

## **Report From Agency**

STATE OF WISCONSIN

DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY

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### **CR 06-041**

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

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

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This report is submitted to the presiding officers 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:** Ch. 351, Stats.

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

**Explanation of agency authority:** Section 85.16(1), Stats., grants 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., and offenses specifically identified in s. 351.02(1)(a), Stats., count as “minor offenses.” Persons who commit a combination of 12 or more “minor” and “major offenses” are deemed “Habitual Traffic Offenders.” This rule makes minor changes to Ch. Trans 103 to make it consistent with the new definition of “minor offense” enacted in Act 25.

Drivers who accumulate 4 or more “major offenses” also have their operating privileges revoked as habitual traffic offenders. Neither the statutory amendments made by 2005 Wis. Act 25 nor this rulemaking would alter that mechanism.

2005 Act 25 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. Drivers whose licenses may be reinstated after reassessment will be required to post proof of financial responsibility for the future as their driver record requires, without consideration of the reassessed and withdrawn habitual traffic offender revocation. 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 Ch. Trans 103.

**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 affect 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](mailto: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 Copies of Proposed Rule:** Copies of the proposed rule can be obtained, without cost, by writing 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.

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**PART 2**  
**TEXT OF PROPOSED RULE**

**SECTION 1.** 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 for 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 are in strict conformity with the offenses described in s. 351.02(1) (a), and any federal law which is in substantial conformity with the offenses described in 351.02(1) (a).

(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.,~~ that is not a major or petty offense, or for 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 are in strict conformity with such ch. 346 offenses, and any federal law which is in substantial conformity with such ch. 346 offenses.

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

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

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

**SECTION 3.** 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' classifications are determined in accordance with this chapter.

**(END OF RULE TEXT)**

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**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 May, 2006.

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FRANK J. BUSALACCHI  
Secretary  
Wisconsin Department of Transportation









ANALYSIS OF FINAL DRAFT OF TRANS 103

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(a) **Basis and Purpose of Rule.** 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. The purpose of this rulemaking is to bring the department's administrative rule related to habitual traffic offenders into line with the statutes that were revised in Act 25, and to reduce the administrative burden on Wisconsin courts and DMV caused by requests to reopen old traffic cases in order to have drivers' status determined under the new law.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on 5-16-06. As a result of comments filed by Legal Action of Wisconsin, the department clarified its intention to treat persons whose HTO revocations are withdrawn following reassessment under the new law as though they had not had their operating privileges revoked under the HTO laws.

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

(d) **Summary of Public Comments and Agency Response to those Comments:**  
Written comments were received from:

Hon. James Gramling, Milwaukee Municipal Court Presiding Judge wrote in support of the rulemaking. He stated that the proposal to reassess drivers' status will "eliminate countless hours of court time, will implement the law in a fair manner, and will not present a danger to the public welfare."

David Pifer, of Legal Action of Wisconsin, wrote in support of the proposed rule making. Mr. Pifer wrote that assisting clients with HTO cases under current regulations, "often requires multiple court appearances in multiple courts, which is inefficient for everyone involved... Automatic recalculation of HTOs will eliminate this problem..."

**Agency Response:** The Department believes that both comments support the Department's proposed rulemaking and particularly support that portion aimed at reducing the administrative burden faced by the courts and the department.

(e) **Explanation of any Changes Made to the Plain Language Analysis or Fiscal Estimate:** The plain language analysis has been slightly changed to better explain that

DMV counts any major offense and any minor offense as a countable offense for purposes of determining whether a person has accumulated 12 of the offenses that will trigger an HTO revocation.

(f) **Response to Legislative Council Recommendations.** The Legislative Council report contained four comments, all of which have been addressed and adopted in the proposed rule.

The Legislative Council comments showed that the proposed draft could confuse persons reading the rule as to whether minor violations of local ordinances, tribal laws or federal law could be counted as “major offenses” by DMV in making HTO calculations. This was not DMV’s intention, and the proposed rule is amended to avoid any confusion.

Rather than incorporate the language used in s. 351.02(1)(c), Stats., into a separate definition of “another traffic offense,” the proposed rule has been revised to incorporate that language directly into the definitions of “major” and “minor” offense. The Legislative Council’s recommendation on this point has therefore been adopted.

Because we have inserted this language into the definitions of “major” and “minor” offenses, the proposed definition of “another traffic law” that appeared in section 1 of the proposed rule making (for the same purpose) has been deleted.

(g) **Final Regulatory Flexibility Analysis.** This rule making will have no effect upon small businesses, except to the extent that it permits some employees to reinstate driver licenses.