

Report From Agency

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

CR 09-058

The Wisconsin Department of Transportation proposes an order to amend TRANS 315.03(1)(a) and (c), relating to safety belt medical use exemption.

**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:

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PART 1

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: s. 347.48(2m)(e), Stats.

Statutory authority: ss. 84.015, 84.41(7) and 347.48(2m)(e), Stats.

Explanation of agency authority: Current law requires every person over 8 years of age to be properly restrained by a safety belt whenever traveling in a motor vehicle. Current law allows the Department to exempt from this safety belt use requirement any person who, because of a physical or medical condition, cannot properly be restrained in a safety belt. Department rules authorize physicians, chiropractors and Christian Science practitioners to grant exemptions from wearing safety belts. Federal law makes highway safety grant moneys available for safety belt use requirements, but federal law recognizes only medical exemptions issued by physicians. Federal grant moneys expire on July 1, 2009, and this state may not qualify for approximately \$15,000,000 in federal moneys if persons other than physicians are authorized to exempt persons from safety belt use laws.

Related statute or rule: 23 USC 406, 71 Fed. Reg. 4196 (Jan. 25, 2006).

Plain language analysis: This rule making deletes authority of any person other than physicians to exempt persons from safety belt use requirements. This rule making will result in increased use of safety belts, and increase receipt of federal moneys for highway safety activities.

Summary of, and preliminary comparison with, existing or proposed federal regulation: Federal policy states that safety belt use requirements do not apply to, "Persons with medical conditions who are unable to use a safety belt, provided there is written documentation from a physician." The Department's current rules go further by allowing chiropractors and Christian Science practitioners to grant those exemptions.

Comparison with Rules in Adjacent States:

Michigan: Mich. Comp. Laws. Annot. 257.710e(1)(e) exempts a person who possesses a written statement from a physician from safety belt use requirements. The Department was unable to identify any administrative rules on this topic.

Minnesota: Minn. Stats. Annot. § 169.686 (2)(3) allows physicians to exempt persons from safety belt use requirements. The Department was unable to identify any administrative rules on this topic.

Illinois: 92 IL Admin. Code 1030.84 exempts from safety belt use requirements only to a person "possessing a written statement from a physician that the person is unable, for medical or physical reasons, to wear a seat safety belt."

Iowa: IA Admin. Code 761-600.16(321) authorizes physicians and chiropractors to exempt a person from safety belt use requirements for medical reasons. The Department identified no authority for Christian Science practitioners to exempt persons from safety belt use requirements.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: None. NHTSA legal counsel informed the Department that in order to qualify for funds under 23 USC 406, any administrative rule that exempts a person from safety belt use requirements must be consistent with the medical exemption permitted in the implementing guidelines for section 406 eligibility. Those guidelines limit the exemption to physicians.

Analysis and supporting documentation used to determine effect on small businesses: This rule making has no effect on small businesses.

Effect on small business: This rule making will eliminate one issue of noncompliance specifically identified by NHTSA that makes Wisconsin ineligible for approximately \$15,000,000 in federal safety belt use grant moneys. The Department's Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@wisconsin.gov, or by calling (414) 438-4585.

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

Copies of proposed rule and agency contact person: Copies of the proposed rule may be obtained, without cost, by writing to Laura Andreasson, Department of Transportation, Division of State Patrol, Room 551, P. O. Box 7936, Madison, WI 53707-7936. You may also contact Laura by phone at (608) 267-5136 or via e-mail at laura.andreasson@wisconsin.gov.

PART 2

TEXT OF PROPOSED RULE

SECTION 1. Trans 315.03(1)(a) and (c) are amended to read:

Trans 315.03(1)(a) The person has a written statement signed by a licensed physician, ~~chiropractor or a Christian Science practitioner residing in this state and listed in the Christian Science Journal~~ indicating the person cannot be restrained by a safety belt because of a physical or medical condition, or words to that effect.

Trans 315.03(1)(c) The statement in par. (a) contains an address and telephone number of the physician, ~~chiropractor, or Christian Science practitioner.~~

(END OF RULE TEXT)

Effective Date. This rule shall take effect upon publication in the official state newspaper as provided in s. 227.24(1)(c), Stats.

Signed at Madison, Wisconsin, this ____ day of
September, 2009.

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation

PART 4
CR 09-058

ANALYSIS OF FINAL DRAFT OF TRANS 315

(a) **Basis and Purpose of Rule.** This rule making deletes authority of any person other than physicians to exempt persons from safety belt use requirements. This rule making will result in increased use of safety belts, and increase receipt of federal moneys for highway safety activities.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on September 8, 2009. No modifications were made as a result of testimony at the hearing.

(c) **List of Persons who Appeared or Registered at Public Hearing.** None.

(d) **Summary of Public Comments and Agency Response to those Comments.** The Department received one comment. Tom Moore, representing the Wisconsin Chiropractic Association, commented that the federal definition of "physician" in 42 USC 1395x includes chiropractors and urged the Department to adopt this broader definition of 'physician' for purposes of issuing safety belt exemptions. The Department responds that the definition includes chiropractors only for the limited purpose of defining "medical *and other health services*," and "only with respect to treatment by means of manual manipulation of the spine (to correct a subluxation)" and that the definition has no bearing on safety belt usage grants under 23 USC 406. Incorporating this definition would also add dentists, podiatrists and optometrists to those who could issue safety belt exemptions. The Department declines the suggestion.

(e) **Explanation of any Changes Made to the Plain Language Analysis or Fiscal Estimate.** No changes made.

(f) **Response to Legislative Council Recommendations.** The Legislative Council report contained no comments.

(g) **Final Regulatory Flexibility Analysis.** This rule making has no effect on small businesses.