's claim made by the judgment debtor, an insurance carrier, or any other person may be aggregated to reach the amount required to be paid prior to satisfaction of the damage judgment for driver licensing purposes under this paragraph.

NOTE: Under s. 346.26(3), Stats., a judgment is deemed "satisfied" to the extent that a person should be able to reinstate their operating privilege once the person has paid a judgment debtor an amount equal to the minimum required insurance amounts a person needs to avoid operating privilege suspension under the safety responsibility law. The actual judgment may not be partially satisfied to the same extent because payment of interest, costs and attorneys fees all qualify as payment toward this total dollar amount. Pars. (f), (g) and (h) address this means of "satisfying" specific types of damage judgments for driver licensing purposes. Par. (i) addresses situations where a debtor owes for both property damage and personal injury and requires payment of up to \$65,000 (\$15,000 + \$50,000) for such an accident to property and one person or \$115,000 (\$15,000 + \$100,000) for damages to property and injuries to multiple persons as a precondition of reinstatement. Of course, providing evidence that the entire judgment has been satisfied with a court is also acceptable. Minimum mandatory insurance amounts are set under s. 344.01(2)(am), Stats.

(1m) RESUSPENSION. If a judgment debtor fails to comply with the payment terms of a voluntary or court-ordered agreement under sub. (1)(b) or (c), upon notice of the default, the secretary shall suspend the debtor's operating privilege. That suspension shall remain in effect until the judgment debtor meets the requirements of sub (1)(a) to (i), provided that a driver who has previously entered into a voluntary

agreement complying with (1)(b) may not remedy the suspension by entering into a second sub. (1)(b) agreement, and further provided that a driver who has previously been the subject of a court-ordered plan under sub. (1)(c) may not remedy the suspension by entering into a second sub. (1)(b) agreement or (1)(c) court-ordered repayment plan.

NOTE: The first sentence of this provision provides that a person whose operating privilege is suspended for a damage judgment may reinstate by paying off the judgment, entering into a voluntary payment agreement with the judgment creditor, obtaining a court-ordered payment plan, filing for bankruptcy, waiting 20 years, or paying the creditor an amount equal to the insurance that would have been paid to the creditor had the judgment debtor held insurance in the minimum mandatory insurance amounts specified in s. 344.01(2)(am), Stats. The second and third sentences make clear that a judgment debtor may only use voluntary or court-ordered plans to reinstate one time. A second application to use a voluntary plan to reinstate or a second application to use a court ordered plan will be denied.

SECTION 14. Trans 100.18(2)(a) is amended to read:

Trans 100.18(2)(a) *Out-of-state judgments against Wisconsin drivers*. Upon receipt of a certified damage judgment naming a Wisconsin resident or licensed operator as judgment debtor from a court or driver licensing authority in another jurisdiction, the department shall provide notice of the receipt of the certification to the judgment debtor. The department shall suspend the operating privilege and motor vehicle registrations of the judgment debtor unless, within 30 days of the issuance of the notice by the department, the person satisfies one of the requirements of sub. (1) (a) to ~~(e)~~ (i) or, files a letter of clearance or other proof of license reinstatement in that other state from the driver licensing authority in the other jurisdiction.

SECTION 15. Trans 100.18(2)(am) is created to read:

Trans 100.18(2)(am) *Out-of-state judgments against drivers moving to Wisconsin from another state*. If a judgment debtor's operating privilege is suspended or revoked in another state for nonpayment of a judgment before the debtor obtains a Wisconsin

driver license, the judgment debtor must reinstate his or her operating privilege in that other state before the driver may be licensed in Wisconsin. If another state provides notice to Wisconsin of entry of a damage judgment in that other state which may result in suspension for nonpayment of the judgment in Wisconsin under s. 344.25(5), Stats., the department shall provide notice of the receipt of the certification to the judgment debtor. The department shall suspend the operating privilege and motor vehicle registrations of the judgment debtor unless, within 30 days of the issuance of the notice by the department, the person satisfies one of the requirements of sub. (1) (a) to (i) or, files a letter of clearance or other proof of license reinstatement in that other state from the driver licensing authority in the other jurisdiction.

NOTE: Where notice of a judgment debt is sent to the Department by a licensing authority in another state, obtaining a release letter may be required as a precondition to obtaining or keeping a Wisconsin driver license. If the judgment debtor has moved to Wisconsin from the other state, the Department is prohibited from issuing the person a license if the person's operating privilege is suspended or revoked in the other state. s. 343.38 (4), Stats. If the person has been issued a license, it will be cancelled. s. 343.25, Stats.

SECTION 16. Trans 100.18(2)(b) is amended to read:

Trans 100.18(2)(b) *Tribal judgments.* Upon receipt of a certified damage judgment naming a Wisconsin resident or licensed driver as judgment debtor from an Indian tribal court in Wisconsin, the department shall provide notice of the receipt of the certification to the judgment debtor. The department shall suspend the operating privilege and motor vehicle registrations of the judgment debtor unless, within 30 days of the issuance of the notice by the department, the person satisfies one of the requirements of sub. (1) (a) to ~~(e)~~ (i).

SECTION 17. Trans 100.18(2)(c) is created to read:

Trans 100.18(2)(c) *Period of suspension.* If a judgment debtor's operating

privilege or vehicle registration is suspended because of non-payment of an out-of-state or tribal judgment, the person's operating privilege or vehicle registration shall remain suspended until the person meets the criteria of sub. (5) and the person satisfies one of the requirements of sub. (1) (a) to (i).

SECTION 18. Trans 100.18(3)(a) and (b)(intro.) are amended to read:

Trans 100.18(3)(a) If a judgment creditor consents to allow a judgment debtor to retain or reinstate the debtor's operating privilege or motor vehicle registration under s. 344.25(2), Stats., the parties shall file a copy of the written installment agreement between the parties. The agreement shall meet the requirements of s. Trans 100.13. In applying the requirements of s. Trans 100.13, the term "injured party" shall mean the judgment creditor, and the term "uninsured person" shall mean the judgment debtor. The installment agreement shall provide that upon payment of the sums specified in the agreement, the judgment will be satisfied. The installment agreement shall clearly state whether the judgment is for damages to property, or damages to a single individual or multiple individuals, or both, shall state the aggregate payment amount sufficient to permit reinstatement of the person's operating privilege under pars. (1)(f) to (i), and shall require the judgment creditor to advise the division of motor vehicles upon receipt of payments totaling that amount.

(3)(b) If the department is notified that a judgment debtor has defaulted on a written installment agreement filed under s. 344.25, Stats., and 6 months have not elapsed from the date of the agreement, the department shall advise the person notifying the department of the default that no action may be taken until 6 months have elapsed and take no further action. If 6 months have elapsed from the date of the agreement, the department shall immediately suspend the person's operating privilege

and motor vehicle registration. The suspension shall remain in effect until the person pays all fees required for operating privilege and motor vehicle registration reinstatement, files any required proof of financial responsibility for the future, complies with sub. (5) and meets one of the following: conditions required for reinstatement under sub. (1)(a), (b), or (d) to (i).

SECTION 19. Trans 100.18(3)(b)1. and 2. are repealed.

SECTION 20. Trans 100.18(3)(b)2.(note) is renumbered Trans 100.18(3)(b)(note).

SECTION 21. Trans 100.18(3)3. and (note) are repealed.

SECTION 22. Trans 100.18(4)(title) is amended to read:

Trans 100.18(4)(title) BANKRUPT PERSONS UNDER DAMAGE JUDGMENT
LAW.

SECTION 23. Trans 100.18(5) and 100.25 are created to read:

Trans 100.18(5) STANDARD REINSTATEMENT REQUIREMENTS. (a) In order to reinstate an operating privilege after a suspension or revocation for nonpayment of a damage judgment, in addition to satisfying the damage judgment by complying with subs. (1) to (3), a driver must also pay all fees required for operating privilege reinstatement and file any required proof of financial responsibility for the future.

(b) In order to reinstate vehicle registration after a suspension or revocation for nonpayment of a damage judgment, a driver must also pay any fee required for reinstatement of the vehicle registration.

Trans 100.25 Mandatory insurance. (1) EXCEPTIONS. The purpose of this section is to implement and administer the provisions of Subch. VI of Chapter 344, Stats., relating to mandatory insurance requirements and exceptions to the requirement of having automobile insurance in Wisconsin.

(2) DEPOSITS IN LIEU OF MANDATORY INSURANCE. A person making a deposit with the department under s. 344.63, Stats., shall file a complete application with the department containing all required information. In addition, the person shall provide the additional materials or information and deposit in the form required in subs. (3) to (5).

(3) CASH DEPOSITS. (a) For purposes of s. 344.63(1)(d), Stats., any of the following shall be considered a deposit of cash with the department:

1. United States currency.
2. A cashier's check or draft.
3. A money order.
4. A financial institution check or draft.
5. A certified personal or business check or draft.
6. An attorney trust account check or draft.

(b) Any person attempting to file cash in lieu of maintaining automobile liability insurance with the department pursuant to s. 344.63(1)(d), Stats., shall file, with the deposit, a certification from the clerk of courts in the county where the depositor resides dated no later than 15 calendar days prior to the date the deposit is received by the department, that indicates the clerk has searched the official records of the county and that no records of unsatisfied judgments of any character against the depositor exist in that county.

Note: ss. 344.63(1)(d) and 344.37(1), Stats.

(4) BOND. (a) *Surety bonds.* Any person attempting to file a surety company bond in lieu of maintaining automobile liability insurance with the department pursuant to s. 344.63(1)(a), shall file a bond of a surety company duly authorized to transact

business within this state that is conditioned for the payment of the amounts specified in s. 344.01(2)(d), Stats. The bond may not be cancelable except after 10 days written notice to the secretary. The bond shall be in the form specified by the department.

(b) *Judicial bonds.* Any person attempting to file a judicially authorized bond in lieu of maintaining automobile liability insurance with the department pursuant to s. 344.63(1)(a), Stats., shall file a bond with at least 2 individual sureties each owning real estate within this state and together having equities equal in value to at least twice the amount of the bond, which real estate shall be scheduled in the bond approved by a judge of a Wisconsin circuit or appellate court. The bond must be conditioned for the payment of the amounts specified in s. 344.01(2)(d), Stats., and may not be cancelable except after 10 days written notice to the secretary.

Note: ss. 344.63(1)(a) and 344.36(1), Stats.

(5) SECURITIES. (a) Securities filed with the department pursuant to s. 344.63(1)(d), Stats., shall be of a type sold on the New York Stock Exchange, NASDAQ or NYSE Amex Equities exchange. The stock must have a minimum capitalization of \$1,000,000,000. The stock must be liquid to the extent that over the 3-month period preceding filing with the department an average of at least 100,000 shares of the stock must have been traded on a daily basis on the exchange.

(b) Any person attempting to file securities with the department pursuant to s. 344.63(1)(d), Stats., shall file all of the following:

1. A certification from the clerk of courts in the county where the depositor resides dated no later than 15 calendar days prior to the date the deposit is received by the department, that indicates the clerk has searched the official records of the county and that no records of unsatisfied judgments of any character against the depositor

exist in that county.

2. An opinion of counsel, for the benefit of the department and persons intended to be protected by the filing described in s. 344.37(2), Stats., that the securities to be filed by the depositor are securities that may legally be purchased by savings banks or for trust funds in this state and that the securities meet the requirements of sub. (5)(a). The opinion shall identify the state or federal statute or regulation permitting the purchase of each deposited security.

3. An affidavit that the securities have a fair market value in excess of \$60,000 and meet the requirements of sub. (5)(a).

4. A pledge of the securities to the department in the form required by the department pledging the securities for the payment of damages resulting from the ownership, maintenance, use or operation of a motor vehicle after such deposit was made, including damages for care and for loss of services because of bodily injury to or death of any person and damages because of injury to or destruction of property and the consequent loss of use thereof. The pledge shall assign all rights to sell or redeem the securities or any coupons associated with the securities to the department in trust for the purposes set forth in this subdivision. The pledge shall exempt the department from any liability for selling or not selling the securities at any time, and shall specify that the depositor relinquishes all rights to sell the securities or to demand their sale by the department. The pledge shall remain effective until the earlier of the return of the deposit pursuant to s. 344.63(3), Stats., or of the sale of the securities, whether made so that the proceeds of sale can be applied to the payment of judgments and assignments relating to motor vehicle accidents, following the procedure described in s. 344.20 (2), Stats., or made for any other reason.

5. The share certificates, bonds, including all bond coupons, if any, or other certificate.

Note: ss. 344.63(1)(d) and 344.37(1), Stats.

(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 11th day of **June**, 2010.

_____/s/_____
FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation