

344.02 Hearing on suspension or impoundment.

(1) Whenever the department under s. 344.13 gives notice of the amount of security required to be deposited and that an order of suspension or impoundment will be made if such security is not deposited, it shall afford the person so notified an opportunity for a hearing on the proposed action, if written request for a hearing is received by the department prior to the date specified in the notice, or prior to the postponed effective date of suspension if postponement has been granted under s. 344.14 (1). Upon receipt of timely request for hearing, the department shall fix the time and place of the hearing and give notice thereof to such person by regular mail. The scope of the hearing is limited to the matter set forth in s. 344.14 (2) (k) and, subject to s. 344.14 (2m), to whether or not the person is the owner of the motor vehicle to be impounded. Any person who fails without reasonable cause to appear at the time and place specified in the notice shall forfeit the right to a hearing.

(2) No law enforcement officer or other witness called by the person who has requested a hearing to testify on his or her behalf may be paid a witness fee by the department. No law enforcement officer called as a witness for the department may be paid any witness fee.

(3) Upon completion of the hearing, the department shall make findings of fact, conclusions of law, and a decision, and shall either proceed to order suspension of the person's operating privilege, or registrations, or both, and may also order the impoundment of the person's motor vehicle, in accordance with s. 344.14, or upon good cause appearing therefor, shall terminate the proceedings.

(4) The time during which enforcement of an order of suspension or impoundment is stayed pending completion of court review thereof shall not be included as part of the one-year period fixed by s. 344.18 (1) (d) for suspension or the period fixed under s. 344.185 (2) (a) or (b) for impoundment.

History: 1971 c. 253; 1977 c. 29 ss. 1462, 1654 (7) (a), (c); 1977 c. 418; 1979 c. 258; 1981 c. 347 s. 80 (2); 1981 c. 363, 391; 1991 a. 269; 1993 a. 16; 1997 a. 27, 84.

The hearing procedures under this section satisfy due process. A person's minimal property interest is balanced by the state's interest in the procedures, which carry little risk of an erroneous deprivation of property. *Kopf v. State*, 158 Wis. 2d 208, 461 N.W.2d 813 (Ct. App. 1990).

344.03 Judicial review. (1) Any person aggrieved by a final decision of the department under this chapter may, at any time prior to 30 days after the entry of an order of suspension, revocation or impoundment, seek judicial review under ch. 227.

(2) If any person aggrieved by a decision of the department under this chapter fails to seek judicial review under ch. 227 within the time allowed in sub. (1), the circuit court may, upon the person's petition and notice to the department, and upon the terms and within a time as the court deems reasonable, but not later than one year after the act complained of or, in the case of an impoundment, after the vehicle has been ordered sold under s. 344.185 (2), allow a review with the same effect as though done within the time prescribed in sub. (1). This subsection does not authorize the court to stay suspension or revocation of an operator's license.

History: 1977 c. 29 ss. 1463, 1654 (7) (c); 1977 c. 187, 418; 1981 c. 347 s. 80 (2); 1981 c. 363, 391; 1993 a. 16.

344.04 Power of court to stay suspension of registration or impoundment of vehicles. (1) Notwithstanding any other provision of this chapter, the secretary shall not suspend the registration of a vehicle when ordered not to do so by the court wherein the judgment for damages was had or, in a case not involving a judgment, when ordered not to do so by a court under petition of the registrant in accordance with sub. (2).

(2) Upon receiving information, other than of a judgment for damages in a court of this state, that would be cause for suspension of registration or impoundment of the vehicle, the secretary shall notify the registrant of the intention to suspend such registration or impound the vehicle. The registrant may thereupon petition any court of record in the registrant's county for an order enjoining the secretary's contemplated action, whereupon the judge of such

court shall grant an order restraining the secretary in the matter until the petition is finally determined by the court. If such petition and order are served upon the secretary within 10 days after the date of the secretary's notice or in any event before the secretary has suspended the registration or impounded the vehicle, the secretary shall await the final determination of the court. The secretary shall be given notice of the hearing. Upon a showing that it would result in undue hardship upon the petitioner to have any such registration suspended or the vehicle impounded, the court shall issue an order restraining the secretary from suspending the registration or impounding the vehicle.

(3) This section does not authorize a court to stay suspension or revocation of an operator's license.

History: 1977 c. 29 s. 1654 (7) (c); 1977 c. 273; 1981 c. 363; 1991 a. 269; 1997 a. 84.

344.05 Courts to report nonpayment of certain judgments.

(1) If a judgment of \$500 or more for damages arising out of a motor vehicle accident is not satisfied within 30 days after its having become final by expiration without appeal of the time within which an appeal might have been taken or by final affirmation on appeal, the clerk of the court in which the judgment was rendered, or the judge if the court has no clerk, shall immediately forward to the secretary a certified copy of the judgment upon request of the judgment creditor or the attorney of record for the judgment creditor.

(2) If the defendant named in any certified copy of a judgment reported to the secretary is a nonresident, the secretary shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registration certificates of the state of which the defendant is a resident.

History: 1977 c. 29 s. 1654 (7) (c); 1981 c. 20; Sup. Ct. Order, 146 Wis. 2d xiii (1988); 1997 a. 84.

344.07 Responsibility law not to prevent other process. Nothing in this chapter shall be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law.

344.08 Suspension for failure to report accident.

(1) The secretary may suspend the operating privilege or registration of any person who fails to report an accident as required by s. 346.70 or to give correctly the information requested by the secretary in connection with such report unless, in the judgment of the secretary, there was excusable cause for such failure or unless the accident did not result in injury or damage to the person or property of anyone other than the person so required to report.

(2) Any operating privilege suspended or revoked under this section, or suspended or revoked under any other section for failure to report an accident, shall be reinstated in accordance with s. 344.09 at the end of one year following the effective date of the suspension or revocation order if, during such one-year period, no notice of action has been filed with the department in the manner specified in s. 344.18 (1) (d).

History: 1977 c. 29 s. 1654 (7) (a), (c); 1979 c. 258; 1991 a. 269; 1997 a. 84.

344.09 Reinstatement of operating privilege and registration.

(1) Whenever the secretary is satisfied that the reason for suspending or revoking an operating privilege under this chapter has been removed, including satisfaction of any of the requirements of s. 344.18, the secretary shall order reinstatement of the operating privilege. The department shall give notice of the reinstatement to the person whose operating privilege was suspended or revoked in the manner it deems appropriate. The order reinstating a suspended operating privilege has the same effect as an automatic reinstatement under s. 343.39.

(2) Whenever an operating privilege suspended or revoked under this chapter is reinstated, any registration that was suspended or revoked along with the operating privilege is reinstated and the department shall return any surrendered and unexpired registration plate in its possession.

(3) Nothing in this section exempts a person from the applicable reinstatement fees under s. 341.36 or 343.21 or from complying with applicable provisions of s. 343.38.

History: 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 273; 1985 a. 29; 1991 a. 269; 1997 a. 84.

SUBCHAPTER II

SECURITY FOR PAST ACCIDENTS

344.12 Applicability of provisions relating to deposit of security for past accidents. Subject to the exceptions contained in s. 344.14, the provisions of this chapter requiring deposit of security and requiring suspension for failure to deposit security apply to the operator and owner of every motor vehicle which is in any manner involved in an accident in this state which has resulted in bodily injury to or death of any person or damage to property of any other person of \$1,000 or more.

History: 1981 c. 20; 1991 a. 269; 1995 a. 113; 1997 a. 84.

Wisconsin's safety responsibility law. FitzGerald. WBB Feb. 1984.

344.13 Secretary to determine amount of security required following accident and to give notice thereof.

(1) The secretary after receipt of a report of an accident of the type specified in s. 344.12 shall determine, with respect to such accident, the amount of security which is sufficient in the secretary's judgment to satisfy any judgment for damages resulting from such accident which may be recovered against either operator or owner of the vehicles involved in such accident. Such determination shall be based upon the total property damage suffered by other persons whose property was involved in the accident, not including the vehicle a person was operating when such operation was with the owner's permission, and on the extent of personal injuries, including deaths, involving other parties to the accident. The determination as to the amount of security required shall not be made with respect to operators or owners who are exempt from the requirements of security and suspension under s. 344.14 (2).

(2) The secretary shall determine the amount of security required to be deposited by each person on the basis of the accident reports or other information submitted. In addition to the accident reports required by law, the secretary may request from any of the persons, including passengers and pedestrians, involved in such accident such further information, sworn statements or other evidence relating to property damage, personal injury or death in motor vehicle accidents as deemed necessary to aid in determining the amount to be deposited as security under s. 344.14. Failure of a person to comply with such request is grounds for suspending such person's operating privilege but no suspension shall be made on such grounds until one follow-up request has been made and at least 20 days have elapsed since the mailing of the first request.

(3) The secretary within 90 days after receipt of a report of an accident of the type specified in s. 344.12 and upon determining the amount of security to be required of any person involved in such accident or to be required of the owner of any vehicle involved in such accident, shall give at least 10 days' written notice to every such person of the amount of security required to be deposited by the person. The notice also shall state that an order of suspension will be made as provided in s. 344.14, unless within such time security is deposited as required by the notice. The order of suspension may be made a part of the notice, with a provision that it will take effect on the date specified in this subsection unless security is deposited prior to that date.

History: 1971 c. 253; 1977 c. 29 s. 1654 (7) (c); 1977 c. 273; 1991 a. 269; 1997 a. 84.

The 90-day time limit under sub. (3) is directory, not mandatory. Warner v. DOT, 102 Wis. 2d 232, 306 N.W.2d 266 (Ct. App. 1981).

344.14 Suspension for failure to deposit security; impoundment of vehicle; exceptions. (1) If a person who was given notice under s. 344.13 (3) fails to deposit security in the amount and by the time specified in the notice, the secretary shall

immediately suspend the person's operating privilege if the person was the operator of a motor vehicle involved in the accident and all the person's registrations if the person was the owner of a motor vehicle involved in the accident unless the person furnishes proof satisfactory to the secretary that the person comes within one of the exceptions set forth in sub. (2). If the owner and operator are separate persons, only one of them need deposit security or the 2 persons may cooperate in depositing security. Upon request of the owner or operator in question, the secretary may postpone the effective date of a suspension under this section not to exceed 20 days.

(1g) The secretary shall refuse registration of any vehicle owned by a person whose registration has been suspended or revoked under sub. (1).

(1m) In addition to the suspensions under sub. (1), the secretary may order the impoundment of any motor vehicle which is:

(a) Registered in the name of the owner of the motor vehicle involved in the accident.

(b) Registered in the name of the operator of the motor vehicle involved in the accident.

(2) Subsections (1) and (1m) do not apply:

(a) To the owner of a motor vehicle involved in an accident if the owner had in effect at the time of the accident a policy or bond with respect to such motor vehicle, which policy or bond complies with the requirements of s. 344.15.

(b) To the operator who is not the owner of the vehicle involved in the accident if either the owner had in effect a policy or bond applying to the operator's operation of the motor vehicle at the time of the accident or there was in effect at the time of the accident a policy or bond with respect to the operator's operation of motor vehicles not owned by the operator, which policy or bond meets the requirements of s. 344.15.

(c) To the operator or owner whose liability for damages resulting from the accident is, in the judgment of the secretary, covered by any other form of liability insurance policy or bond meeting the requirements of s. 344.15.

(d) To any person qualifying as a self-insurer under s. 344.16 or to any person operating a vehicle for such self-insurer.

(e) To the operator or owner of a vehicle involved in an accident wherein no injury was caused to the person of anyone other than such operator or owner and wherein damage to property of any one person other than such operator or owner did not equal or exceed \$1,000.

(f) To the operator or owner of a vehicle legally parked at the time of the accident, provided that the operators of the other vehicles involved admit that such vehicle was legally parked or other proof establishing such fact to the secretary's satisfaction is filed.

(g) To the owner of a vehicle if, at the time of the accident, the vehicle was being operated without the owner's permission, express or implied, or was parked by a person who had been operating such vehicle without such permission.

(h) To any person who would otherwise have to deposit security if, prior to the date the secretary would otherwise suspend the person's operating privilege and registrations under sub. (1) or order the impoundment of the motor vehicle under sub. (1m), there is filed with the secretary evidence satisfactory to the secretary that the person has been released from liability or has been finally adjudicated not to be liable or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments with respect to all claims for injuries or damage resulting from the accident. The secretary may accept a release from liability executed by a parent as natural guardian on behalf of a minor child with respect to property damage or personal injuries sustained by the minor, provided that the total damages, including the cost of medical care, do not exceed \$5,000 and that, in case of personal injury, the doctor's certificate of injury filed with the department certifies that the minor received no permanent injury.

(i) To the owner of a vehicle insured as required by s. 121.53, 194.41 or 194.42 or to the operator of such vehicle if operating with the owner's permission at the time of the accident.

(j) To the owner of a vehicle involved in an accident if at the time of the accident such vehicle was owned by or leased to the United States, this state or any county or municipality of this state, or to the operator of such vehicle if operating such vehicle with permission.

(k) To the operator or the owner of a vehicle involved in an accident when it appears to the satisfaction of the secretary that there does not exist a reasonable possibility of a judgment in the amount claimed or in a lesser amount being rendered against such operator as a result of the accident.

(2m) A motor vehicle may not be impounded under sub. (1m) if the vehicle is registered, or is required to be registered, in the name of the lessee of the vehicle.

(4) (a) Before the impoundment of a motor vehicle under sub. (1m), the department shall conduct a reasonable search for the owner of the motor vehicle and any holder of a security interest, mortgage or other interest and notify the person so identified of the action.

(b) Any person notified under par. (a) before the vehicle is impounded shall be given not less than 10 days to furnish sufficient proof to the secretary that one of the exceptions in sub. (2) applies.

History: 1971 c. 78; 1971 c. 164 s. 83; 1971 c. 253; 1975 c. 55, 199, 297; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 273; 1981 c. 20, 363; 1983 a. 217; 1989 a. 105; 1991 a. 269, 316; 1995 a. 113; 1997 a. 27, 84.

344.15 Requirements as to policy or bond. (1) No policy or bond is effective under s. 344.14 unless issued by an insurer authorized to do an automobile liability or surety business in this state, except as provided in sub. (2), or unless the policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than \$25,000 because of bodily injury to or death of one person in any one accident and, subject to that limit for one person, to a limit of not less than \$50,000 because of bodily injury to or death of 2 or more persons in any one accident and, if the accident has resulted in injury to or destruction of property, to a limit of not less than \$10,000 because of injury to or destruction of property of others in any one accident.

(2) A policy or bond with respect to a vehicle which was not registered in this state or was registered elsewhere at the time of the effective date of the policy or bond or the most recent renewal thereof may be effective under s. 344.14 even though not issued by an insurer authorized to do an automobile liability or surety business in this state if the following conditions are complied with:

(a) The policy or bond either meets the liability limits specified in sub. (1) or meets the liability limits of the equivalent law of the state in which issued and such limits are, in the judgment of the secretary, adequate to cover any damage or injury involved in the accident in question.

(b) The insurer which issued the policy or bond executes a power of attorney authorizing the secretary to accept service on its behalf of notice or process in any action upon the policy or bond arising out of the accident.

(3) Where service of process is made on the secretary under a power of attorney filed in accordance with sub. (2), the secretary shall forthwith mail by registered mail a copy of the process papers to the insurer at the address given in the filed power of attorney. In all cases of such service, there shall be served 2 authenticated copies for the secretary and such additional number of authenticated copies as there are defendants so served in the action. One of the secretary's copies shall be retained for the secretary's record of service and the other copy shall be returned with proper certificate of service attached for filing in court as proof of service of the copies by having mailed them by registered mail to

the defendants named therein. The service fee shall be \$4 for each defendant so served.

(4) After receipt of the report of an accident of the type specified in s. 344.12, the secretary may forward to the insurer named therein, that portion of the report or other notice which pertains to an automobile liability policy or bond. The secretary shall assume that an automobile liability policy or bond as described in this section was in effect and applied to both the owner and operator with respect to the accident unless the insurer notifies the secretary otherwise within 30 days from the mailing to the insurer of that portion of the report or other notice pertaining to the automobile liability policy or bond. Upon receipt of notice from the insurer that an automobile liability policy or bond was in effect as to the owner only, the operator only or was not in effect as to either of them, the secretary shall within the remainder of the 90-day period specified in s. 344.13 (3) require the owner or operator or both, whichever is applicable, to deposit security pursuant to this chapter. As respects permission to operate the vehicle, the insurer may correct the report or other notice only if it files with the secretary within the 30-day period specified in this subsection an affidavit signed by the owner stating that the operator did not have the owner's permission to operate the vehicle. Where the insurer's failure to notify the secretary within 30 days of a correction in that portion of the report or other notice pertaining to an automobile liability policy or bond is caused by fraud, the insurer shall notify the secretary of the correction within 30 days of the time the fraud is discovered.

(5) Nothing in this chapter shall be construed to impose any obligation not otherwise assumed by the insurer in its automobile liability policy or bond except that if no correction is made in the report or other notice within 30 days after it is mailed to the insurer, the insurer, except in case of fraud, whenever such fraud may occur, is estopped from using as a defense to its liability the insured's failure to give permission to the operator or a violation of the purposes of use specified in the automobile liability policy or bond or the use of the vehicle beyond agreed geographical limits.

History: 1975 c. 55; 1977 c. 29 s. 1654 (7) (c); 1977 c. 60, 293, 418; 1979 c. 102; 1981 c. 284; 1985 a. 29.

The failure to make a correction within the 30-day period under sub. (5) only estops an insurer from asserting one of the defenses listed in that subsection. *Holmgren v. Strebig*, 54 Wis. 2d 590, 196 N.W.2d 655 (1972).

The 30-day notice requirement in subs. (4) and (5) is mandatory. Substantial compliance was inapplicable. *Midwest Mutual Insurance Co. v. Nicolazzi*, 138 Wis. 2d 192, 405 N.W.2d 732 (Ct. App. 1987).

When the insured is also the operator, subs. (4) and (5) do not operate to estop an insurer from raising a "permission" defense. *Nelson v. Zeimetz*, 150 Wis. 2d 785, 442 N.W.2d 530 (Ct. App. 1989).

Coverage of automobile liability insurance is not mandatory in Wisconsin, and a liability policy issued in Oregon with limits of \$10,000 per person is not in conflict with this statute. *Schanche v. Estate of Alvarez*, 368 F. Supp. 543.

344.16 Requirements as to self-insurers. (1) Any person in whose name more than 25 motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the secretary as provided in sub. (2).

(2) The secretary may, upon the application of such a person, issue a certificate of self-insurance when satisfied that such person is possessed and will continue to be possessed of ability to pay judgments obtained against such person.

(3) Upon not less than 5 days' notice and a hearing pursuant to such notice, the secretary may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment within 30 days after such judgment has become final constitutes a reasonable ground for cancellation of a certificate of self-insurance.

History: 1977 c. 29 s. 1654 (7) (c); 1977 c. 273.

The uninsured motorist coverage requirements of s. 632.32 are inapplicable to self-insured entities under s. 344.16. *Classified Insurance Co. v. Budget Rent-A-Car Inc.* 186 Wis. 2d 476, 521 N.W.2d 478 (Ct. App. 1994).

No statute requires a self-insured entity under s. 344.16 to provide uninsured motorist coverage as part of the optional insurance it offers to its customers. *Prophet v. Enterprise Rent-A-Car Company, Inc.* 2000 WI App 171, 238 Wis. 2d 150, 617 N.W.2d 225.

344.17 Requirements as to form and amount of security. (1) The security required under s. 344.14 shall be in such form and in such amount as the secretary may require but in no case in excess of the limits specified in s. 344.15 (1) with reference to the acceptable limits of a policy or bond. The person depositing security shall specify in writing the person or persons on whose behalf the deposit is made and, at any time while such deposit is in the custody of the secretary, the person depositing it may, in writing, amend the specification of the persons on whose behalf the deposit is made to include an additional person or persons, subject to the limitation that a single deposit of security shall be applicable only on behalf of persons required to furnish security because of the same accident.

(2) The secretary may reduce the amount of security ordered in any case if, in the secretary's judgment, from evidence submitted, the amount ordered is excessive or has become excessive by filed release on part of the liability or by adjudication reducing the extent of the liability. In case the security originally ordered had been deposited at the time the reduced amount is ordered, the excess over the reduced amount shall be returned to the depositor or the personal representative forthwith, notwithstanding s. 344.20.

History: 1973 c. 189 s. 20; Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975); 1975 c. 218, 270, 421, 422; 1977 c. 29 s. 1654 (7) (c); 1977 c. 43, 273.

344.18 Duration of suspension for failure to deposit security. (1) Any registration suspended or revoked under s. 344.14 shall remain suspended or revoked and shall not be renewed or reinstated until the person pays the fee required under s. 341.36 (1m), meets one of the requirements under pars. (a) to (d) and satisfies the requirements of sub. (1m). Any operating privilege suspended or revoked under s. 344.14 shall remain suspended or revoked and shall not be reinstated until the person pays the fee required under s. 343.21 (1) (j), complies with the applicable provisions of s. 343.38 and meets any of the following requirements:

(a) The person whose operating privilege or registration was suspended or revoked deposits the security required under s. 344.14.

(b) There is filed with the secretary evidence satisfactory to the secretary that the person whose operating privilege or registration was suspended or revoked has been released from liability or has been finally adjudicated not to be liable. The secretary may accept a release executed by a parent on behalf of a minor child only if the release satisfies the requirements specified in s. 344.14 (2) (h).

(c) There is filed with the secretary evidence satisfactory to the secretary that the person whose operating privilege or registration was suspended or revoked has executed a duly acknowledged written agreement in accordance with s. 344.14 (2) (h) and subject to sub. (3).

(d) One year has elapsed since the effective date of the suspension or revocation order and, during such period, no notice has been filed with the secretary by any claimant that an action was commenced by a party in interest. If the action was commenced in a court of record, the notice required by this paragraph shall include a certified copy of the summons and complaint or counterclaim or cross-complaint and proof of service filed therein. In all cases of service under s. 345.09, an additional notice and service must be made under this chapter to avail oneself of the provisions of this chapter.

(1m) (a) Unless 3 years have elapsed since the date that a requirement under sub. (1) (a), (b), (c) or (d) has been met, the person whose operating privilege or registration was suspended or revoked under s. 344.14 shall file with the department and maintain in effect proof of financial responsibility in the amount, form and manner specified in this chapter.

(b) This subsection applies as a condition precedent to reinstatement of an operating privilege or registration suspended or revoked under s. 344.14.

(3) If a person defaults in the payment of any installment under a duly acknowledged written agreement, the secretary, upon notice of such default given in no event later than 30 days after the time for final installment, shall immediately suspend the registrations and operating privilege of the defaulting person. A suspension or revocation of registration under this subsection shall remain in effect until the person pays the fee required under s. 341.36 (1m), meets the requirement under par. (a) or (b) and satisfies the requirements of sub. (3m). A suspension or revocation of an operating privilege under this subsection shall remain in effect until the person pays the fee required in s. 343.21 (1) (j), complies with the applicable provisions of s. 343.38 and meets any of the following requirements:

(a) Such person deposits the security required under s. 344.14.

(b) One year has elapsed since the effective date of the suspension or revocation order and, during such period, no notice has been filed with the secretary by any claimant that an action was commenced by a party in interest. The notice required by this paragraph shall comply with sub. (1) (d).

(3m) (a) Unless 3 years have elapsed since the date that a requirement under sub. (3) (a) or (b) has been met, the person whose operating privilege or registration was suspended or revoked under sub. (3) shall file with the department and maintain in effect proof of financial responsibility in the amount, form and manner specified in this chapter.

(b) This subsection applies as a condition precedent to reinstatement of an operating privilege or registration suspended or revoked under sub. (3).

(3r) The secretary shall refuse registration of any vehicle owned by a person whose registration has been suspended or revoked under sub. (3).

(4) The secretary shall not suspend, as required by sub. (3), if the defaulting person has made payments to the extent specified in s. 344.15 (1) with reference to the acceptable limits of a policy or bond.

History: Sup. Ct. Order, 67 Wis. 2d 585, 766 (1975); 1975 c. 55, 199; 1977 c. 29 s. 1654 (7) (c); 1977 c. 273; 1979 c. 32, 258; 1981 c. 20; 1985 a. 202 ss. 29, 37; 1987 a. 3; 1991 a. 269, 315; 1997 a. 84.

344.185 Duration of impoundment of motor vehicle; disposition. (1) Any motor vehicle impounded under s. 344.14 (1m) may not be returned to the owner unless:

(a) An owner or holder of a security interest, mortgage or other interest who is first notified after the vehicle is impounded furnishes satisfactory proof to the secretary that one of the exceptions in s. 344.14 (2) applies and pays the expenses incurred by the department in impounding the vehicle; or

(b) The owner deposits the security required under s. 344.13 (3) and pays the expenses incurred by the department in impounding the vehicle.

(2) (a) Any impounded vehicle which is not returned to the owner within 30 days after impoundment shall be sold by the department.

(b) If the owner is making a good faith attempt to redeem the vehicle under sub. (1), the department may grant an extension of up to 30 additional days before selling the vehicle.

(c) The department, upon request, may permit the person who, according to the department's records, holds a security interest in the vehicle to accept and maintain custody of the vehicle after impoundment or to sell the vehicle in a commercially reasonable manner at a public or private sale. The proceeds of the sale under this paragraph shall be transmitted to the department for distribution under par. (e).

(d) If the vehicle is sold, any person who is the holder of a security interest which is perfected under s. 342.19 shall be notified of the sale and any person who holds a security interest, mortgage or other interest in the vehicle and who acquired the security interest, the mortgage or other interest in good faith may file a claim within 30 days after the sale with the department.

(e) 1. The money from the sale of a vehicle shall be used first for payment of all proper expenses of impounding, preparing for the sale and selling the vehicle, including expenses for seizure, maintenance of custody and advertising. Any remaining money may be paid to a claimant under par. (d) in the priority provided under s. 342.19.

2. All other proceeds of the sale remaining after the payments under subd. 1. shall be retained by the secretary of transportation and applied as security for payment of judgments and assignments as provided under s. 344.20 (2). Any amounts not used to pay judgments or assignments shall be transmitted to the secretary of administration for deposit in the school fund.

(3) Notwithstanding subch. VI of ch. 409 and ch. 425:

(a) A creditor with a security interest in a vehicle which is ordered sold under this section may accelerate the maturity of the secured indebtedness, is not required to give notice of default and right to cure, may accept custody of the vehicle and may conduct the sale of the vehicle as provided under sub. (2) (c) without sending notification of the sale to the debtor and may receive proceeds from the sale as provided under sub. (2) (e).

(b) The owner of a vehicle which is ordered sold under this section is deemed in default under the instrument securing the indebtedness but has no right to cure the default or redeem the vehicle once the sale has been ordered, may not receive any proceeds from the sale and remains liable to a secured party for any deficiency which remains unsatisfied after the distribution under sub. (2) (e).

(4) When a vehicle is sold by or at the direction of the department under this section, the sale transfers to the purchaser for value all of the owner's rights therein, and discharges all security interests in the vehicle. The purchaser takes free of all such rights and interests even though the sale is not conducted in a commercially reasonable manner or the department fails to give the notifications required under s. 344.14 (4) (a):

(a) In the case of the public sale, if the purchaser has no knowledge of such defects in the sale and does not buy in collusion with the department, other bidders or the person conducting the sale; or

(b) In any other case, if the purchaser acts in good faith.

History: 1981 c. 363; 2001 a. 10; 2003 a. 33.

344.19 Applicability to nonresidents, unlicensed drivers, unregistered motor vehicles and accidents in other states.

(1) If the operator or the owner of a motor vehicle involved in an accident within this state has no license or registration, whether because the operator or owner is a nonresident or because the operator or owner is a resident who has failed or neglected to obtain a license or registration in this state, the operator or owner shall not be allowed a license or registration until the operator or owner has complied with the requirements of this chapter to the same extent as would be necessary if, at the time of the accident, the operator or owner had held a license and registration in this state.

(2) If the operating privilege or registration of a nonresident is suspended under s. 344.14, the secretary shall transmit a certified copy of the record of such action to the administrator of the division of motor vehicles or equivalent official of the state in which that person resides if the law of the state in which that person resides provides for similar action by the administrator or equivalent official of that state in the event that a resident of this state has a nonresident's operating privilege or registration in that state suspended or revoked for failure to comply with the safety responsibility law of that state.

(3) Upon receipt of such certification from another state to the effect that the operating privilege or registration of a resident of this state has been suspended or revoked in such other state under a law providing for its suspension or revocation for failure to deposit security for payment of judgments arising out of a motor vehicle accident, under circumstances which would require the secretary to suspend a nonresident's operating privilege or regis-

tration had the accident occurred in this state, the secretary shall suspend the operating privilege of such resident if he or she was the operator and all of his or her registrations if he or she was the owner of a motor vehicle involved in such accident. The department may accept a certification which is in the form of a combined notice of required security and suspension order, but shall not suspend a resident's operating privilege or registration on the basis of such order until at least 30 days have elapsed since the time for depositing security in the other state expired. A suspension or revocation of operating privilege under this section shall continue until such resident furnishes evidence of his or her compliance with the law of the other state relating to the deposit of security, pays the fee required under s. 343.21 (1) (j) and complies with the applicable provisions of s. 343.38. A suspension or revocation of registration under this section shall continue until such resident furnishes evidence of his or her compliance with the law of the other state relating to the deposit of security, pays the fee required under s. 341.36 (1m) and satisfies the requirements of sub. (3m).

(3g) The secretary shall refuse registration of any vehicle owned by a person whose registration has been suspended or revoked under sub. (3).

(3m) (a) Unless 3 years have elapsed since compliance of the resident with the law of the other state relating to the deposit of security, the resident whose operating privilege or registration was suspended or revoked under sub. (3) shall file with the department and maintain in effect proof of financial responsibility in the amount, form and manner specified in this chapter.

(b) This subsection applies as a condition precedent to reinstatement of an operating privilege or registration suspended or revoked under sub. (3).

History: 1977 c. 29 ss. 1464, 1654 (7) (a), (c); 1991 a. 269, 316; 1997 a. 84.

344.20 Custody, disposition and return of security.

(1) Security shall be deposited with the secretary in compliance with this chapter.

(2) The secretary shall apply the security only to the payment of judgments and assignments and only as provided in this subsection:

(a) The security may be applied to the payment of judgments for damages arising out of the accident in question rendered against either operator or owner for the damages resulting from such accident in an action at law. Any party to such action in favor of whom a judgment was rendered may move to have the court order the secretary to transmit to the court for application to the payment of the judgment the money or securities available for such purpose, and the court may so order. The secretary shall transmit to the clerk of the court the money or securities in the amount authorized by par. (c) or in the amount specified in the court order if less than the amount so authorized. Securities transmitted shall be valued at the same amount as when received by the department. Any excess shall be returned by the court to the secretary to be held by the secretary subject to the provisions of this chapter.

(b) Subject to the restrictions imposed by par. (c), the security may be applied to the payment of a duly acknowledged assignment by the person who made the deposit, provided the assignment is accompanied by releases signed by all parties in interest and releasing the assignor from all liability to such parties on account of damages arising out of the accident in question.

(c) No amount in excess of the portion designated by the secretary as having been deposited on account of damages suffered by the assignee or judgment creditor or person representing either of them shall be paid out on behalf of such person unless the depositor has been released from liability by all other parties in interest. In the latter event, the deposit may be applied to the payment of the judgment or assignment in question without regard to the designations.

(3) (a) The deposit of security or any balance thereof shall be returned to the depositor or the personal representative under the conditions provided in par. (b) or (c).

(b) The deposit or any balance thereof shall be returned when evidence satisfactory to the secretary has been filed that one of the contingencies specified in s. 344.18 (1) (b), (c) or (d) or (3) (b) has occurred.

(c) If the provisions of s. 344.18 (1) (b), (c) or (d) or (3) (b) are not applicable, the deposit or any balance thereof shall be returned when one year has elapsed from the date the deposit was made and during that period no notice has been filed with the secretary by any claimant that an action was commenced by a party in interest. If the action was commenced in a court of record, the notice required by this paragraph shall include a certified copy of the summons and complaint or counterclaim or cross complaint and proof of service filed therein. In all cases of service under s. 345.09, an additional notice and service must be made under this chapter to avail oneself of the provisions of this chapter.

(4) Security deposited under this section shall be paid into the transportation fund and invested in accordance with s. 25.17 (1) (v).

History: 1973 c. 12; 1975 c. 270, 421; 1977 c. 29 ss. 1464m, 1654 (7) (a), (c); 1977 c. 273; 1979 c. 258; 1991 a. 189, 269.

344.21 Matters not to be evidence in civil suits. Neither the report required following an accident, the action taken by the department pursuant to this chapter, the findings, if any, upon which such action is based nor the security filed as provided in this chapter shall be referred to in any way or be any evidence of the negligence or due care of either party at the trial of any action at law to recover damages, but this shall not be construed to exclude a notice of insurance filed pursuant to s. 344.14 or 344.15 (4), or both, from being admissible in evidence where it would otherwise be material and admissible under the rules of evidence.

History: 1977 c. 29 s. 1654 (7) (e); 1985 a. 29.

344.22 Short title. Sections 344.12 to 344.22 and the general provisions applicable thereto may be cited as the safety responsibility law.

SUBCHAPTER III

PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE

344.24 Applicability of sections relating to proof of financial responsibility for the future. Sections 344.29 to 344.41 are applicable in all cases in which a person is required to deposit proof of financial responsibility for the future, including those cases in which a person is required to deposit proof of financial responsibility for the future under ss. 344.25 to 344.27, those cases in which the deposit of proof of financial responsibility for the future is a condition precedent to reinstatement of an operating privilege or registration suspended or revoked under s. 344.14, 344.18 (3) or 344.19 (3) and those cases in which the deposit of proof of financial responsibility for the future is a condition precedent to issuance of an operator's license under s. 343.38 (4) or reinstatement of an operating privilege revoked under ch. 343.

History: 1989 a. 72; 1991 a. 269; 1997 a. 84.

344.25 Suspension for nonpayment of judgment; exceptions. Upon the receipt, under s. 344.05, of a certified copy of a judgment for damages of \$500 or more arising out of a motor vehicle accident, the secretary shall immediately suspend the operating privilege and all registrations of the person against whom such judgment was rendered, subject to the following exceptions:

(1) If the judgment arose out of an accident caused by the ownership or operation, with permission, of a vehicle owned by or leased to the United States, this state or any county or municipality of this state or a vehicle subject to the requirements of s. 121.53,

194.41 or 194.42, the secretary shall not suspend such operating privilege or registration.

(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.

(3) The secretary shall not suspend such operating privilege or registrations if the judgment debtor obtains a court order for installment payments and furnishes proof of financial responsibility as provided in s. 344.27.

(5) When the secretary receives certification of the entry of a damage judgment in accordance with s. 344.05 against a resident of this state which has been entered by an Indian tribal court in this state or by a court in another jurisdiction, the secretary shall give notice to the person of the receipt of the certification of judgment. If satisfaction of such judgment is not made and copy of such satisfaction filed with the secretary within 30 days from the date such notice was given, the secretary shall suspend the operating privilege and registrations of such judgment debtor.

(6) Notwithstanding sub. (5), subs. (2) and (3) apply to a damage judgment in accordance with s. 344.05 against a resident of this state which has been entered by an Indian tribal court in this state.

History: 1977 c. 29 s. 1654 (7) (c); 1977 c. 273; 1981 c. 20; 1989 a. 105; 1991 a. 39; 1997 a. 84; 1999 a. 80.

344.26 Suspension to continue until judgment paid and proof of financial responsibility given. (1) Subject to the exceptions stated in ss. 344.25 (2) and 344.27 (2), any operating privilege or registration suspended or revoked under s. 344.25 shall remain suspended or revoked until every judgment mentioned in s. 344.25 is stayed, satisfied or discharged and, unless 3 years have elapsed since the date on which the judgment was stayed, satisfied or discharged, until the person whose operating privilege and registration was suspended or revoked furnishes and maintains in effect proof of financial responsibility for the future.

(3) Judgments in excess of the amounts specified in s. 344.01 (2) (d) shall, for the purpose of this section only, be deemed satisfied when payments in the amounts so specified have been credited thereon. Payments made in settlement of any claims because of bodily injury, death or property damage arising from a motor vehicle accident shall be credited in reduction of the respective amounts so specified.

History: 1975 c. 297; 1997 a. 84; 1999 a. 80, 186.

344.27 Installment payment of judgments; suspension upon default. (1) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(2) The secretary shall not suspend the operating privilege or registration and shall restore any operating privilege or registration suspended following nonpayment of a judgment when the judgment debtor obtains such order permitting the payment of the judgment in installments and, unless 3 years have elapsed since the date on which the order permitting the payment of the judgment in installments is filed with the secretary, furnishes and maintains proof of financial responsibility for the future.

(3) If 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.

History: 1977 c. 29 s. 1654 (7) (c); 1997 a. 84; 1999 a. 80, 186.

344.29 Proof of financial responsibility for the future required. Proof of financial responsibility for the future shall be furnished by any person required to give such proof under ss. 344.25 to 344.27, those cases in which the deposit of proof of financial responsibility for the future is a condition precedent to reinstatement of an operating privilege or registration suspended or revoked under s. 344.14, 344.18 (3) or 344.19 (3) and in those cases in which the deposit of proof of financial responsibility for the future is a condition precedent to issuance of an operator's license under s. 343.38 (4) or reinstatement of an operating privilege revoked under ch. 343.

History: 1973 c. 90; 1989 a. 72; 1991 a. 269; 1997 a. 84.

344.30 Methods of giving proof of financial responsibility. Whenever a person is required under ch. 343 or this chapter to give proof of financial responsibility for the future, such proof may be given by filing:

(1) Certification of insurance as provided in s. 344.31 or 344.32; or

(2) A bond as provided in s. 344.36; or

(3) A certificate of deposit of money or securities as provided in s. 344.37; or

(4) A certificate of self-insurance as provided in s. 344.16, supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, the self-insurer will pay the same amounts that an insurer would have been obligated to pay under a motor vehicle liability policy if it had issued such a policy to such self-insurer.

History: 1973 c. 90; 1981 c. 390; 1987 a. 27; 1991 a. 316.

344.31 Certification of insurance as proof. Proof of financial responsibility for the future may be furnished by filing with the secretary the written certification of any insurer duly authorized to do business in this state that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility or by transmitting such certification to the secretary by another means approved by the secretary. Such certification shall give the effective date of such motor vehicle liability policy, which date shall be the same as the effective date of the certification and shall certify coverage for any motor vehicle operated by the named insured if the certification is required to be furnished by a vehicle operator or coverage for any motor vehicle owned by the named insured if the certification is required to be furnished by a vehicle owner.

History: 1973 c. 90; 1977 c. 29 s. 1654 (7) (c); 1979 c. 102 s. 236 (3); 1987 a. 27; 1999 a. 80.

No policy issued pursuant to the ch. 344 financial responsibility statutes may exclude coverage for persons related by blood or marriage to the operator as mandated by s. 632.32 (6) (b) 1. *Bindrim v. Colonial Ins. Co.* 190 Wis. 2d 525, 527 N.W.2d 321 (1995).

344.32 Certification furnished by nonresidents as proof. (1) A nonresident may give proof of financial responsibility by filing with the secretary a written certification of an insurer authorized to transact an automobile liability or surety business in the state in which the person resides or by transmitting such certification to the secretary by another means approved by the secretary, provided the certification otherwise conforms to this chapter. The secretary shall accept the certification if the insurer complies with the following with respect to the policies so certified:

(a) Such insurer shall execute a power of attorney authorizing the secretary to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in this state.

(b) Such insurer shall agree in writing that such policies shall be deemed to conform with the laws of this state relating to the terms of motor vehicle liability policies issued herein.

(2) If any insurer not authorized to transact business in this state, which has qualified to furnish proof of financial responsibility, defaults in any such undertakings or agreements, the secretary shall not thereafter accept as proof any certification of such carrier whether theretofore filed or thereafter tendered as proof, so long as such default continues.

History: 1971 c. 164 s. 82; 1973 c. 90; 1977 c. 29 s. 1654 (7) (c); 1977 c. 273; 1979 c. 102 ss. 42, 236 (3); 1987 a. 27.

344.33 “Motor vehicle liability policy” defined.

(1) **CERTIFICATION.** In this chapter, “motor vehicle liability policy” means a motor vehicle policy of liability insurance, certified as provided in s. 344.31 or 344.32 as proof of financial responsibility for the future, and issued, except as otherwise provided in s. 344.32, by an insurer authorized to do an automobile liability business in this state to or for the benefit of the person named in the policy as the insured.

(2) **MOTOR VEHICLE LIABILITY POLICY.** A motor vehicle policy of liability insurance shall insure the person named therein using any motor vehicle with the express or implied permission of the owner, or shall insure any motor vehicle owned by the named insured and any person using such motor vehicle with the express or implied permission of the named insured, against loss from the liability imposed by law for damages arising out of the maintenance or use of the motor vehicle within the United States of America or the Dominion of Canada, subject to the limits exclusive of interest and costs, with respect to each such motor vehicle as follows: \$25,000 because of bodily injury to or death of one person in any one accident and, subject to such limit for one person, \$50,000 because of bodily injury to or death of 2 or more persons in any one accident, and \$10,000 because of injury to or destruction of property of others in any one accident.

(3) **REQUIRED STATEMENTS IN POLICY.** Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this chapter with respect to bodily injury and death or property damage, or both, and is subject to all the provisions of this chapter.

(4) **CERTAIN TYPES OF COVERAGE EXCLUDED.** Such motor vehicle liability policy shall not insure any liability under any worker's compensation law as provided in ch. 102 nor any liability on account of bodily injury to or death of any employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance or repair of any such motor vehicle or any liability for damage to property owned by, rented to, in charge of or transported by the insured.

(5) **PROVISIONS INCORPORATED IN POLICY BY LAW.** Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

(a) The policy may not be canceled or annulled as to such liability by any agreement between the insurer and the insured after the occurrence of any injury or damage covered by such motor vehicle liability policy.

(b) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurer to make payment on account of such injury or damage.

(c) The insurer shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in sub. (2).

(d) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of this chapter constitutes the entire contract between the parties.

(6) **EXCESS OR ADDITIONAL COVERAGE.** Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage is not subject to the provisions of this chapter. With respect to a policy which grants such excess or additional coverage the term “motor vehicle liability policy” applies only to that part of the coverage which is required by this section.

(7) **REIMBURSEMENT PROVISION PERMITTED.** Any motor vehicle liability policy may provide that the insured shall reimburse the insurer for any payment the insurer would not have been obligated to make under the terms of the policy except for the provisions of this section.

(8) **PRORATION OF INSURANCE PERMITTED.** Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(9) **MULTIPLE POLICIES.** The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurers which policies together meet such requirements.

(10) **BINDERS.** Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy.

History: 1973 c. 90, 243; 1975 c. 147 s. 54; 1977 c. 293, 1979 c. 102 ss. 43, 236 (3), (4); 1981 c. 284; 1999 a. 80.

Although the record owner’s son loaned the car to another against the father’s express wishes, the record owner’s permission under sub. (2) was presumed as a matter of law when the son’s custody and control was such that son was the car’s real owner. Permissive use is to be viewed the same under sub. (2) or under the omnibus coverage of s. 204.30 (3), 1975 stats. [632.32 (2)]. *Gross v. Joecks*, 72 Wis. 2d 583, 241 N.W.2d 727 (1976).

Financial responsibility statutes mandate insurance on the person, not on the vehicles that the person may own. *Cardinal v. Leader National Insurance Co.* 166 Wis. 2d 375, 480 N.W.2d 1 (1992).

The requirements of this section do not apply to all automobile insurance policies issued in this state, only those that provide proof of financial responsibility under s. 344.31 or 344.32. *Beerbohm v. State Farm Mutual Automobile Insurance Co.* 2000 WI App 105, 235 Wis. 2d 182, 612 N.W.2d 338.

An insurer’s excess coverage was illusory in the context of its nonowned vehicle provision. This section requires policy limits of at least \$25,000. The insurer’s policy limited coverage to \$25,000, but excess only. Because the policy’s limit was equal to the statutory minimum, and stacking is prevented, the policy would never provide excess coverage. *Janssen v. State Farm Mutual Automobile Insurance Company*, 2003 WI App 183, 266 Wis. 2d 430, 668 N.W.2d 820, 02–2928.

Sub. (2) applies only to liability policies, not uninsured motorist coverage. *Crandall v. Society Insurance*, 2004 WI App 34, 269 Wis. 2d 750, 676 N.W.2d 174, 03–1453.

344.34 Notice of cancellation or termination of certified policy. When an insurer has certified a motor vehicle liability policy under s. 344.31, a policy under s. 344.32 or a bond under s. 344.36, the insurance so certified shall not be canceled or terminated until at least 10 days after a notice of cancellation or termination of the insurance so certified has been filed in the office of the secretary. No insurance so certified may be canceled or terminated by the insurer prior to the expiration of 90 days from the effective date of the certification on the grounds of failure to pay a premium when due. Such a certified policy or bond subsequently procured shall, on the effective date of its certification, terminate the insurance previously certified. Any certification or recertification filed by the same insurer following cancellation shall be accompanied by a fee of \$3 payable by the insurer.

History: 1973 c. 90; 1977 c. 29 s. 1654 (7) (c); 1979 c. 102 s. 236 (3); 1987 a. 27; 1991 a. 269; 1993 a. 213.

The failure of an insurer to comply with the notice requirement under this section precludes the insurer from asserting that a previously certified policy had lapsed. *Lang v. Kurtz*, 100 Wis. 2d 40, 301 N.W.2d 262 (Ct. App. 1980).

The 10-day notice of cancellation requirement only applied to liability coverage of a policy acquired to satisfy proof of financial responsibility. Uninsured motorist coverage cancellation took effect immediately. *Nutter v. Milwaukee Insurance Co.* 167 Wis. 2d 449, 481 N.W.2d 701 (Ct. App. 1992).

344.35 This chapter not to affect other policies.

(1) This chapter does not apply to or affect policies of automobile insurance against liability which may now or hereafter be required

by any other law of this state. If such policies contain an agreement or are endorsed to conform to the requirements of this chapter, they may be certified as proof of financial responsibility under this chapter.

(2) This chapter does not apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured’s employ or on the insured’s behalf of motor vehicles not owned by the insured.

History: 1991 a. 316.

344.36 Bond as proof. (1) Proof of financial responsibility may be evidenced by the bond of a surety company duly authorized to transact business within this state or 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 court of record. Such bond shall be conditioned for the payment of the amounts specified in s. 344.01 (2) (d). The bond shall be filed with the secretary and shall not be cancellable except after 10 days’ written notice to the secretary.

(2) The bond constitutes a lien in favor of the state upon any surety’s real estate which is scheduled in the bond and which is not exempt by law from execution. Such lien is effective as of the time when the secretary records the bond in the office of the register of deeds of the county wherein such real estate is located, as provided in s. 706.05 (1). Such lien exists in favor of any holder of a final judgment against the person who filed such bond, for damages resulting from the ownership, maintenance, use or operation of a motor vehicle after such bond was recorded, 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.

(3) If the judgment rendered against the principal on the bond is not satisfied within 60 days after it has become final, the judgment creditor may, for his or her own use and benefit and at the judgment creditor’s sole expense, bring an action in the name of the state against the company or persons executing the bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of a person who has executed such bond. In the foreclosure of such lien, ch. 846 on the foreclosure of real estate mortgages shall apply as far as possible.

History: 1973 c. 189 s. 20; Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975); 1975 c. 218; 1977 c. 29 s. 1654 (7) (c).

The direct action statute, s. 632.24, does not apply to actions in which the principal on a bond under this section causes injury. Sub. (3) requires obtaining a judgment against the principal before an action may be brought against the surety. *Vanguard v. Progressive Northern Insurance Co.* 188 Wis. 2d 584, 525 N.W.2d 146 (Ct. App. 1994).

344.37 Money or securities as proof. (1) Proof of financial responsibility for the future may be evidenced by a deposit with the secretary by the person of \$60,000 in cash, or in securities such as may legally be purchased by savings banks or for trust funds of a market value of \$60,000. The secretary shall not accept any such deposit unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.

(2) Deposits made under this section shall be held by the secretary to satisfy, in accordance with this chapter, any execution on a judgment issued against the person making the deposit, for 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. Money or securities so deposited are not subject to attachment or execution unless such attachment or execution arises out of a suit for damages as set forth in this section.

History: 1971 c. 164 s. 82; 1975 c. 270; 1977 c. 29 s. 1654 (7) (c); 1989 a. 32.

344.38 Owner and leasing company may give proof for others. Whenever any person required to give proof of financial

responsibility for the future under this chapter is or later becomes an operator in the employ of any owner, or is or later becomes a member of the immediate family or household of the owner, the secretary shall accept proof given by such owner in lieu of proof by such other person. If the vehicle is leased to the employer, then the leasing company may file proof of financial responsibility on behalf of the person required to furnish such proof. When proof has been given as provided in this section, the person on whose behalf such proof was furnished may be granted a license, but only to operate those vehicles for which proof was so given. The department shall note such restriction on the person's license, including a designation of each vehicle for which proof was given.

History: 1977 c. 29 s. 1654 (7) (a), (c).

344.39 Substitution of proof. The secretary shall consent to the cancellation of any bond or certification of insurance or return any money or securities to the person entitled thereto upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this chapter.

History: 1975 c. 270; 1977 c. 29 s. 1654 (7) (c); 1987 a. 27.

344.40 Revocation or suspension for failure to maintain proof; other proof may be required. (1) (a) Except as provided in par. (b), whenever any person whose operating privilege was suspended or revoked who has furnished proof of financial responsibility fails to maintain such proof at any time during the period when proof of financial responsibility is required, the secretary shall suspend or revoke such person's operating privilege for a period of time running from the date of suspension or revocation until such time as either satisfactory proof of financial responsibility is again furnished or the period during which proof was required to be furnished has expired.

(b) Whenever any person who has furnished proof of financial responsibility fails to maintain such proof at any time during the period when proof of financial responsibility is required under s. 344.18 (1m) or (3m) or 344.19 (3m), the secretary shall suspend all of the person's registrations for a period of time running from the date of suspension until such time as either satisfactory proof of financial responsibility is again furnished or the period during which proof was required to be furnished has expired.

(2) (a) Except as provided in par. (b), whenever any proof of financial responsibility filed under this chapter no longer fulfills the purposes for which required, the secretary shall require other proof meeting the requirements of this chapter and shall suspend or revoke the operating privilege pending the filing of such other proof.

(b) Whenever any proof of financial responsibility filed under s. 344.18 (1m) or (3m) or 344.19 (3m) no longer fulfills the purposes for which required, the secretary shall require other proof meeting the requirements of this chapter and shall suspend all of the person's registrations pending the filing of such other proof.

History: 1973 c. 90; 1977 c. 29 s. 1654 (7) (c); 1989 a. 72; 1991 a. 269; 1997 a. 84.

344.41 Duration of proof; when proof may be canceled or returned. (1) Subject to the exceptions set forth in sub. (2), the secretary shall, upon request, consent to the immediate cancellation of any bond or certification of insurance, return to the person entitled thereto any money or securities deposited pursuant to this chapter as proof of financial responsibility and shall waive any requirement of the filing of proof of financial responsibility whenever, except as provided in sub. (1m), any of the following events has occurred:

(a) The period during which proof of financial responsibility is required has expired; or

(b) The person on whose behalf such proof was filed has died or has become permanently incapacitated to operate a motor vehicle; or

(c) The person who has given proof surrenders the person's license to the secretary.

(1m) Subject to the exceptions set forth in sub. (2), the secretary shall, upon request, consent to the immediate cancellation of any bond or certification of insurance, return to the person entitled thereto any money or securities deposited pursuant to this chapter as proof of financial responsibility and shall waive any requirement of the filing of proof of financial responsibility under s. 344.18 (1m) or (3m) or 344.19 (3m) whenever any of the following events has occurred:

(a) The period during which proof of financial responsibility is required has expired.

(b) The person who has given proof surrenders all of the person's registrations to the secretary.

(2) The secretary shall not consent to the cancellation of any bond or the return of any money or securities if any action for damages upon a liability covered by such proof is then pending or any judgment upon any such liability is then unsatisfied, or if the person who filed the bond or deposited the money or securities has, within one year immediately preceding the request for cancellation of the bond or return of the money or securities, been involved as an operator or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that the person has been released from all liability, or has been finally adjudicated not to be liable for such injury or damages is sufficient evidence thereof in the absence of evidence to the contrary in the records of the secretary.

(3) (a) Whenever any person whose proof has been canceled or returned under sub. (1) (c) desires reinstatement of that person's operating privilege prior to the expiration of the period during which proof of financial responsibility is required, that person shall again furnish proof of financial responsibility. Thereupon that person's operating privilege is reinstated as provided in s. 343.38.

(b) Whenever any person whose proof has been canceled or returned under sub. (1m) (b) desires reinstatement of his or her registrations prior to the expiration of the period during which proof of financial responsibility is required, he or she shall again furnish proof of financial responsibility. Thereupon his or her registrations may be renewed or reinstated upon payment of the fee required under s. 341.36 (1m).

History: 1973 c. 90; 1975 c. 270; 1977 c. 29 s. 1654 (7) (c); 1977 c. 273; 1987 a. 27; 1991 a. 269, 316; 1997 a. 84.

344.42 Submission of certifications and recertifications by insurers. If the sum of certifications and recertifications under ss. 344.31, 344.32 and 344.34 that are submitted by an insurer to the department in any year exceeds 1,000, the insurer shall pay to the department a transaction fee of \$1.50 per certification or recertification that is not transmitted electronically to the department. The department shall promulgate rules establishing procedures for the collection of transaction fees under this section.

History: 1997 a. 27.

Cross Reference: See also ch. Trans 197, Wis. adm. code.

SUBCHAPTER IV

PENALTIES FOR VIOLATIONS OF CHAPTER

344.45 Surrender of license and registration upon suspension. (1) Whenever a person's operating privilege or registration is suspended under this chapter, the department may order the person to surrender to the department his or her operator's license and the registration plates of the vehicle or vehicles for which registration was suspended. If the person fails immediately to return the operator's license or registration plates to the

department, the department may direct a traffic officer to take possession thereof and return them to the department.

(2) Any person who intentionally fails or refuses to return a license and registration plate or plates as required by this section may be required to forfeit not more than \$100.

History: 1971 c. 278; 1977 c. 29 ss. 1465, 1654 (7) (a), (c); 1977 c. 43, 203; 1985 a. 29; 1989 a. 72; 1997 a. 84.

344.46 Transfer of vehicle ownership to defeat purpose of chapter. (1) No owner of a motor vehicle involved in an accident in this state which is reportable under s. 346.70 shall transfer the ownership or registration of any vehicle whose registration is subject to suspension or revocation under this chapter until all of the applicable provisions of this chapter has been complied with or until the secretary is satisfied that such transfer is proposed in good faith and not for the purpose or with the effect of defeating the purposes of this chapter.

(2) Any person violating this section may be required to forfeit not more than \$200.

(3) This section does not apply to or affect the registration of any vehicle sold by a person who, under the terms or conditions of any written instrument giving a right of repossession, has exercised such right and has repossessed such vehicle from a person whose registration has been suspended or revoked under this chapter.

History: 1971 c. 278; 1977 c. 29 s. 1654 (7) (c); 1991 a. 269; 1997 a. 84; 1999 a. 80, 186.

344.48 Forged proof. (1) No person shall:

(a) Forge or, without authority, sign any notice provided for in s. 344.14 or 344.15 (4), or both, to the effect that a policy or bond is in effect or, knowing or having reason to believe that the notice has been forged or signed without authority, file or offer the notice for filing; or

(b) Forge or, without authority, sign any evidence of proof of financial responsibility or, knowing or having reason to believe that such evidence has been forged or signed without authority, file or offer such evidence for filing.

(c) Sign or file the affidavit mentioned in s. 344.15 (4), knowing that it contains a false statement.

(2) Any person violating this section may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

History: 1985 a. 29; 1997 a. 283; 2001 a. 109.

SUBCHAPTER V

FINANCIAL RESPONSIBILITY FOR RENTED AND HUMAN SERVICES VEHICLES

344.51 Financial responsibility for domestic rented or leased vehicles. (1g) In this section:

(a) “Lessor” means a person who, for compensation, leases a motor vehicle to a lessee to be operated by or with the consent of the lessee or who acquires a contract for the leasing of a motor vehicle from another person.

(b) “Motor vehicle” means a self-propelled vehicle.

(c) “Rental company” means a person who, for compensation, rents a motor vehicle to a renter to be operated by or with the consent of the renter or who acquires a contract for the renting of a motor vehicle from another person.

(1m) No lessor or rental company may for compensation rent or lease any motor vehicle unless there is filed with the department on a form prescribed by the department a certificate for a good and sufficient bond or policy of insurance issued by an insurer authorized to do an automobile liability insurance or surety business in this state. The certificate shall provide that the insurer which issued it will be liable for damages caused by the negligent operation of the motor vehicle in the amounts set forth in s. 344.01 (2) (d). No lessor or rental company complying with this subsection,

and no lessor or rental company entering into or acquiring an interest in any contract for the rental or leasing of a motor vehicle for which any other lessor or rental company has complied with this subsection, is liable for damages caused by the negligent operation of the motor vehicle by another person.

(2) Any lessor or rental company failing to comply with this section is directly liable for damages caused by the negligence of the person operating such rented or leased vehicle, but such liability may not exceed the limits set forth in s. 344.01 (2) (d) with respect to the acceptable limits of liability when furnishing proof of financial responsibility.

(3) Any person violating this section may be required to forfeit not more than \$200.

History: 1971 c. 278; 1977 c. 29 s. 1654 (7) (a); 1979 c. 102; 1995 a. 329; 1997 a. 48.

A lessor is not liable to the lessee’s insurer for monies that the insurer paid to a victim of the lessee’s negligence. *American Family Mutual Insurance Co. v. Reciprocal Ins. Service Exchange Mgt. Co.* 111 Wis. 2d 308, 330 N.W.2d 223 (Ct. App. 1983).

When a lessee’s insurance was insufficient to cover all damages, the lessor’s errors and omissions policy was required to cover remaining damages. *Germanotta v. National Indemnity Co.* 119 Wis. 2d 293, 349 N.W.2d 733 (Ct. App. 1984).

Sections 344.30 and 344.16 permit car rental agencies to satisfy their obligation of proving financial responsibility by filing a certificate of self-insurance and receiving a certificate from DOT confirming their ability to pay. A self-insured agency is not the equivalent of an uninsured driver as it is not otherwise liable for its lessee’s negligence. Its liability is limited to the amount an insurer would be required to pay, which under s. 344.01 (2) (d) is fixed at \$25,000. *Boatright v. Spiewak*, 214 Wis. 2d 506, 570 N.W.2d 897 (Ct. App. 1997).

No statute requires a self-insured entity under s. 344.16 to provide uninsured motorist coverage as part of the optional insurance it offers to its customers. *Prophet v. Enterprise Rent-A-Car Company, Inc.* 2000 WI App 171, 238 Wis. 2d 150, 617 N.W.2d 225.

344.52 Financial responsibility for foreign rented vehicles. (1) Whenever any motor vehicle rented for compensation outside this state is operated in this state, the lessor of such motor vehicle is directly liable for all damages to persons or property caused by the negligent operation of such rented vehicle unless, at the time when such damage or injury occurs, the operation of the vehicle is effectively covered by a policy of insurance which provides coverage at least in the amounts specified in s. 344.01 (2) (d) for property damage, personal injury or death suffered by any person on account of the negligent operation of such vehicle. The amount of liability imposed upon the lessor by this section in the absence of insurance coverage shall not exceed the limits set forth in s. 344.01 (2) (d) with respect to the acceptable limits of liability when furnishing proof of financial responsibility. The fact that the rented vehicle is operated in this state contrary to any understanding or agreement with the lessor is not a defense to any liability imposed by this section.

(2) (a) If a motor vehicle rented for compensation outside this state is operated in this state, the lessor of the vehicle is considered to have irrevocably appointed the secretary as the agent or attorney upon whom legal process may be served in any action or proceeding against the lessor or the lessor’s personal representative, successors, or assigns, growing out of the operation of the rented motor vehicle in this state, which appointment is binding upon the lessor’s personal representative, successors, or assigns. The operation of the rented motor vehicle in this state is a signification of the lessor’s agreement that legal process or notice may be served upon the lessor or the lessor’s personal representative, successors, or assigns and that process or notice so served has the same legal force as if personally served upon them in this state.

(b) Service of process or notice under par. (a) shall be made as provided in s. 345.09. This section does not affect the right to serve process or notice on the nonresident operator of the rented motor vehicle as provided in s. 345.09.

(3) In this section, “motor vehicle” means a self-propelled vehicle.

History: 1977 c. 29; 2001 a. 102.

344.55 Insurance for human service vehicles. (1) No motor vehicle may be used as a human service vehicle unless a policy of bodily injury and property damage liability insurance, issued by an insurer authorized to transact business in this state,

is maintained thereon. The policy shall provide property damage liability coverage with a limit of not less than \$10,000. The policy also shall provide bodily injury liability coverage with limits of not less than \$75,000 for each person and, subject to such limit for each person, total limits as follows:

- (a) \$150,000 for each accident for each motor vehicle having a seating capacity of 7 passengers or less.
- (b) \$200,000 for each accident for each motor vehicle having a seating capacity of 8 to 15 passengers.
- (c) \$250,000 for each accident for each motor vehicle having a seating capacity of 16 to 24 passengers.
- (d) \$375,000 for each accident for each motor vehicle having a seating capacity of 25 to 36 passengers.
- (e) \$500,000 for each accident for each motor vehicle having a seating capacity of 37 to 49 passengers.
- (f) \$500,000 plus not less than \$10,000 for each accident for each passenger seat accommodation for each motor vehicle having a seating capacity of 50 or more passengers.

(2) The department may not issue registration plates for such a vehicle unless there is on file with the department a certificate of insurance showing that the vehicle is insured in compliance with sub. (1). No such policy may be terminated prior to its expiration or canceled for any reason unless a notice thereof is filed with the department at least 30 days prior to the date of termination or cancellation. The department shall suspend the registration of a vehicle on which the insurance policy has been terminated or canceled, effective on the date of termination or cancellation.

History: 1983 a. 175 s. 20; Stats. 1983 s. 344.55; 1997 a. 84.

344.57 Definitions applicable to ss. 344.57 to 344.579. In ss. 344.57 to 344.579:

- (1) "Accident" means collision of a private passenger vehicle with another object or other upset of the private passenger vehicle while in operation.
- (2) "Authorized driver" means, in connection with a private passenger vehicle under a rental agreement, all of the following:
 - (a) The spouse of the renter, if the spouse is a licensed driver and meets any minimum age requirement in the rental agreement.
 - (b) A person listed in the rental agreement as an authorized driver.
 - (c) The renter's employer, employee or co-worker, if the employer, employee or co-worker engages in a business activity with the renter, is a licensed driver and meets the rental company's minimum age requirement.
 - (d) A person who operates the private passenger vehicle during an emergency or while parking the private passenger vehicle at a commercial or private establishment.
- (3) "Damage waiver" means a contractual provision under which a rental company agrees for a charge not to hold a renter or authorized driver liable for damage or loss related to a private passenger vehicle rented by the renter.
- (4) "Private passenger vehicle" means a type 1 automobile.
- (5) "Rental agreement" means a written agreement setting forth the terms and conditions governing the use of a private passenger vehicle provided for rent by a rental company.
- (6) "Rental company" means a person in the business of providing private passenger vehicles for rent to the public.
- (7) "Renter" means the person who rents a private passenger vehicle from a rental company under a rental agreement.

History: 1989 a. 328.

344.572 Applicability to rental agreements. (1) Except as provided in sub. (2), ss. 344.574, 344.576 and 344.578 apply to all rental agreements concerning private passenger vehicles rented from locations in this state for a period of 30 consecutive days or less.

(2) Sections 344.574, 344.576 and 344.578 do not apply to a rental agreement under which a person rents from a motor vehicle

dealer licensed under ss. 218.0101 to 218.0163 a private passenger vehicle owned by the dealer if the private passenger vehicle is rented only for use while a vehicle owned or leased by the person or which the person has agreed to purchase is being serviced, repaired, manufactured or delivered.

(3) If a rental agreement is subject to ss. 344.574, 344.576 and 344.578, any provision of the rental agreement that violates any requirement of ss. 344.574, 344.576 and 344.578 is void.

History: 1989 a. 328; 1999 a. 31.

344.574 Limited liability for damage. (1) DAMAGE TO PRIVATE PASSENGER VEHICLE. (a) Unless a renter purchases a damage waiver offered in accordance with s. 344.576, a rental company may hold the renter liable to the extent permitted under subs. (2) to (4) for physical or mechanical damage to the rented private passenger vehicle that is caused by any of the following:

1. An accident occurring while the private passenger vehicle is under the rental agreement.
2. The renter or an authorized driver who is using the private passenger vehicle, intentionally or by his or her reckless or wanton misconduct.

(b) Unless a renter purchases a damage waiver offered in accordance with s. 344.576, a rental company may hold an authorized driver liable to the extent permitted under subs. (2) to (4) for physical or mechanical damage to the rented private passenger vehicle that is caused by any of the following:

1. An accident occurring while the private passenger vehicle is operated by the authorized driver and is under the rental agreement.
2. The authorized driver who is using the private passenger vehicle, intentionally or by his or her reckless or wanton misconduct.

(2) LIMITS ON LIABILITY. (a) The total liability of a renter or authorized driver under sub. (1) for damage to a rented private passenger vehicle may not exceed all of the following:

1. The lesser of:
 - a. The actual and reasonable costs that the rental company incurred to repair the private passenger vehicle or that the rental company would have incurred if the private passenger vehicle had been repaired, which shall reflect any discounts, price reductions or adjustments available to the rental company.
 - b. The fair market value of that private passenger vehicle immediately before the damage occurred, as determined in the customary market for the sale of that private passenger vehicle.
2. Actual and reasonable costs incurred by the rental company for towing the private passenger vehicle and for storage of the private passenger vehicle for no more than 2 days.

(b) A rental company may not hold the renter or authorized driver liable for any of the following:

1. Loss or damage to the private passenger vehicle resulting from a cause other than that described in sub. (1) (a) 1. or 2. with respect to the renter or sub. (1) (b) 1. or 2. with respect to the authorized driver.
2. Loss of use of the private passenger vehicle.
3. Any administrative charges, including the cost of appraisal, or other costs or expenses that are incidental to the damage to the private passenger vehicle.
4. Any other charge unless expressly permitted under par. (a).

(c) A rental company may not hold the renter liable for any amounts that the rental company has recovered from an authorized driver. A rental company may not hold an authorized driver liable for any amounts that the rental company has recovered from the renter.

(4) INSPECTION AND ESTIMATES. A rental company may not collect or attempt to collect the amount described in sub. (2) (a) from the renter or authorized driver or the insurer of the renter or authorized driver unless the rental company satisfies all of the following:

(a) Allows the renter or authorized driver who may be liable under sub. (1) (b) and the insurer of the renter or authorized driver to inspect the unrepaired rented private passenger vehicle within 2 working days after the rental company is notified of the damage. Upon receiving notice of the damage, the rental company shall promptly notify the renter or authorized driver who may be liable under sub. (1) (b) of his or her right and his or her insurer's right to inspect the private passenger vehicle.

(b) Obtains at least 2 estimates from competing repair shops on the costs of repairing the private passenger vehicle, makes a copy of each estimate available upon request to the renter or authorized driver who may be liable under sub. (1) (b) or the insurer of the renter or authorized driver who may be liable under sub. (1) (b) and submits a copy of each estimate with any claim to collect the amount described in sub. (2) (a).

History: 1989 a. 328.

344.576 Damage waivers. (1) OFFER AND SALE RESTRICTED. A rental company may not offer or sell a damage waiver in conjunction with a rental agreement unless the terms of the damage waiver comply with sub. (2) and the renter is provided the notice required under sub. (3).

(2) TERMS. Every damage waiver shall provide that the rental company may not hold the renter or authorized driver liable for any amount that the renter or authorized driver might otherwise be liable for under s. 344.574 (2) (a) for damage to the rented private passenger vehicle, unless any of the following applies:

(a) The damage is caused by the renter or authorized driver intentionally or by his or her reckless or wanton misconduct.

(b) The damage occurs while the renter or authorized driver operates the private passenger vehicle in this state while under the influence of an intoxicant or other drug, as described under s. 346.63 (1) (a), (am), or (b) or (2m).

(c) The damage occurs while the renter or authorized driver operates the private passenger vehicle in another state while under the influence of an intoxicant or other drug, as described in the laws of that state.

(d) The damage occurs while the renter or authorized driver is engaged in a race or speed or endurance contest.

(e) The damage occurs while the renter or authorized driver is using, or has directed another to use, the private passenger vehicle in the commission of a misdemeanor or felony, as those terms are defined in s. 939.60.

(f) The damage occurs while the renter or authorized driver uses the private passenger vehicle to carry persons or property for hire.

(g) The damage occurs while the renter or authorized driver uses the private passenger vehicle outside of the United States or Canada, unless use outside the United States or Canada is permitted under the rental agreement.

(h) The damage occurs while the private passenger vehicle is operated on a surface not intended for use by private passenger vehicles.

(i) The renter provided misleading or false information to the rental company, causing the rental company to rent the private passenger vehicle when the rental company would not have otherwise done so, or on terms to which it would not have otherwise agreed.

(j) The renter or the authorized driver who was operating the private passenger vehicle when an accident occurred fails to promptly report to the police and rental company the accident resulting in damage to the private passenger vehicle.

(3) NOTICE. (a) A rental company that offers or sells a damage waiver shall provide to each renter a written notice that is in the form required by rule under par. (c) and that includes all of the following:

1. An explanation of the total costs that the renter or authorized driver may be liable for under s. 344.574 (2) (a).

2. A statement that the liability of the renter or authorized driver under s. 344.574 (2) (a) may be covered by the renter's or authorized driver's personal motor vehicle insurance policy or by an agreement under which the renter or authorized driver has obtained a credit card.

3. A list of any exceptions to the damage waiver imposed in accordance with sub. (2) (a) to (j).

4. An explanation of the right of inspection under s. 344.574 (4) (a).

5. The address and telephone number of the department of agriculture, trade and consumer protection.

6. Any other information required by rule under par. (c).

7. A line for the renter's signature.

(b) A rental company that offers or sells a damage waiver shall provide the notice described in par. (a) to each renter before the renter enters into a rental agreement. The rental company shall give the renter one copy of the notice signed by the renter and shall retain one copy in its files.

(c) The department of agriculture, trade and consumer protection shall promulgate rules specifying the form of the notice required under par. (a), including the size of the paper and the type size and any highlighting of the information described in par. (a). The rule may specify additional information that must be included in the notice and the precise language that must be used.

History: 1989 a. 328; 1995 a. 27; 2003 a. 97.

Cross Reference: See also s. ATCP 118.01, Wis. adm. code.

344.577 Advertisement or representation. (1) DEFINITION. In this section, "advertisement or representation" means any oral, written or graphic statement which is made in connection with the solicitation of the rental of a private passenger vehicle.

(2) DAMAGE WAIVER CHARGE. If a rental company or an employee or agent of a rental company disseminates or makes in this state an advertisement or representation that includes a statement of the rental rate for a private passenger vehicle available for rent from a location in this state, the advertisement or representation shall also include a statement of the charge for any damage waiver offered by the rental company in conjunction with the rental of that private passenger vehicle and a statement that purchase of the damage waiver is optional.

History: 1989 a. 328.

344.578 Credit card for deposit or damages. (1) PROHIBITED DEPOSITS; COLLECTION OF DAMAGES. A rental company may not use credit available pursuant to a credit card belonging to a renter as a deposit for damages for which the renter may be held liable under s. 344.574 (2) (a) or for any other charges, except as provided in sub. (2). If a rented private passenger vehicle is damaged, the rental company may use credit available pursuant to a credit card belonging to the renter as payment for the damages for which the renter is liable under s. 344.574 (2) (a) only if the rental company obtains the renter's authorization to use that credit and the authorization is obtained after the total amount of the renter's liability is determined and before the rental company processes the credit card charge.

(2) DEPOSIT FOR RENTAL FEES. If authorized by the renter, a rental company may use credit available pursuant to a credit card belonging to the renter as a deposit for the estimated cost of the rental, as determined under this subsection. The estimated cost of the rental may not exceed an amount equal to the daily rental rate specified in the rental agreement, which may include the daily charge for a damage waiver if purchased by the renter, multiplied by the number of days specified in the agreement for which the private passenger vehicle is being rented.

History: 1989 a. 328.

344.579 Violations. (1) PENALTIES. Whoever violates s. 344.574, 344.576 (1), (2) or (3) (a) or (b), 344.577 or 344.578 may be required to forfeit not less than \$500 nor more than \$1,000 for each violation.

(2) ENFORCEMENT. The department of agriculture, trade and consumer protection shall investigate violations of ss. 344.574, 344.576 (1), (2) and (3) (a) and (b), 344.577 and 344.578. The department of agriculture, trade and consumer protection may on behalf of the state:

(a) Bring an action for temporary or permanent injunctive or other relief in any court of competent jurisdiction for any violation of s. 344.574, 344.576 (1), (2) or (3) (a) or (b), 344.577 or 344.578. The court may, upon entry of final judgment, award restitution when appropriate to any person suffering loss because of a violation of s. 344.574, 344.576 (1), (2) or (3) (a) or (b), 344.577 or 344.578 if proof of such loss is submitted to the satisfaction of the

court.

(b) Bring an action in any court of competent jurisdiction for the recovery of forfeitures authorized under sub. (1).

(3) DEFENSE. Proof by a rental company that the rental company began an action to impose liability upon a renter or authorized driver, even though the renter had purchased a damage waiver sold under s. 344.576, because of a good-faith mistake that an exception under s. 344.576 (2) (a) to (j) applied is a defense to a prosecution for a violation of the terms of the damage waiver under s. 344.576 (2).

History: 1989 a. 328; 1995 a. 27.