

Report From Agency

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

CR 11-043

The Wisconsin Department of Transportation proposes an order to amend Trans 100.02(11m), (12m), and (13m), relating to mandatory minimum liability limits for insurance policies under 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.

Submitted by:

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PART 1
CR 11-043

ANALYSIS PREPARED BY THE DEPARTMENT OF TRANSPORTATION

Statutes interpreted: ss. 344.01(2)(d), 344.15(1), 344.33(2)(a) to (c), Stats.

Statutory authority: ss. 85.16(1), 227.11(2)(a), and 344.66, Stats.

Explanation of agency authority: The department is charged with administering the safety responsibility, damage judgment, and mandatory insurance laws contained in ch. 344, Stats. This rule making implements ch. 344, Stats., as amended by 2011 Wis. Act 14.

Related statute or rule: ch. 344, Stats.

Plain language analysis: Current Wis. Admin. Code ch. Trans 100 reflects the mandatory minimum liability limit amounts established under 2009 Wis. Act 28 and the indexing system for adjustments to those limits. 2011 Wis. Act 14 lowered the mandatory minimum liability limit amounts and repealed the indexing system. This rule making will amend the mandatory minimum insurance limits in current Trans 100 to conform to those set by 2011 Wis. Act 14, and repeal the current rule's references to the indexing system.

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. Michigan law requires the following minimum liability amounts by type: "\$20,000.00 because of bodily injury to or death of 1 person in any 1 accident and, subject to said limit for 1 person, \$40,000.00 because of bodily injury to or death of 2 or more persons in any 1 accident, and \$10,000.00 because of injury to or destruction of property of others in any 1 accident." Mich. Comp. Laws § 257.520(b)(2) (2011). These limits do not appear to be adjusted by index.

Minnesota: The Minnesota No-Fault Act, Minn. Stat. § 65B.48 (2010), requires owners of registered motor vehicles to maintain no-fault insurance. Vehicle owners must be insured to the following minimum liability amounts by type: "not less than \$30,000 because of bodily injury to one person in any one accident and, subject to said limit for one person, of not less than \$60,000 because of injury to two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, of not less than \$10,000 because of such injury to or destruction of property of others in any one accident." Minn. Stat. § 69B.49 subd. 3(1) (2010). These limits do not appear to be adjusted by index.

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. Illinois requires drivers to carry bodily injury or death liability limits of \$20,000 for single-person and \$40,000 for multiple-persons, as well as property damage liability limits of \$15,000 and uninsured motorist coverage. 625 Ill. Comp. Stat. 5/7-203 (2011). These limits do not appear to be adjusted by index.

Iowa: Iowa does not mandate that drivers or vehicle owners carry insurance. A driver who causes personal injury or damage exceeding \$1,000 to another party must prove his or her financial responsibility or be subject to license suspension. Drivers can prove financial responsibility by showing that they were covered by automobile liability insurance at the time of the accident. An insurance policy is not an effective proof of financial responsibility unless it meets the following minimum liability amounts: \$20,000 for bodily injury or death to one person, \$40,000 for bodily injury or death to two or more persons, and \$15,000 for property damage. Iowa Code § 321A.5 subd. 3 (2011). These limits do not appear to be adjusted by index.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: The proposed rule revises the mandatory minimum liability limits to agree with new statutory limits, and removes the indexing adjustment system repealed by 2011 Wis. Act 14. Factual data from insurance industry sources was used to estimate the growth in the amount of average injury claims in Wisconsin. [Property Casualty Insurers Association of America, *2009 Wisconsin Act 28: Analyzing the Repeal of Automobile Insurance-Related Provisions* (Jan. 18, 2011).]

Analysis and supporting documentation used to determine effect on small businesses: The department anticipates that this regulatory change will have some fiscal effect on small business consistent with the *Fiscal Estimate and Economic Impact Analysis* accompanying this proposed rule. Generally, the department anticipates that revenues to insurance companies may fall if drivers purchase less liability coverage; however, insurance companies may be required to pay out less in damage claims.

The after-insurance liability of drivers who carry only the minimum required insurance can be expected to rise if the insurance coverage is inadequate to cover damages. When medical bills and collision repair bills exceed insurance coverage, the impact of these changes may be realized by providers of medical services and auto repair services. Small businesses are therefore anticipated to be affected to the extent that they are involved in either selling insurance, insuring drivers as a vicariously liable employer, providing post-accident services to minimally insured drivers, or attempting to recover damages from a minimally insured driver.

Insurance industry data suggest that the new minimum limits for insurance coverage will exceed the average injury claim in Wisconsin by the year 2018. The department finds, however, that it is infeasible to implement the methods for reducing the impact of this rule on small businesses set forth in s. 227.114(2), Stats., because the department is required to administer ch. Trans 100 consistent with the statutory changes made in 2011 Wis. Act 14.

Agency contact person and copies of proposed rule: Copies of the proposed rule may be obtained, without cost, by writing to Jane Dederich, Accident Records Unit Supervisor, Division of Motor Vehicles, Room 804, P. O. Box 7983, Madison, WI 53707-7983, or by calling (608) 264-7236. You may also contact Ms. Dederich via e-mail at: dotuninsuredmotorist@dot.wi.gov.

To view the proposed amendments to the rule and view the current rule via internet, you may visit the following website:

[http:// www.dot.wisconsin.gov/library/research/law/rulenotices.htm](http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm)

PART 2

TEXT OF PROPOSED RULE

CR 11-043

SECTION 1. Trans 100.02(11m), (12m), and (13m) are amended 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~~\$50,000.

(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~~\$10,000.

(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~~\$25,000.

(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.)

Signed at Madison, Wisconsin, this ____ day of

_____, 2012.

Mark Gottlieb, P.E.
Secretary
Wisconsin Department of Transportation

PART 3

CR 11-043

RECOMMENDATIONS OF THE LEGISLATIVE COUNCIL

The following is the Legislative Council's Clearinghouse Report and Comments for Clearinghouse Rule 11-043, submitted to the department on September 29, 2011.

PART 4
CR 11-043

ANALYSIS OF FINAL DRAFT OF TRANS 100

(a) **Need for Amended Rule**. Current Wis. Admin. Code ch. Trans 100 reflects the mandatory minimum liability limit amounts established under 2009 Wis. Act 28 and the indexing system for adjustments to those limits. 2011 Wis. Act 14 lowered the mandatory minimum liability limit amounts and repealed the indexing system. This rule making will amend the mandatory minimum insurance limits in current Trans 100 to conform to those set by 2011 Wis. Act 14, and repeal the current rule's references to the indexing system.

(b) **Modifications as a Result of Testimony at Public Hearing**. None. Pursuant to s. 227.16(2)(b), Stats., the department did not hold a public hearing for this proposed rule making. No written comments were filed with the department.

(c) **List of Persons who Appeared or Registered at Public Hearing**. None. Pursuant to s. 227.16(2)(b), Stats., the department did not hold a public hearing for this proposed rule making.

(d) **Response to Legislative Council Recommendations**. The recommendations of the Legislative Council have been accepted in whole, as follows.

1. *Statutory Authority*. The statutory authority citations have been revised pursuant to the recommendations of the Legislative Council.

5. *Clarity, Grammar, Punctuation and Use of Plain Language*.
 - a. *Plain Language Analysis*. The department believed that the analysis and data were needed in the evaluation of the rule to meet the requirements of s. 227.14(2)(a)6. Pursuant to the recommendations of the Legislative Council, the plain language analysis has been shortened.
 - b. *Analysis and supporting documentation used to determine the effect on small businesses*. This section has been revised pursuant to the recommendations of the Legislative Council.
 - c. *Anticipated costs incurred by the private sector*. The subsection on "Anticipated costs incurred by the private sector" was intended to be read as part of the small business analysis. Pursuant to the recommendations of the Legislative Council, this heading has been removed to conform with s. 227.14, Stats., and the *Administrative Rules Procedures Manual*. The analysis has also been revised with limited focus on small business effects, per Legislative Council recommendations.

(e) **Final Regulatory Flexibility Analysis**. The department has determined that this rulemaking will have an impact on small businesses to the extent that small businesses may be affected by minimally-insured drivers.

Revenues to insurance companies may fall if drivers purchase less liability coverage; however, insurance companies may be required to pay out less overall in damage claims because of the lower policy limits. Lower liability limits may lower premiums for drivers who buy minimally compliant policies. Whether that will result in more people becoming insured or maintaining insurance is uncertain.

Insurance industry data suggest that the new minimum limits for insurance coverage adopted by 2011 Wis. Act 14 and this rule will exceed the average injury claim in Wisconsin by the year 2018. The after-insurance liability of drivers who carry only the minimum required insurance can be expected to rise if their insurance coverage is inadequate to cover damages, impacting those seeking damages from minimally insured drivers. When medical bills and collision repair bills exceed insurance coverage, the impact of these changes may be realized by providers of medical services and auto repair services.

Small businesses are therefore anticipated to be affected to the extent that they are involved in either selling insurance, insuring drivers as a vicariously liable employer, providing post-accident services to minimally insured drivers, or attempting to recover damages from a minimally insured driver.

The methods of ss. 227.114(2)(a)-(e), Stats., are infeasible to reduce the anticipated impact on small businesses. This rulemaking imposes no additional reporting requirements, [id. (a)-(c)], nor any design or operational standards. [Id. (d)]. Exempting small businesses from the requirements of this rule would be contrary to the requirements of 2011 Wis. Act 14. Executive agencies may not adopt rules at variance with unambiguous statutes. [*Metro. Holding Co. v. Bd. of Rev. of City of Milwaukee*, 173 Wis.2d 626, 633, 495 N.W.2d 315 (1993).] Moreover, exempting small businesses from minimum insurance requirements would not address the impact of this rule on those small businesses that sell insurance and those small businesses that may need to seek after-insurance damages or payments from a minimally insured driver. The department has thus not incorporated any of the methods of ss. 227.114(2)(a)-(e) into this proposed rule.