

Clearinghouse Rule 06-041

STATE OF WISCONSIN

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

The Wisconsin Department of Transportation proposes an order to renumber TRANS 103.02(1); amend TRANS 103.02(4) and (5); and create TRANS 103.02(2), 103.03(2)(note) and 103.10, relating to habitual traffic offenders

**NOTICE OF HEARING
AND
TEXT OF PROPOSED RULE**

NOTICE IS HEREBY GIVEN that pursuant to s. 85.16 and 227.11(2), Stats., and interpreting ch. 351, Stats., the Department of Transportation will hold a public hearing in **Room 394** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **16th** day of **May**, 2006, at **3:00 PM**, to consider the amendment of ch. Trans 103, Wisconsin Administrative Code, relating to habitual traffic offenders.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

Parking for persons with disabilities and an accessible entrance are available on the south side of the Hill Farms State Transportation Building.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: Ch. 351, Stats.

Statutory authority: ss. 85.16 and 227.11(2), Stats.

Explanation of agency authority: Sections 85.16(1), Stats., grant the Department broad authority to “make reasonable and uniform orders and rules deemed necessary to the discharge of the powers, duties and functions vested in the department.” Similar authority is granted to the Department under s. 227.11(2), Stats.

The Department administers the Habitual Traffic Offender law, Ch. 351, Stats. The Department reviews the driver records for all drivers and determines whether a person qualifies as a habitual traffic offender. If the Department concludes a person qualifies as a habitual traffic offender, the Department revokes the person's operating privilege for 5 years as required by s. 351.025, Stats.

Ch. Trans 103 has been promulgated by the Department to carry out this administrative task.

Related statute or rule: Ch. 351, Stats.

Plain language analysis: The Department administers the Habitual Traffic Offender law, Ch. 351, Stats. The Department reviews the driver records for all drivers and determines whether a person qualifies as a habitual traffic offender. If the Department concludes a person qualifies as a habitual traffic offender, the Department revokes the person's operating privilege for 5 years as required by s. 351.025, Stats.

2005 Wis. Act 25 amended Ch. 351, Stats., to change the definition of "habitual traffic offender" as used in that chapter. Under prior law, any offense resulting in the assessment of demerit points or other moving violation could be counted as a "minor offense" under the HTO law. Accumulation of 12 such offenses resulted in a mandatory 5-year HTO revocation of driving privileges.

Under the law as amended by 2005 Act 25, only violations of the rules of the road enumerated in Ch. 346, Stats., count as "minor offenses." Thus, only persons who commit 12 or more violations of ch. 346, Stats., are deemed "Habitual Traffic Offenders" under the amended law. This rule makes minor changes to Ch. Trans 103 to make it consistent with the new statutory provisions.

The amended law gave DOT authority to count or not to count offenses reported to DOT before the effective date of the law for purposes of making determinations of HTO status. The Department has counted all offenses reported prior to that effective date for purposes of implementing the new law. As a result, courts are being inundated with requests to reopen old cases and then re-report them to DOT. This activity results in WisDOT being legally obliged to re-calculate the person's HTO status and often to release the person's HTO revocation. In addition, individuals are petitioning circuit courts for review of HTO determinations under the provisions of Ch. 351, Stats.

This mechanism is administratively inefficient in two respects. First, it results in time consuming case-by-case work by courts. Second, it requires DOT to deal with individual HTO cases on a one-by-one basis. DOT can reassess all drivers' status at one time through the use of its computer systems. Courts have asked the Department to do this, and the Department believes doing so will be a more efficient mechanism for both the courts and the Department. The rule making will permit the Department to do so.

As a result of this rule making, all persons' HTO status will be determined according to the same rules, rather than having different requirements for persons whose convictions

were reported before and after the effective date of 2005 Wis. Act 25. The Department believes this will be fairer to all individuals affected by the HTO law.

This rule making also makes clear that the Department will continue to count all major violations as minor violations, regardless of whether the violations are for violations of statutes outside Ch. 346. Thus, great bodily harm and homicide by intoxicated use of a vehicle, violations of ss. 940.25 and 940.09, Stats., will be counted as both major and minor offenses under this rule making.

Summary of, and preliminary comparison with, existing or proposed federal regulation: There is no existing or proposed federal regulation requiring states to impose an HTO law.

Comparison with Rules in Adjacent States:

Michigan: A review of Michigan traffic statutes did not reveal a similar law to Wisconsin's Habitual Traffic Offender Law, Ch. 351, Stats., in that state.

Minnesota: Under s. 171.18(4), MN Stats., the Minnesota commissioner of public safety may suspend the driver license of a "habitual traffic offender" for up to 1 year (Wisconsin revokes for 5 years). The commissioner determines which offenses shall be counted in that state by rule. This system is more similar to Wisconsin's demerit point system than Wisconsin's Habitual Traffic Offender law. Minnesota does not appear to have a 5-year license revocation for habitual violations like Wisconsin.

Illinois: In Illinois, a driver's license will be suspended if the driver is convicted of three traffic violations committed within any 12-month period. Drivers under age 21 at the time of arrest will be suspended if convicted of two traffic violations within any 24-month period. Drivers under age 18 are required to successfully complete a driver remedial education course to reinstate their driving privileges. In addition, such drivers may be required to submit to a complete driver's license examination to be re-issued a driver's license. The length of the suspension varies according to the seriousness of the traffic offenses. This system is more similar to Wisconsin's demerit point system than Wisconsin's Habitual Traffic Offender law. Illinois does not appear to have a 5-year license revocation for habitual violations like Wisconsin.

Iowa: In Iowa, a driver who is convicted of 3 serious offenses in a 6-year period or 6 minor offenses in a 2-year period is subject to a 2-year to 6-year license revocation as a habitual traffic offender. The driver is ineligible for an occupational license for one year. Iowa counts all traffic offenses reported to its driver licensing authority identically and does not distinguish between violations of the rules of the road, equipment violations, and other violations of the traffic code. Iowa Code ss. 321.555 through 321.562.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: Approximately 15,000 drivers are currently revoked as Habitual Traffic Offenders under Wisconsin law. DOT estimates that if all drivers' status are reassessed consistent with the requirements of 2005

Wis. Act 25's amendments to the HTO law, that approximately 10,000 to 12,000 drivers will no longer be subject to a 5-year revocation and may be eligible to reinstate their operating privileges earlier than otherwise anticipated.

Analysis and supporting documentation used to determine effect on small businesses: This rulemaking is not anticipated to effect small business in any fashion as it does not regulate or impose requirements upon businesses.

Effect on small business: This rule making will have no effect upon small businesses, except to the extent that it permits some employees to reinstate driver licenses. The Department's Regulatory Review Coordinator may be contacted by e-mail at andrew.ruiz@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal effect and anticipated costs incurred by private sector: The Department expects no significant fiscal effect from implementing this regulation. The Department will incur data processing costs to recalculate the HTO status of persons currently revoked under the HTO laws. These costs, however, will undoubtedly be less than the costs of the Department and courts dealing with these cases on a one-by-one basis.

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 Kent Buehler, Department of Transportation, Bureau of Driver Services, Citations and Withdrawal Section, Room 305, P. O. Box 7917, Madison, WI 53707-7917. You may also contact Mr. Buehler by phone at (608) 266-9901.

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/rulenotices.htm>.

TEXT OF PROPOSED RULE

SECTION 1. Trans 103.02(1) is renumbered Trans 103.02(1m).

SECTION 2. Trans 103.02(1) is created to read:

Trans 103.02(1) "Another traffic law" means an offense under any valid ordinance enacted by a local authority under s. 349.06 or any law enacted by a federally recognized American Indian tribe or band in this state which is in strict conformity with

an offense described in s. 351.02(1)(a) or (b), and any federal law which is in substantial conformity with an offense described in s. 351.02(1)(a) or (b).

NOTE: s. 351.02(1)(c), Stats.

SECTION 3. Trans 103.02(4) and (5) are amended to read:

Trans 103.02(4) "Major offense" means a conviction for any offense specified in s. 351.02(1) (a), Stats., or another traffic law for a conforming or similar violation.

(5) "Minor offense" means a conviction under ~~ss. 346.63(2m), 346.63(5)(a) ch. 346~~, Stats., or for any offense specified in s. 351.02(1)(b), Stats., another traffic law that is not a major or petty offense.

NOTE: ss. 351.032(1)(b) and (c).

SECTION 4. Trans 103.03(2)(note) is created to read:

Trans 103.03(2)(note) Any major offense counts under this provision.

SECTION 5. Trans 103.10 is created to read:

Trans 103.10 Implementation of 2005 Wis. Act 25. (1) Offenses that cannot be counted as minor offenses under s. 351.02(1)(b), Stats., as amended by 2005 Wis. Act 25, may not be counted as minor offenses under this chapter regardless of violation date, conviction date, or the date the conviction was reported to the department.

(2) The department may reassess the driver license status of any person who has been classified as a habitual traffic offender prior to the effective date of this chapter...[revisor insert date] so that all drivers classification are determined in accordance with this chapter.

(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 ____ day of
April, 2006.

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation