

Report From Agency

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

CR 10-070

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.

**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.

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PART 1
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 and vehicle registrations 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. s. 344.25, Stats. 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 or otherwise satisfy the claim results in suspension of operating privileges and vehicle registrations. s. 344.14(1), Stats.

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

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.

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, DMV has required satisfaction of an unpaid damage judgment as a condition of reinstatement following default on any judicially ordered payment 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.” Historically, DMV has treated the order entered by the court as a judicial order that DMV is compelled to follow.

The Department draft rule presented for hearing proposed to codify this statutory interpretation. WisDOT received testimony at its rule hearing and a number of written comments regarding this particular provision. The testimony and comments led WisDOT to reexamine the statute and reconsider this longstanding policy.

The persons testifying at hearing and commenting on the rule suggested that DMV examine whether it may, under the current statutes, permit an injured party and a driver to agree to a voluntary repayment plan after the driver has defaulted on a court-ordered plan. As described above, s. 344.27(3) clearly states that DMV cannot allow a person to reinstate from a court-ordered plan unless the driver “satisfies” the judgment in the manner s. 344.26 provides. Section 344.27(3) never mentions s. 344.25, Stats., and does not suggest that a 344.25 payment plan should be permitted following default on a court-ordered plan. This is not unusual. In general, if parties want the provisions of a judicial order to be changed, they have to ask the court to change the order. They can’t just agree on the side to ignore what the court, by law, has decreed.

But, in the particular area of driver licensing, the interaction between the courts and the Division of Motor Vehicles is peculiar. Courts lack inherent authority to grant or revoke motor vehicle operating privileges. *State v. Darling*, 143 Wis. 2d 839, 422 N.W.2d 886 (Ct. App. 1988). Any judicial authority with regard to driver licensing issues is derived from the statutes after a grant of power by the legislature. *Id.* The Administrator of the Division of Motor Vehicles is the licensing authority for the state. ss. 343.17(1), 343.02(1), Stats. When judges are called upon to make driver licensing decisions, those decisions are considered administrative in nature, rather than judicial. *State v. Marcus*, 259 Wis. 543, 49 N.W.2d 447 (1951); *State ex rel. Marcus v. County Court of Chippewa County*, 260 Wis. 532, 51 N.W.2d 503 (1952); *State v. Darling*, 143 Wis. 2d 839, 422 N.W.2d 886 (Ct. App. 1988).

In *State v. Marcus*, 259 Wis. 543, 49 N.W.2d 447 (1951), the Wisconsin Supreme Court examined the nature of occupational license orders issued by judges in Wisconsin. At that time, the law called for judges to issue orders permitting a driver to obtain an occupational license. In *Marcus*, a court issued such an order, but DMV refused to issue the license because of a statutory prohibition against issuing the license. The defendant brought contempt proceedings.

The *Marcus* court examined the statutory basis for occupational license issuance and noted that after the court entered its order to issue an occupational license, the DMV still had authority not to issue the license for various reasons, such as failure to post proof of financial responsibility for the future. The court concluded that the DMV could not have such authority to independently reject a judicial order and concluded that the order to issue an occupational license was therefore administrative in nature.

The Department has concluded that this same logic applies with respect to the damage judgment laws being interpreted in this rule making. Section 344.25(2) has a provision that suggests that, if the injured party and the driver agree on a plan following default on a court-ordered plan, that DMV has discretion to permit the driver to reinstate suspended operating privileges and vehicle registrations:

344.25(2) If the judgment creditor consents in writing in such form as the secretary may prescribe that the judgment debtor be allowed to retain or reinstate the operating privilege and registrations, the same may be allowed by the secretary for 6 months from the date of such consent and thereafter until such consent is revoked in writing, ***notwithstanding default in the payment of such judgment or of any installments thereof as prescribed in s. 344.27***, provided the judgment debtor furnishes proof of financial responsibility for the future and maintains such proof at all times when such license and registrations are in effect during a period of 3 years following the date on which the agreement is filed with the secretary. [*emphasis mine.*]

The fact that DMV may allow payment by installments notwithstanding a judgment debtor's failure to conform to a court order issued under s. 344.27 suggests that a s. 344.27 damage judgment payment plan order is administrative rather than judicial in nature. The fact that such an order has no effect upon the underlying damage

judgment other than to permit motor vehicle operation also suggests that the order is an administrative order. A s. 344.27 order does not, for example, stay execution of the judgment, garnishment of wages, accrual of interest on the judgment or in any other manner affect the judgment. s. 344.27(1). It is merely an order permitting a person to obtain a driver license; an order for which contempt is not available if the driver fails to comply.

DMV has statutory authority to permit drivers to be licensed pursuant to voluntary payment agreements related to unpaid judgments under s. 344.25(2), Stats. Because a judicial payment plan under s. 344.27, Stats., is an administrative rather than a judicial order, DMV is not committing contempt or violating a court order if it permits a s. 344.25 voluntary payment plan to follow default on a judicial payment plan authorized under s. 344.27, Stats.

Accordingly, DMV has elected to establish uniform rules for exercising its discretionary authority with regard to permitting voluntary payment plans under s. 344.25, Stats. This proposed rule would permit an unlimited number of voluntary or judicially approved payment plans under ss. 344.25 and 344.27, Stats. The Department does not anticipate that this change in procedure and policy will lead to problems with the administration of the law. But, if the Department finds that the change leads to abuse by parties or creates an unmanageable workload increase, the Department may revisit this issue and reestablish limits on the availability of these options.

With regard to the public policies underlying this decision, outside of the technical provisions of the underlying statutes, the Department believes that permitting multiple payment plans will not result in any danger to the travelling public. First, it is widely recognized that the majority of drivers whose operating privileges are suspended continue to drive in violation of the law. By permitting drivers whose licenses are suspended under the damage judgment law to reach accord with the judgment creditors, post an SR-22 or other proof of financial responsibility for the future, and be relicensed, this rule will enhance employment opportunities for affected judgment debtors and improve the likelihood of their eventually satisfying the unpaid judgment. The SR-22 requirement license reinstatement protects other drivers from the risk of a second uninsured accident by that same judgment debtor.

In short, both the safety responsibility and damage judgment laws essentially boil down to collection tools primarily used by insurance companies to collect on damages resulting from accidents with their insured drivers. To the extent this rule change will allow those private parties to reach private agreements regarding satisfaction of the debt, the Department does not believe there is any public policy served by preventing or prohibiting those agreements.

The other changes to the rule related to the safety responsibility and damage judgment laws relate to inconsistent use of terms and updating formulas to reflect the increased minimum mandatory insurance required in Wisconsin. Proposed amendments to s. Trans 100.08(1) are intended 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 cancel the bond or return the deposit, even if the Department knows that the accident has occurred. Once the bond is cancelled or 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 may not be able to 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.

A second issue related to the new mandatory insurance law that may merit further legislative attention is whether exceptions to the law for religious groups, or other modifications to Wisconsin law for such groups should be considered. The Department received detailed written comments and testimony at both emergency and permanent rule hearings for Ch. Trans 100 from persons of the Mennonite faith. The testimony established that a core religious tenet of some Mennonites is that buying commercial insurance violates their ethical principles. Kenneth Wittmer, a deacon in a Neshkoro,

Wisconsin congregation, testified that one primary reason Mennonites believe that is because they believe in the importance of brotherly aid amongst their community (Galatians 6:2, "Bear ye one another's burdens, and so fulfil the law of Christ.") Thus, they believe that each member has a duty to help others during times of adversity. They also believe in acceptance of personal responsibility for their actions. (Galatians 6:5, "For every man shall bear his own burden.") He further explained that to trust in an insurance contract is, in their view, elevating trust in man above trust in God. (Psalm 118:8, "[It is] better to trust in the Lord than to put confidence in man.") Finally, he explained that Mennonites also dislike the use of litigation and courts to resolve differences and prefer to settle matters directly between persons. A subrogated insurer, holding the right to press a claim on behalf of a church member, could violate their beliefs regarding when and how to settle such claims. Because of their beliefs, the church members asked DMV to exempt Mennonites from the new statutory requirement that all persons either carry insurance or post a form of security in the manner specified in s. 344.63, Stats. Other witnesses explained that while there is variation between communities in some particulars of their faith, they share these basic beliefs.

The Mennonite witnesses explained that their congregations band together to settle damage claims after they arise and they all contribute to paying claims against their members. They suggested that WisDOT consider whether it could exempt persons of their faith from the mandatory insurance requirements of Ch. 344, Stats., or whether it could permit Mennonite churches to "self insure" the vehicles owned by members of their congregations. They testified that their congregations have an excellent history, nationwide, of paying damage judgments against their members. The Department did not investigate or conduct additional research into that contention because it concluded that regardless of whether the representations are accurate, the Department lacks authority to promulgate the rule amendment the witnesses requested.

It did come out at hearing that Mennonite congregations do not pay damage judgments against persons who leave their congregations. In this respect, the community arrangements of the Mennonites differ from traditional insurance, which covers a driver for damages caused as of the date of an accident regardless of whether the driver remains insured by the insurer after the accident date.

The Mennonite witnesses provided copies of laws or regulations from Ohio and Pennsylvania that permit congregations to post a bond or security for the entire congregation as security for potential damages in the future. They requested the department also consider adopting that type of scheme which would protect other drivers involved in accidents with their members while permitting them to maintain their religious practice of avoiding the purchase of insurance.

The Department carefully considered the requests made by the Mennonite groups, but concluded it lacks authority to grant the types of exemption they requested and that such exemptions to the mandatory insurance law would need to be created by the legislature.

Under Wisconsin law, the legislature has given executive agencies such as WisDOT limited legislative authority in areas they administer. This authority is subject to the legislature's oversight through the rule making process as set forth in s. 227.11(2)(a), Stats.:

Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, **but a rule is not valid if it exceeds the bounds of correct interpretation.** [emphasis mine.]

The last sentence is important because it is basic to administrative law that executive agencies have only limited powers. Unlike natural persons, who enjoy freedom to engage in any activity unless there is a law prohibiting it, state agencies have no power to engage in activities unless the legislature grants them that power. The legislature has granted many powers to WisDOT, but WisDOT has no authority to "trump" or ignore any legislative enactment by administrative rule. In a conflict between a statute and a rule, the statute controls. *Debeck v. DNR*, 172 Wis. 2d 382, 493 N.W.2d 234 (Ct. App. 1992).

Thus, WisDOT rule making authority with regard to the mandatory insurance, safety responsibility and damage judgment laws is limited to the parameters set by the legislature. WisDOT cannot contravene a statutory mandate. Statutory provisions that impose burdens on citizens must be corrected by amendment of the statutes by the legislature.

Section 344.62 is quite clear in providing that "Except as provided in s. 344.63, no person may operate a motor vehicle upon a highway in this state unless the owner or operator of the vehicle has in effect a motor vehicle liability policy with respect to the vehicle being operated." Section 344.63 permits limited exceptions to the requirement of holding insurance. Some of those exemptions are available to individuals, including members of Mennonite congregations. For example, the owner or operator of the motor vehicle may file a bond or deposit cash or securities with WisDOT and thereby be exempted from the requirement of buying auto insurance. To this extent, the legislation already accommodates persons who may have religious qualms about the purchase of insurance. The legislation, however, provides these optional mechanisms to individuals, not to congregations or groups of persons.

Nothing in s. 344.62 nor 344.63 permits WisDOT to exempt a particular group from the requirements of the mandatory insurance law. Only the legislature may create such an exemption, and this rule making therefore lacks any proposal to create such an exemption.

With regard to self-insurance, s. 344.16(1) provides that "Any person in whose name more than 25 motor vehicles are registered may qualify as a self-insurer..." Accordingly, a Mennonite Church or organization that registers 25 or more vehicles in its name may qualify for self-insurance. But, nothing in the statute permits a collection of individually-owned and registered vehicles to qualify for "self insurance." Accordingly, this rule does not propose any amendment to permit groups persons owning individually

titled and registered vehicles to qualify as a single self-insured person. Any such change to Wisconsin law would need to be made statutorily by the legislature.

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.

Trans 100, Additional Installment Agreements Implementation Costs

The Uninsured Motorist Unit (UMU) processes an average of 285 private and court ordered installment agreements for damages per month. UMU also processes an average of 34 defaults on these agreements, which is approximately 12%.

Assuming that 10% of installments agreements may default above the current 12% rate once the knowledge of an opportunity to negotiate subsequent agreements becomes well known, we could anticipate a rise in defaults from the current 12% (34 per month) to a rate of 22% (63 per month).

Assuming that of the 22% of defaults, 80% (50) would opt for an additional agreement if approved by the creditor.

This would bring the total amount of private installment agreements processed by the Uninsured Motorist Unit to 323 per month with a continuing 22% defaulting.

Transactions	MPU	Increase in Annual Number of Transactions	Hours of Increased work	Number of new FTEs Needed	Costs
Processing installment agreements	20	600	200	.12	\$6432.00
Processing defaults on agreements	7.5	348	43.5	.025	\$1340.00
Form Changes	240	1	4	.002	\$107.20
Totals		949	247.5	.147	\$7900.00

This cost would be offset by the reinstatement fees collected each time. Fees for the reinstatements could amount to between \$36,000 and \$66,000.

At this time the extra work would be completed by the Uninsured Motorist Unit without the addition of any full time employees. The costs would be offset by the reinstatement fees.

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 copies of proposed rule: Copies of the proposed rule may be obtained, without cost, by writing 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@wisconsin.gov.

PART 2 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-lending 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 renumbered Trans 100.15(5) and 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) (b)(note), (e)(note), (f) to (i) and (1m) are created to read:

Trans 100.18(1)(b)(note) 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.

(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).

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. This provision permits more than one debtor-creditor agreed or judicially ordered payment plan under s. 344.25 or 27, Stats.

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 may not be licensed in Wisconsin until the debtor

reinstates his or her operating privilege in that other state. 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) is 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 sub. (1)(f) to (i), and shall require the judgment creditor to advise the division of motor vehicles upon receipt of payments totaling that amount.

SECTION 19. Trans 100.18(3)(b)(intro.) is renumbered Trans 100.18(3)(b) and amended to read:

Trans 100.18(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 may not 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 20. Trans 100.18(3)(b)1. and 2. are repealed.

SECTION 21. Trans 100.18(3)(b)2.(note) is renumbered Trans 100.18(3)(b)(note).

SECTION 22. Trans 100.18(3)3. and (note) are repealed.

SECTION 23. Trans 100.18(4)(title) is amended to read:

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

SECTION 24. 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 6th day of **August**, 2010.

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

LEG. COUNCIL COMMENTS GO HERE

PART 4
CR 10-070

ANALYSIS OF FINAL DRAFT OF TRANS 100

(a) **Basis and Purpose of Rule.** 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 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.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on July 21, 2010. An emergency rule public hearing was also held in Madison on June 24, 2010. The Department changed the proposed rule as a result of testimony at the public hearing and written comments to permit multiple judicial and debtor-creditor agreement payment plans to form the bases of operating privilege and vehicle registration reinstatement under ss. 344.25 and 344.27, Stats. A detailed explanation of the changes and the policy and legal basis for the change is found in the Plain Language Analysis.

(c) **List of Persons who Appeared or Registered at Public Hearing.** The following persons appeared/registered at the **emergency** rule hearing held on June 24, 2010:

Name of Person Appearing at Emergency Rule Hearing	Spoke for Information	Registered for Information	Submitted Written Comments
Myron L. Horst, Deacon, Mennonite Church, Beloit, WI	✓		
Edward Ker, Deacon, Eastern Pennsylvania Mennonite Church, Owen and Pleasant Ridge congregations, Owen, WI	✓		
Tom Muniz, Attorney, representing client Kenneth Witmer, Mennonite Organization, Ripon, WI	✓		✓

Name of Person Appearing at Emergency Rule Hearing	Spoke for Information	Registered for Information	Submitted Written Comments
Kenneth Witmer, Deacon, Mennonite Church, Neshkoro, WI	✓		
Leroy H. Martin, Weaverland Mennonite Aid, Colby, WI		✓	✓
Philip H. Martin, Weaverland Mennonite Aid, Loyal, WI	✓		
Joseph K. Hursh, Eastern Mennonite Church, Loyal, WI	✓		
Alvin Z. Horning, Agent, Weaverland Mennonite Vehicle Aid Plan, Thorp, WI		✓	
Elvin Snyder, Agent, Weaverland Mennonite Vehicle Aid Plan, Fennimore, WI		✓	

The following persons appeared, registered or provided testimony or written comments that were admitted into the record at the *permanent* rule hearing held on July 21, 2010:

Name of Person Appearing at Permanent Rule Hearing	Spoke in Opposition	Registered for Information	Submitted Written Comments	Testimony from ER Hearing Made Part of Record
Molly Gena, Attorney, Legal Action of Wisconsin, Milwaukee, WI	✓		✓	
Myron L. Horst, Deacon, Mennonite Church, Beloit, WI	At ER Hearing	✓		✓
Aaron Weaver, Deacon, Weaverland Mennonite Vehicle Aid Plan, Granton, WI		✓		
Carl Zimmerman, Weaverland Mennonite Vehicle Aid Plan, Loyal, WI		✓		
Mahlon Mast, Minister, Mennonite Church, Brodhead, WI		✓		
Simon P. Kropf, Nationwide Fellowship Churches, Beloit, WI		✓		
Alvin Horning, Weaverland Mennonite Vehicle Aid Plan, Thorp, WI		✓		
Philip H. Martin, Weaverland Mennonite Aid, Loyal, WI	At ER Hearing	✓		✓
Edward Ker, Deacon, Eastern Pennsylvania Mennonite Church, Owen and Pleasant Ridge congregations, Owen, WI	At ER Hearing			✓
Tom Muniz, Attorney, representing client Kenneth Witmer, Mennonite Organization, Ripon, WI	At ER Hearing		At ER Hearing	✓

Name of Person Appearing at Permanent Rule Hearing	Spoke in Opposition	Registered for Information	Submitted Written Comments	Testimony from ER Hearing Made Part of Record
Kenneth Witmer, Deacon, Mennonite Church, Neshkoro, WI	At ER Hearing			✓
Leroy H. Martin, Weaverland Mennonite Aid, Colby, WI			At ER Hearing	✓
Joseph K. Hursh, Eastern Mennonite Church, Loyal, WI	At ER Hearing			✓

The written comment period was held open until close of business the day of the hearing. In addition to those submitted at hearing(s), written comments were also received from the following persons:

Philip Rosenkranz, Attorney, Legal Aid Society of Milwaukee (via e-mail)

Monte E. Weiss, Attorney, Deutsch & Weiss, LLC, Milwaukee, WI

Senator Lena C. Taylor, 4th Senate District, Madison, WI

(d) **Summary of Public Comments and Agency Response to those Comments.** The persons testifying at hearing and commenting on the rule provisions related to the damage judgment law recommended that DMV permit an injured party and a driver to agree to a voluntary repayment plan after the driver has defaulted on a court-ordered plan. They suggested there should not be limits on the opportunity for judgment debtors and creditors to work out a mechanism for getting the judgment paid and the driver's operating privilege and vehicle registrations reinstated. The Department adopted this recommendation.

The persons commenting on the mandatory insurance law recommended the Department permit groups of individuals with religious beliefs that forbid or discourage the use of insurance to form collectives that qualify for self-insurance under Wisconsin law, or exempt such persons from the mandatory insurance law's requirements. The Department concluded that it lacks statutory authority to extend the self-insurance law to unrelated persons who are members of an organization or congregation, and that it cannot create exemptions to the mandatory insurance law not specifically authorized by the legislature.

(e) **Explanation of any Changes Made to the Plain Language Analysis or Fiscal Estimate.** The Plain Language Analysis was changed to explain testimony and written comments received by the Department and Department reaction to that input, including explanations of changes made to the proposed rule as a result of the hearing. The fiscal estimate was changed because changes to procedures related to the damage judgment law are expected to change the number of damage judgment law transactions processed by the Department.

(f) **Response to Legislative Council Recommendations.** All of the comments contained in the Legislative Council report have been incorporated into the proposed rule except that the recommendation to replace the word “must” with the word “should” throughout the rule was not adopted. The word “should” indicates an “aspiration” rather than a mandatory requirement. *In the Matter of Judicial Disciplinary Proceedings Against the Honorable Michael J. Gableman; Wisconsin Judicial Commission v. Michael J. Gableman, 2010 WI 62*, par. 31. The provisions containing the word “must” are intended as mandated requirements and would be difficult for laymen to read if reformatted in a “no person may... unless...” format. The provision in proposed s. Trans 100.18(2)(am) was rewritten in that form; in the other instances, the use of the word “must” as indicating a mandatory condition was retained.

(g) **Final Regulatory Flexibility Analysis.** 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.