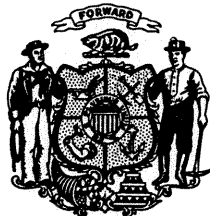


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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-057

AN ORDER to repeal Trans 101.02 (3) (b) and 103.05 (2) and (3); to renumber Trans 103.05 (4) and (5); to amend Trans 101.02 (1) (g), (3) (e), (5) (intro.) and (v) and (8) (a), 101.04 (3) (intro.) and (5), 101.05 (1), 102.20 (2) (i), 103.05 (1), 104.03 (4), 104.06 (5) (b) and (6) (a) 3., 104.09 (1), (2) and (5) and 104.10 (title), (1) (d) and (e); to repeal and recreate chapter Trans 101 (title), 101.02 (1) (k) and (3) (a) and 101.04 (4) and (6); and to create Trans 101.04 (3m), 101.10, 102.205, 104.03 (8) (b) 6. to 8., 104.055 and 104.09 (3m), relating to the demerit point system and graduated driver license restriction extensions.

Submitted by **DEPARTMENT OF TRANSPORTATION**

03-14-00 RECEIVED BY LEGISLATIVE COUNCIL.

04-10-00 REPORT SENT TO AGENCY.

RS:DF:jal;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

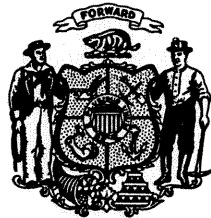
Comment Attached YES NO

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CLEARINGHOUSE RULE 00-057

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. In s. Trans 101.02 (3) (e), delete "control device sign of signal" and substitute "sign or signal control device." [See s. 1.06 (1), Manual.]

b. Section Trans 101.04 (4) should be rewritten to read:

A departmental revocation or suspension under this chapter takes effect on the date of the suspension or revocation order, except that a revocation for a conviction in another jurisdiction for an offense which, if committed in this state, would have required revocation of the person's operating privilege under s. 343.21 (1), Stats., takes effect on the date of the conviction.

c. In s. Trans 101.05 (1), the word "may" should be replaced by the word "do."

d. In s. Trans 101.10 (2) (a) 3., substitute "Operation" for "Operating."

e. Section Trans 101.10 (2) (b) 5. should begin with a phrase such as "Operating with an" in order to be consistent with the other subdivisions in par. (b).

f. In s. Trans 102.205, the word “may” in the last sentence should be replaced by the word “does.” Also, in the note, the notation “, Stats.,” should be inserted after the first statutory cross-reference.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In that portion of the analysis describing restriction extensions, it appears that, in the second sentence of the first paragraph, the word “extensions” should be replaced by the word “restrictions.”

b. In s. Trans 101.02 (8) (a), delete “~~or any, an~~” and substitute “any an.” The new comma should be inserted after the word “conviction.” As originally drafted, deletion of the second “or” would create a grammatically incorrect sentence.

c. In s. Trans 101.10 (2) (b) (intro.), delete “of”; and in subd. (b) 1., insert a comma after “chapter.”

d. In s. Trans 104.055 (2) (a), the first sentence is so lengthy that it is difficult to understand. This sentence should be redrafted as two separate sentences for clarity.

e. In s. Trans 104.09 (3m), delete “because of being unable to demonstrate his or her ability” and substitute “due to his or her inability.”

The Wisconsin Department of Transportation proposes an order to repeal TRANS 101.02(3)(b) and 103.05(2) and (3); renumber TRANS 103.05(4) and (5); amend TRANS 101.02(1)(g), (3)(e), (5)(intro.), (v) and (8)(a), 101.04(3)(intro.) and (5), 101.05(1), 102.20(2)(i), 103.05(1), 104.03(4), 104.06(5)(b) and (6)(a)3., 104.09(1), (2) and (5), and 104.10(title), (1)(d) and (e); repeal and recreate ch. TRANS 101(title), 101.02(1)(k) and (3)(a), and 101.04(4) and (6); and create TRANS 101.04(3m), 101.10, 102.205, 104.03(8)(b)6. to 8., 104.055 and 104.09(3m), relating to the demerit point system and graduated driver license restriction extensions.

**NOTICE OF HEARING
AND
TEXT OF PROPOSED RULE**

NOTICE IS HEREBY GIVEN that pursuant to ss. 343.32(2)(bc) as created by s. 2749gg 1999 Wis. Act 9, 343.32(2)(c)2 as created by s. 2749gr of 1999 Wis. Act 9, 343.085(1)(b) as created by s. 2734rh of 1999 Wis. Act 9, 343.06(1)(cm) as created by s. 2734qd. of 1997 Wis. Act 9, [351.02(1)(f), 343.02(1), 343.16, 343.25, 85.16,] s. 9150(5g), 1999 Wis. Act 9., and interpreting those statutory provisions and s. 2734qd to 2747s, 9150(5g), 9350(4g) and 9446(3g) of 1999 Wisconsin Act 9, the Department of Transportation will hold public hearings at the following locations to consider the amendment of chs. Trans 101, 102, 103 and 104, Wisconsin Administrative Code, relating to the demerit point system and graduated driver license restriction extensions:

April 12, 2000
DC Everest High School Auditorium
6500 Alderson Street
Schofield, Wisconsin
3:15 PM

(Parking for persons with disabilities is available on south driveway near back door)

April 13, 2000
Eau Claire Memorial High School - Little Theater
225 Keith Street
Eau Claire, Wisconsin
7:00 PM

*(Parking for persons with disabilities is located by door #1;
enter from Clairemont Avenue)*

April 17, 2000
John Marshall High School - Cafeteria
4141 N. 64th Street
Milwaukee, Wisconsin
4:00 PM

*(Parking for persons with disabilities is located in the north parking lot by door #10;
enter from 64th or 66th Streets)*

An interpreter for the hearing impaired will be available on request for this hearing.
Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

The public record on this proposed rule making will be held open until close of business on the date of the last hearing scheduled herein, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to John Alley, Department of Transportation, Bureau of Driver Services, Room 351, P. O. Box 7917, Madison, WI 53707-7917.

NOTE: This hearing is being conducted at 3 locations in order to give the public greater opportunity to present its facts, arguments and opinions. The records from all locations will be combined into a single Hearing Record on which the Department will base its decisions. Individuals need only attend one of the public hearings for their testimony to be fully considered.

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 343.32(2)(bc) as created by s. 2749gg 1999 Wis. Act 9, 343.32(2)(c)2 as created by s. 2749gr of 1999 Wis. Act 9, 343.085(1)(b) as created by s. 2734rh of 1999 Wis. Act 9, 343.06(1)(cm) as created by s. 2734qd. of 1997 Wis. Act 9, 351.02(1)(f), 343.02(1), 85.16, s. 9150(5g), 1999 Wis. Act 9

STATUTES INTERPRETED: ss. 343.32(2)(bc) as created by s. 2749gg 1999 Wis. Act 9, 343.32(2)(c)2 as created by s. 2749gr of 1999 Wis. Act 9, 343.085(1)(b) as created by s. 2734rh of 1999 Wis. Act 9, 343.06(1)(cm) as created by s. 2734qd. of 1997 Wis. Act 9, 351.02(1)(f), 343.02(1), 85.16, s. 9150(5g), 1999 Wis. Act 9.

General Summary of Proposed Rule. 1999 Wisconsin Act 9, the 1999 budget bill, incorporated the provisions of 1999 AB 52 and established a Graduated Driver License ("GDL") system for Wisconsin. The general scheme of the legislation is to require drivers to practice more before obtaining their first drivers licenses, to restrict the types of driving activities they may engage in after first obtaining their licenses, and to penalize those that break traffic laws, such as speeding, more harshly than experienced drivers.

This proposed rule making administratively interprets the GDL provisions of 1999 Wis. Act 9 and provides a framework for enforcement of the driver license restrictions applied to new drivers and to implement the harsher demerit point system applied to drivers that are subject to the new law.

In addition to implementing a GDL law, 1999 Wis. Act 9 also amended existing law to provide the Department with authority to regulate the copying of driver licenses. This rule proposes to implement that legislative directive by permitting any business to copy driver licenses for legitimate business purposes, provided they do not compile a library of photographs from the copies, nor sell them.

In addition, where administrative changes in rules being amended were already contemplated by the Department, those changes are incorporated into this rule making.

Demerit Point Counting. 1999 Wis. Act 9 requires the Secretary to double demerit points assessed for second and subsequent traffic offenses to drivers who obtain probationary licenses or are eligible for probationary licensing after September 1, 2000. Under current ch. Trans 101, two extra points per offense are charged to a driver who commits such offenses. This rule making proposes to eliminate the current rule providing for only two extra points per offense and provides that all probationary drivers shall be subject to the same point doubling rules after September 1, 2000.

Under current law, a person who accumulates 12 demerit points in a one-year period is subject to a 2-month suspension. Act 9 requires that GDL holders receive 6 month license suspensions for accumulating 12 demerit points in a year. This rule making proposes to implement this requirement, but retains the Department's current rule

which calls for revoking or suspending the driver license of a driver who accumulates more than 30 points in a year.

As under current law, a driver's first traffic offense does not result in increased point assessments, but all subsequent offenses do. Unlike current law, safety equipment violations, such as speedometer violations, missing lights, or failure to buckle small children into child safety restraints cannot be enhanced. This rule making proposes to amend ch. Trans 101 to conform to these new requirements.

License Eligibility - Clean Driver Record Requirement. Act 9 requires the Department to establish a list of offenses which, if committed within 6 months of application for a GDL, makes the person ineligible for licensing. The usual impact of this provision will be to delay an instruction permit holder who is ticketed for a traffic law violation from receiving his or her GDL.

This rule proposes to make any person committing a demerit point offense ineligible for licensing, except for equipment violations resulting in assessment of 2 points or less and illegal riding. Although Act 9 prohibits the doubling of demerit points for seat belt, child restraint and defective speedometer violations, this rule proposes to make drivers who commit those specific equipment violations ineligible for licensing for 6 months.

Restriction Extensions. Act 9 provides that all new drivers' licenses shall be restricted for the first 9 months they hold their GDL. Those extensions can be extended if the drivers commit certain offenses during that first 9 month period. The Department is required to promulgate rules defining which offenses will result in extension of the restrictions.

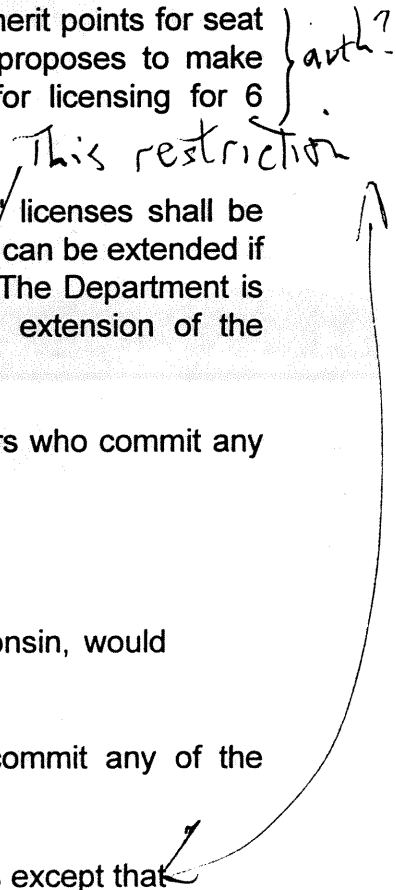
This rule making proposes to extend GDL restrictions for drivers who commit any offense for which demerit points are assessed or any of the following:

- underage "drinking and driving" offenses
- hit and run offenses
- offenses in other jurisdictions which, if committed in Wisconsin, would result in an extension.

Extensions will not, however, be required for drivers who commit any of the following offenses:

- Any violation of ch. 347 resulting in 2 or fewer demerit points except that child safety restraint, seat belt and defective speedometer violations will be used. (These are primarily equipment violations.)
- Illegal riding.
- Operating with Multiple Licenses.
- Operating without a license. [Required by 1999 Wis. Act 9 s. 9150(5g)]
- Unlawful possession of a commercial driver license.

auth?
This restriction



- Operating while suspended or revoked. [Required by 1999 Wis. Act 9 s. 9150(5g)]
- Operating while disqualified.

Most of these offenses are not "moving violations" under Wisconsin law in that neither operating a motor vehicle nor being on duty time with respect to a commercial motor vehicle is an element of the offense. s. 343.01(2)(cg), Stats. Under s. 343.085(2m)(b)1., the Department may only extend restrictions of drivers who are convicted of moving offenses. In addition, s. 9150(5g) of 1999 Wis. Act 9 prohibits the Department from proposing in this rule draft to extend restrictions based upon conviction of any of the offenses set forth in that section.

Other Administrative Changes. The Department also proposes a few administrative housekeeping changes to the chapters affected by this GDL rule making. Provisions are proposed that permit the Department to deny knowledge tests to applicants who repeatedly take and fail the tests unless they provide some evidence that they have taken a class or there is some other basis to believe they have improved the likelihood of their passing. The Department is faced with certain individuals who will take and retake these tests for months and who come no closer to passing them. This rule making is intended to reduce the administrative burden of testing, testing and retesting these individuals when diminished capacities make them unable to pass driver knowledge tests.

The Department's nearly 10 years of experience testing CDL drivers has led it to conclude that it is not necessary to completely retest most drivers who fail an airbrake restriction, school bus or abbreviated skills test. Usually, these drivers are competent, but simply forgot to check one item (a score of 100% is federally required to pass). Retesting them on just the air brake portion of the test is usually sufficient. This rule does provide, however, that an examiner may require a complete skills test if the results of a renewal test lead the examiner to question the driver's competence to operate commercial motor vehicles. *commercial?*

Effective Date. This rule becomes effective September 1, 2000, the effective date for the graduated driver license provisions of 1999 Wis. Act 9. These rules apply to all persons holding probationary licenses or graduated driver licenses after that date. *- maybe*

Fiscal Effect. Act 9, as it relates to Graduated Driver Licensing, will directly impact approximately 103,600 16 and 17 year old drivers. Cost and revenue impact are as follows:

The Department of Transportation will incur:

(1) \$383,700 in one time costs:

- \$292,700 for 476 DP development days or 2.6 programmers for 9 months to complete computer system changes.
- \$ 91,000 for public awareness, materials and training.

(2) \$41,100 net ongoing cost increase including an additional 1 FTE in DMV for additional customer contacts and processing.

(3) \$57,400 net ongoing revenue increase related to instruction permits processed.

Local Costs

(1) Courts incur an indeterminable cost increase and related revenue increase from the additional operating while suspended convictions due to an increase in demerit point suspensions.

(2) The Wisconsin Technical College System (WTCS) will incur an indeterminable cost increase and related revenue increase from additional attendees in traffic safety school due to an increase in attendance in point reduction classes.

Initial Regulatory Flexibility Analysis. This rule making will have no effect on small businesses, except that it may increase revenues to commercial driving schools to the extent that some parents may have commercial schools provide their children with the training needed to meet the 30 hour practice driving requirements for driver licensing.

Copies of Proposed Rule. Copies of this proposed rule may be obtained upon request, without cost, by writing to John Alley, Department of Transportation, Bureau of Driver Services, Room 351, P. O. Box 7920, Madison, WI 53707-7920, or by calling (608) 266-0614. Hearing-impaired individuals may contact the Department using TDD (608) 266-3096. Alternate formats of the proposed rule will be provided to individuals at their request.

TEXT OF PROPOSED RULE

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 343.32(2)(bc) as created by s. 2749gg 1999 Wis. Act 9, 343.32(2)(c)2 as created by s. 2749gr of 1999 Wis. Act 9, 343.085(1)(b) as created by s. 2734rh of 1999 Wis. Act 9, 343.06(1)(cm) as created by s. 2734qd. of 1997 Wis. Act 9, 351.02(1)(f), 343.02(1), 85.16, s. 9150(5g), 1999 Wis. Act 9, Stats., the department of transportation hereby proposes to amend a rule interpreting those provisions relating to the demerit point system and graduated driver license restriction extensions.

SECTION 1. Chapter Trans 101(title) is repealed and recreated to read:



**DEMERIT POINT SYSTEM AND
GRADUATED DRIVER LICENSE RESTRICTION EXTENSIONS**

SECTION 2. Trans 101.02(1)(g) is amended to read:

Trans 101.02(1)(g) Operating while under influence of intoxicant or controlled substance, or with a prohibited alcohol concentration.

SECTION 3. Trans 101.02(1)(k) and (3)(a) are repealed and recreated to read:

Trans 101.02(1)(k) Failure to stop at a railroad crossing.

(3)(a) Violation of a restriction on a graduated driver license related to the time ^{or} route of travel or passengers permitted.

SECTION 4. Trans 101.02(3)(b) is repealed.

SECTION 5. Trans 101.02(3)(e), (5)(intro.) and (v), and (8)(a) are amended to read:

Trans 101.02(3)(e) Failure to obey any official traffic control device ~~sign or signal~~.

NOTE: This includes arterial signs, one-way signs or traffic signs or signals. See s. 340.01(38), Stats.

(5)(intro.) ZERO DEMERIT POINT VIOLATIONS. The department ~~shall~~ may not assess demerit points for any of the following violations:

(v) Under age ~~19~~ 21, operating motor vehicle with any measured alcohol ~~content~~ concentration.

(8)(a) The demerit points charged against the record of any person who holds a an instruction permit or probationary license on the date of the conviction or any, an ^{or?} unlicensed person who would be issued a probationary license or instruction permit if proper application were made and all other requirements for license were met, shall have the demerit point value shown for the convictions set forth in subs. (1) to (4)

increased by 2 points doubled on the second and all subsequent convictions, unless the conviction is for a violation of ch. 347, Stats.

SECTION 6. Trans 101.04(3)(intro.) is amended to read:

Trans 101.04(3)(intro.) ~~The~~ Except as provided in sub. (3m) with respect to probationary driver licenses, the following demerit point accumulations, calculated from the date of violation, shall result in the following revocation or suspension periods:

SECTION 7. Trans 101.04(3m) is created to read:

Trans 101.04(3m) Notwithstanding subs. (1) and (3), the following demerit point accumulations, calculated from the date of violation, shall result in the following suspension or revocation periods, if the driver holds an instruction permit or a probationary driver license, ^{or?} or would be issued an instruction permit or probationary driver license upon proper application and meeting other requirements: o.k.

Demerit Points Accumulated in a 12-Month Period	Length of Revocation or Suspension
12 to 30 points	6 months
More than 30 points	1 year

o.k.

NOTE: See s. 343.32(2)(a) and (c), Stats.

SECTION 8. Trans 101.04(4) is repealed and recreated to read:

Trans 101.04(4) ~~The effective date of~~ departmental revocations or suspensions under this chapter shall ^{take effect on} ~~be effective as of~~ the date of the suspension or revocation order, except that revocations for convictions in another jurisdiction for an offense therein which, if committed in this state, would have required revocation of the person's operating privilege under s. 343.32(1), Stats., shall ^{take effect on} ~~be effective from~~ the date of the conviction. X

SECTION 9. Trans 101.04(5) is amended to read:

Trans 101.04(5) ~~Revocations~~ Suspensions under the provisions of s. 343.32(1)(b) or (c), Stats., shall be effective for 6 months. ~~If a person was convicted of a traffic violation that was a cause of an accident that resulted in the death of another, there shall be a revocation for a period of 6 months under the provisions of s. 343.32(1)(a), 1993 Stats.~~

SECTION 10. Trans 101.04(6) is repealed and recreated to read:

Trans 101.04(6) If a court orders suspension of a person's operating privilege under s. 343.30(1), Stats., and the person is also subject to a demerit point suspension or revocation under s. 343.32, Stats., and this chapter, as a result of the same violation, the longer suspension or revocation period shall apply. } *copy*

SECTION 11. Trans 101.05(1) is amended to read:

Trans 101.05(1) The department, upon issuing a reinstated operator's license or upon return of a license which has been suspended, shall reduce the accumulated point value to 6 points. If at the time of reinstatement or suspension termination, the demerit point value in the immediately preceding 12 month period is less than 6, the lesser point value shall be carried forward in the record. Revocations and suspensions under chs. 48, 344, 345, 767, 800, 938 and 961, Stats., and ss. 343.30(lq)(d), 343.30(6), 343.305(10), 343.32(1m)(b) and 343.345, Stats., shall ^{do} ~~may~~ not qualify for point reduction under this section. X

SECTION 12. Trans 101.10 is created to read:

Trans 101.10 Graduated driver license eligibility and restriction extensions. (1) The department may not issue a license to a person under s. 343.085(1)(b), Stats., if the person has committed any offense for which demerit points are assessed

under this chapter, or any offense under the law of another jurisdiction for which demerit points would be assessed if the offense were committed in this state, within the preceding 6 months, except:

(a) Any violation of ch. 347, Stats., resulting in the assignment of 2 or fewer demerit points under this chapter, or a similar violation under law of another jurisdiction, except child safety restraint, seat belt and defective speedometer violations.

(b) Illegal riding.

(2)(a) Except as provided in par. (b), the department shall extend graduated driver license restrictions required under s. 343.085(2m)(a), Stats., if the person has committed any offense for which demerit points are assessed under this chapter or any of the following offenses:

1. Operation of a motor vehicle by a person who has not attained the legal drinking age while having an alcohol concentration greater than 0.0 and less than 0.1.

2. Refusal of chemical testing under the implied consent law.

3. Operating^{ion} of a commercial motor vehicle with an alcohol concentration greater than 0.04 and less than 0.10.

4. Operation of a commercial motor vehicle with an alcohol concentration above 0.0, within 4 hours of having consumed or having been under the influence of an intoxicating beverage, or while possessing an alcoholic beverage.

5. Failure to notify the owner of any property on or adjacent to a highway that is damaged in an accident.

6. Any offense committed in another jurisdiction for which demerit points would be assessed if the offense were committed in this state.

(b) Notwithstanding par. (a), the department may not extend the graduated driver license restrictions required under s. 343.085(2m)(a), Stats., solely for committing ^{of} any of the following offenses:

1. Any violation of ch. 347, Stats., resulting in the assignment of 2 or fewer demerit points under this chapter, except child safety restraint, seat belt and defective speedometer violations, or a similar violation under the law of another jurisdiction.

2. Illegal riding.

3. Operating with multiple licenses.

4. Operating without a license or without an endorsement necessary for the vehicle class being operated.

X 5. ^{verb} Unlawful commercial driver license.

6. Operating while suspended or revoked.

7. Operating while disqualified.

(c) Only one extension of graduated driver license restrictions may result from any one incident or occurrence.

SECTION 13. Trans 102.20(2)(i) is amended to read:

Trans 102.20(2)(i) "Livestock feeder" means a business that is licensed as an ~~approved veal lot under s. ATCP 11.13~~ or an approved feed lot under s. ATCP 11.14.

SECTION 14. Trans 102.205 is created to read:

Trans 102.205 Copying of driver licenses. Any person, including the state or federal government, or an agency or political subdivision thereof, may make a copy of a driver license provided the copy is intended to be used for the identification of the person to whom the license has been issued and the person does not sell or transfer

the copies to any third person or include the copy of the driver license photo in any electronic or paper library of images. This provision ^{does} may not prohibit a lender or business from requesting and making a copy of a driver license as part of an application for credit or other business services and forwarding that copy with the application materials in the ordinary course of business when the commercial paper or business is sold or transferred.

Stats,

NOTE: Amendments to s. 343.43(1)(f) enacted as part of 1999 Wisconsin Act 9 provide the Department with authority to adopt this rule with respect to driver licenses. No similar authority exists with regard to the general prohibition against copying identification cards found in s. 343.50(12)(e), Stats. See State v. Schwolin, 57 Wis. 2d 764 (1973), for general guidance on the copying of identification cards.

SECTION 15. Trans 103.05(1) is amended to read:

*Order
Del in
chapter*

Trans 103.05(1) Except as provided in subs. (2) ~~to (5)~~ and (3), the effective date shall be the date the HTO or repeat HTO order is mailed.

SECTION 16. Trans 103.05(2) and (3) are repealed.

SECTION 17. Trans 103.05(4) and (5) are renumbered (2) and (3).

*and Trans
103.05(4) as per
is an to*

SECTION 18. Trans 104.03(4) is amended to read:

Trans 104.03(4) **FAILED TESTS.** A person who fails a knowledge or pre-trip inspection test may not retake the test sooner than the next day following the failed test. A person who fails a knowledge or pre-trip inspection test more than 5 times within one year may be authorized a sixth attempt only after requesting and receiving permission from the department to do so. Permission to take more than 5 tests in a one year period may be granted if the person demonstrates that he or she has received additional instruction, or some other significant circumstance has changed since the last failed exam, which makes successful completion of the exam more likely.

SECTION 19. Trans 104.03(8)(b)6., 7. and 8. are created to read:

Trans 104.03(8)(b)6. Locate and verbally identify the air-brake operating controls and monitoring devices.

7. Ascertain whether the emergency braking system will activate properly.

8. Ascertain, with a fully charged air system and the engine off, the rate at which air is lost from the system.

SECTION 20. Trans 104.055 is created to read:

Trans 104.055 Graduated driver license requirements and waivers.

(1) GRADUATED DRIVER LICENSE REQUIREMENTS. Except as provided in sub.

(2), the department may not issue a probationary driver license to any person less than 18 years of age unless the person has met all of the following requirements:

(a) The person has accumulated at least 30 hours of behind-the-wheel driving experience, at least 10 of which were during hours of darkness. Up to 5 hours of behind-the-wheel driving experience performed with a qualified instructor may be counted at the rate of 2 hours for each hour of actual driving. The department shall require an applicant's adult sponsor under s. Trans 102.21 to certify that the applicant has met this requirement as a condition of issuing a probationary driver license, except that persons who are permitted to file proof of financial responsibility in lieu of sponsorship under s. 343.15(4), Stats., may provide that certification.

(b) The person has not received a citation for an offense described in s. Trans 101.10(1).

(2) WAIVERS FOR DRIVERS PREVIOUSLY LICENSED IN OTHER JURISDICTIONS. (a) *License holders from other jurisdictions.* The department may issue a probationary driver license to a person less than 18 years of age without regard

to the length of time the person held any instruction permit and without requiring the certification described in sub. (1) if the person has been issued a driver license, other than an instruction permit, by another jurisdiction prior to the person establishing Wisconsin residency and certifies that the person has not been convicted of a violation of law which prohibits issuance of a probationary driver license to a person under 18 years of age within the preceding 6 months, as provided for in s. Trans 101.10(1). The department shall cancel the license of any person who provides a false certification under this subsection.

(b) *Instruction permit holders from other jurisdictions.* The 6 month period during which a driver less than 18 years of age must hold a Wisconsin instruction permit prior to receiving a driver license in Wisconsin under s. 343.085(1)(b), Stats., shall be reduced by any amount of time a driver can show he or she was a resident of another jurisdiction and held an instruction permit issued by that jurisdiction.

SECTION 21. Trans 104.06(5)(b) and (6)(a)3. are amended to read:

(5)(b) *Abbreviated skills test.* A person holding a commercial driver license with proper classes who applies only to remove an air-brake restriction may be administered an abbreviated skills test in an air-brake equipped vehicle. ~~A person who fails an abbreviated test once shall be required to pass a full skills test in an air brake equipped vehicle to have the air brake restriction removed from the person's license.~~ The department may require a driver to retake a complete CDL skills test if the results of an abbreviated skills test lead the examiner to question whether the driver is competent to safely operate a commercial motor vehicle in compliance with the laws of this state.

(6)(a)3. ~~Hit~~ Roadside stop and start.

note - defined in chapter

SECTION 22. Trans 104.09(1) and (2) are amended to read:

Trans 104.09(1) A Except as provided in subs. (2) to (5), a person who fails a skills test or special examination ~~solely as a result of committing a moving traffic violation~~ shall wait a minimum of one day before retaking the test.

(2) A person who fails a skills test or special examination by 10 points or less, or who fails a skills test because of dangerous driving behavior described in s. Trans 104.06(13)(a), (b) or (d), shall wait a minimum of one week before retaking the test.

SECTION 23. Trans 104.09(3m) is created to read:

Trans 104.09(3m) A person who fails a CDL skills test solely ^{due to his or her} because of being ^{inability} unable to demonstrate his or her ability to successfully complete the straight-line and curved-path backing tests shall wait a minimum of one week before retaking the test.

SECTION 24. Trans 104.09(5) is amended to read:

Trans 104.09(5) A person who fails 5 skills tests or special examinations within one year may be authorized a sixth attempt only after requesting and receiving permission from the department to do so. Permission to take more than 5 tests or exams in a one year period may be granted if the person demonstrates that he or she has received additional instruction, or some other significant circumstance has changed since the last failed test or exam, which makes successful completion of the test or exam more likely.

SECTION 25. Trans 104.10(title), (1)(d) and (e) are amended to read:

Trans 104.10 (title) ~~Renewal testing~~ Retesting intervals for certain endorsements.

(1)(d) If a person with a school bus endorsement fails the abbreviated ~~renewal~~ skills test, ~~a complete driving school bus skills test shall be required~~ the person's school bus endorsement may not be renewed until the person retakes and passes the abbreviated skills test. ~~This test may be taken no sooner than the day following the a failed test.~~ The department may require a driver to retake a complete driving school bus test if the results of an abbreviated skills test lead the examiner to question whether the driver has the ability to exercise ordinary and reasonable control in the operation of a school bus in compliance with the laws of this state.

(e) A person who holds a license with a school bus endorsement that is restricted from operation of air-brake equipped vehicles may not take a school bus endorsement ~~renewal examination~~ abbreviated skills test in an air-brake equipped vehicle unless the person first completes all knowledge and skills examinations required to remove an air-brake restriction under ss. Trans 104.03(2)(f) and (8) and 104.06(5)(b). The air-brake pre-inspection test and abbreviated air-brake skills test may be conducted as part of a school bus ~~renewal examination~~ abbreviated skills test.

(END OF RULE TEXT)

Effective Date. This rule shall take effect on September 1, 2000.

Signed at Madison, Wisconsin, this 14 day of March, 2000.


CHARLES H. THOMPSON
Secretary
Wisconsin Department of Transportation



JUN 05 2000

Wisconsin Department of Transportation

www.dot.state.wi.us

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The Honorable Fred Risser
President, Wisconsin State Senate
Room 220 South, State Capitol
Madison, Wisconsin 53707

May 30, 2000

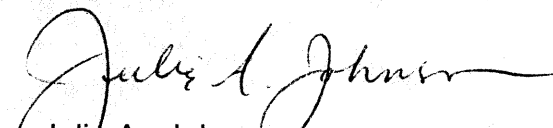
The Honorable Scott Jensen
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
Madison, Wisconsin 53707

RE: Proposed Administrative Rule **TRANS 101-104 (GDL)**
Notification of Legislative Standing Committees
CLEARINGHOUSE RULE 00-057

Gentlemen:

Enclosed is a copy of Clearinghouse Rule **00-057**, relating to the **demerit point system and graduated driver license restriction extensions**. The rule is submitted to you for referral to the appropriate standing committees.

Sincerely,


Julie A. Johnson
Paralegal

JAJ/dim

Enclosure

cc: Gary Poulson/Senator Judy Robson/Representative Glenn Grothman/
Roger D. Cross/John Alley/Doug Thompson/Gary Guenther

CR 00-057

The Wisconsin Department of Transportation proposes an order to repeal TRANS 101.02(3)(b) and (o), and 103.05(2) and (3); renumber TRANS 103.05(4) and (5); amend TRANS 101.02(1)(g), (3)(e), (5)(intro.), (v) and (8)(a), 101.04(3)(intro.) and (5), 101.05(1), 102.20(2)(i), 103.05(1), 104.03(4), 104.06(5)(b) and (6)(a)3., 104.09(1), (2) and (5), and 104.10(title), (1)(d) and (e); repeal and recreate ch. TRANS 101(title), 101.02(1)(k) and (3)(a), and 101.04(4) and (6); and create TRANS 101.04(3m), 101.10, 102.205, 104.03(8)(b)6. to 8., 104.055, 104.09(3m), and 117.03(3)(j), relating to the demerit point system and graduated driver license restriction extensions.

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

This report is submitted to the presiding officers of the Senate and Assembly for referral to the appropriate standing committees. The report consists of the following parts:

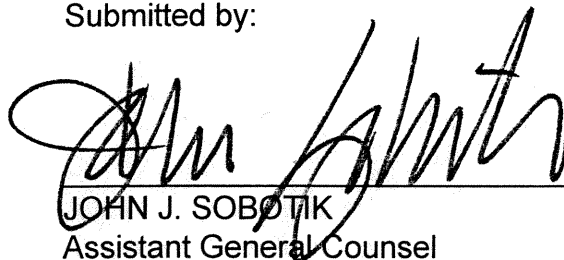
Part 1--Analysis prepared by the Department of Transportation.

Part 2--Rule text in final draft form.

Part 3--Recommendations of the Legislative Council.

Part 4--Analysis prepared pursuant to the provisions of s. 227.19(3), Stats.

Submitted by:



JOHN J. SOBOTIK
Assistant General Counsel
Office of General Counsel
Department of Transportation
Room 115-B, Hill Farms State
Transportation Building
P. O. Box 7910
Madison, WI 53707-7910
(608) 266-8810

PART 1

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 343.32(2)(bc) as created by s. 2749gg 1999 Wis. Act 9, 343.32(2)(c)2 as created by s. 2749gr of 1999 Wis. Act 9, 343.085(1)(b) as created by s. 2734rh of 1999 Wis. Act 9, 343.06(1)(cm) as created by s. 2734qd. of 1997 Wis. Act 9, 351.02(1)(f), 343.02(1), 85.16, s. 9150(5g), 1999 Wis. Act 9

STATUTES INTERPRETED: ss. 343.32(2)(bc) as created by s. 2749gg 1999 Wis. Act 9, 343.32(2)(c)2 as created by s. 2749gr of 1999 Wis. Act 9, 343.085(1)(b) as created by s. 2734rh of 1999 Wis. Act 9, 343.06(1)(cm) as created by s. 2734qd. of 1997 Wis. Act 9, 351.02(1)(f), 343.02(1), 85.16, s. 9150(5g), 1999 Wis. Act 9.

General Summary of Proposed Rule. 1999 Wisconsin Act 9, the 1999 budget bill, incorporated the provisions of 1999 AB 52 and established a Graduated Driver License ("GDL") system for Wisconsin. The general scheme of the legislation is to require drivers to practice more before obtaining their first drivers licenses, to restrict the types of driving activities they may engage in after first obtaining their licenses, and to penalize those that break traffic laws, such as speeding, more harshly than experienced drivers.

This proposed rule making administratively interprets the GDL provisions of 1999 Wis. Act 9 and provides a framework for enforcement of the driver license restrictions applied to new drivers and to implement the harsher demerit point system applied to drivers that are subject to the new law.

In addition to implementing a GDL law, 1999 Wis. Act 9 also amended existing law to provide the Department with authority to regulate the copying of driver licenses. This rule proposes to implement that legislative directive by permitting any business to copy driver licenses for legitimate business purposes, provided they do not compile a library of photographs from the copies, nor sell them.

In addition, where administrative changes in rules being amended were already contemplated by the Department, those changes are incorporated into this rule making.

Demerit Point Counting. 1999 Wis. Act 9 requires the Secretary to double demerit points assessed for second and subsequent traffic offenses to drivers who obtain probationary licenses or are eligible for probationary licensing after September 1, 2000. Under current ch. Trans 101, two extra points per offense are charged to a driver who commits such offenses. This rule making proposes to eliminate the current rule providing for only two extra points per offense and provides that all probationary drivers shall be subject to the same point doubling rules after September 1, 2000.

Under current law, a person who accumulates 12 demerit points in a one-year period is subject to a 2-month suspension. Act 9 requires that GDL holders receive 6 month license suspensions for accumulating 12 demerit points in a year. This rule making proposes to implement this requirement, but retains the Department's current rule

which calls for revoking or suspending the driver license of a driver who accumulates more than 30 points in a year.

As under current law, a driver's first traffic offense does not result in increased point assessments, but all subsequent offenses do. Unlike current law, safety equipment violations, such as speedometer violations, missing lights, or failure to buckle small children into child safety restraints cannot be enhanced. This rule making proposes to amend ch. Trans 101 to conform to these new requirements.

License Eligibility - Clean Driver Record Requirement. Act 9 requires the Department to establish a list of offenses which, if committed within 6 months of application for a GDL, makes the person ineligible for licensing. The usual impact of this provision will be to delay an instruction permit holder who is ticketed for a traffic law violation from receiving his or her GDL.

This rule proposes to make any person committing a demerit point offense ineligible for licensing, except for equipment violations resulting in assessment of 2 points or less and illegal riding. Although Act 9 prohibits the doubling of demerit points for seat belt, child restraint and defective speedometer violations, this rule proposes to make drivers who commit those specific equipment violations ineligible for licensing for 6 months.

Restriction Extensions. Act 9 provides that all new drivers' licenses shall be restricted for the first 9 months they hold their GDL. Those restrictions can be extended if the drivers commit certain offenses during that first 9 month period. The Department is required to promulgate rules defining which offenses will result in extension of the restrictions.

This rule making proposes to extend GDL restrictions for drivers who commit any offense for which demerit points are assessed or any of the following:

- underage "drinking and driving" offenses
- hit and run offenses
- offenses in other jurisdictions which, if committed in Wisconsin, would result in an extension.

Extensions will not, however, be required for drivers who commit any of the following offenses:

- Any violation of ch. 347 resulting in 2 or fewer demerit points except that child safety restraint, seat belt and defective speedometer violations will be used. (These are primarily equipment violations.)
- Illegal riding.
- Operating with Multiple Licenses.
- Operating without a license. [Required by 1999 Wis. Act 9 s. 9150(5g)]
- Unlawful possession of a commercial driver license.

- Operating while suspended or revoked. [Required by 1999 Wis. Act 9 s. 9150(5g)]
- Operating while disqualified.

Most of these offenses are not "moving violations" under Wisconsin law in that neither operating a motor vehicle nor being on duty time with respect to a commercial motor vehicle is an element of the offense. s. 343.01(2)(cg), Stats. Under s. 343.085(2m)(b)1., the Department may only extend restrictions of drivers who are convicted of moving offenses. In addition, s. 9150(5g) of 1999 Wis. Act 9 prohibits the Department from proposing in this rule draft to extend restrictions based upon conviction of any of the offenses set forth in that section.

Other Administrative Changes. The Department also proposes a few administrative housekeeping changes to the chapters affected by this GDL rule making. Provisions are proposed that permit the Department to deny knowledge tests to applicants who repeatedly take and fail the tests unless they provide some evidence that they have taken a class or there is some other basis to believe they have improved the likelihood of their passing. The Department is faced with certain individuals who will take and retake these tests for months and who come no closer to passing them. This rule making is intended to reduce the administrative burden of testing, testing and retesting these individuals when diminished capacities make them unable to pass driver knowledge tests.

The Department's nearly 10 years of experience testing CDL drivers has led it to conclude that it is not necessary to completely retest most drivers who fail an airbrake restriction, school bus or abbreviated skills test. Usually, these drivers are competent, but simply forgot to check one item (a score of 100% is federally required to pass). Retesting them on just the air brake portion of the test is usually sufficient. This rule does provide, however, that an examiner may require a complete skills test if the results of a renewal test lead the examiner to question the drivers competence to operate commercial motor vehicles.

Effective Date. This rule becomes effective September 1, 2000, the effective date for the graduated driver license provisions of 1999 Wis. Act 9. These rules apply to all persons holding probationary licenses or graduated driver licenses after that date.

Fiscal Effect. Act 9, as it relates to Graduated Driver Licensing, will directly impact approximately 103,600 16 and 17 year old drivers. Cost and revenue impact are as follows:

The Department of Transportation will incur:

(1) \$383,700 in one time costs:

- \$292,700 for 476 DP development days or 2.6 programmers for 9 months to complete computer system changes.
- \$ 91,000 for public awareness, materials and training.

(2) \$41,100 **net** ongoing cost increase including an additional 1 FTE in DMV for additional customer contacts and processing.

(3) \$57,400 **net** ongoing revenue increase related to instruction permits processed.

Local Costs

(1) Courts incur an indeterminable cost increase and related revenue increase from the additional operating while suspended convictions due to an increase in demerit point suspensions.

(2) The Wisconsin Technical College System (WTCS) will incur an indeterminable cost increase and related revenue increase from additional attendees in traffic safety school due to an increase in attendance in point reduction classes.

Copies of Proposed Rule. Copies of this proposed rule may be obtained upon request, without cost, by writing to John Alley, Department of Transportation, Bureau of Driver Services, Room 351, P. O. Box 7920, Madison, WI 53707-7920, or by calling (608) 266-0614. Hearing-impaired individuals may contact the Department using TDD (608) 266-3096. Alternate formats of the proposed rule will be provided to individuals at their request.

PART 2 **TEXT OF PROPOSED RULE**

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 343.32(2)(bc) as created by s. 2749gg 1999 Wis. Act 9, 343.32(2)(c)2 as created by s. 2749gr of 1999 Wis. Act 9, 343.085(1)(b) as created by s. 2734rh of 1999 Wis. Act 9, 343.06(1)(cm) as created by s. 2734qd. of 1997 Wis. Act 9, 351.02(1)(f), 343.02(1), 85.16, s. 9150(5g), 1999 Wis. Act 9, Stats., the department of transportation hereby proposes to amend a rule interpreting those provisions relating to the demerit point system and graduated driver license restriction extensions.

SECTION 1. Chapter Trans 101(title) is repealed and recreated to read:

DEMERIT POINT SYSTEM AND GRADUATED DRIVER LICENSE RESTRICTION EXTENSIONS

SECTION 2. Trans 101.02(1)(g) is amended to read:

Trans 101.02(1)(g) Operating while under influence of intoxicant or controlled substance, or with a prohibited alcohol concentration.

SECTION 3. Trans 101.02(1)(k) and (3)(a) are repealed and recreated to read:

Trans 101.02(1)(k) Failure to stop at a railroad crossing.

(3)(a) Violation of a restriction on a graduated driver license related to the time or route of travel or passengers permitted.

SECTION 4. Trans 101.02(3)(b) is repealed.

SECTION 5. Trans 101.02(3)(e) is amended to read:

Trans 101.02(3)(e) Failure to obey any official traffic sign or signal control device.

NOTE: This includes arterial signs, one-way signs or traffic signs or signals. See s. 340.01(38), Stats.

SECTION 6. Trans 101.02(3)(o) is repealed.

SECTION 7. Trans 101.02(5)(intro.) and (v), and (8)(a) are amended to read:

Trans 101.02(5)(intro.) ZERO DEMERIT POINT VIOLATIONS. The department ~~shall~~ may not assess demerit points for any of the following violations:

(v) Under age ~~19~~ 21, operating motor vehicle with any measured alcohol ~~content~~ concentration.

(8)(a) The demerit points charged against the record of any person who holds ~~a~~ an instruction permit or probationary license on the date of the conviction, ~~or any an~~ unlicensed person who would be issued a probationary license or instruction permit if proper application were made and all other requirements for license were met, shall have the demerit point value shown for the convictions set forth in subs. (1) to (4) ~~increased by 2 points~~ doubled on the second and all subsequent convictions, unless the conviction is for a violation of ch. 347, Stats.

SECTION 8. Trans 101.04(3)(intro.) is amended to read:

Trans 101.04(3)(intro.) ~~The~~ Except as provided in sub. (3m) with respect to probationary driver licenses, the following demerit point accumulations, calculated from the date of violation, shall result in the following revocation or suspension periods:

SECTION 9. Trans 101.04(3m) is created to read:

Trans 101.04(3m) Notwithstanding subs. (1) and (3), the following demerit point accumulations, calculated from the date of violation, shall result in the following suspension or revocation periods, if the driver holds an instruction permit or a probationary driver license, or would be issued an instruction permit or probationary driver license upon proper application and meeting other requirements:

Demerit Points Accumulated in a 12-Month Period	Length of Revocation or Suspension
12 to 30 points	6 months
More than 30 points	1 year

NOTE: See s. 343.32(2)(a) and (c), Stats.

SECTION 10. Trans 101.04(4) is repealed and recreated to read:

Trans 101.04(4) A departmental revocation or suspension under this chapter takes effect on the date of the suspension or revocation order, except that a revocation for a conviction in another jurisdiction for an offense which, if committed in this state, would have required revocation of the person's operating privilege under s. 343.32(1), Stats., takes effect on the date of the conviction.

SECTION 11. Trans 101.04(5) is amended to read:

Trans 101.04(5) ~~Revocations~~ Suspensions under the provisions of s. 343.32(1)(b) or (c), Stats., shall be effective for 6 months. ~~If a person was convicted of a traffic violation that was a cause of an accident that resulted in the death of another,~~

~~there shall be a revocation for a period of 6 months under the provisions of s. 343.32(1)(a), 1993 Stats.~~

SECTION 12. Trans 101.04(6) is repealed and recreated to read:

Trans 101.04(6) If a court orders suspension of a person's operating privilege under s. 343.30(1), Stats., and the person is also subject to a demerit point suspension or revocation under s. 343.32, Stats., and this chapter, as a result of the same violation, the longer suspension or revocation period shall apply.

SECTION 13. Trans 101.05(1) is amended to read:

Trans 101.05(1) The department, upon issuing a reinstated operator's license or upon return of a license which has been suspended, shall reduce the accumulated point value to 6 points. If at the time of reinstatement or suspension termination, the demerit point value in the immediately preceding 12 month period is less than 6, the lesser point value shall be carried forward in the record. Revocations and suspensions under chs. 48, 344, 345, 767, 800, 938 and 961, Stats., and ss. 343.30(lq)(d), 343.30(6), 343.305(10), 343.32(1m)(b) and 343.345, Stats., ~~shall~~ do not qualify for point reduction under this section.

SECTION 14. Trans 101.10 is created to read:

Trans 101.10 Graduated driver license eligibility and restriction extensions. (1) The department may not issue a license to a person under s. 343.085(1)(b), Stats., if the person has committed any offense for which demerit points are assessed under this chapter, or any offense under the law of another jurisdiction for which demerit points would be assessed if the offense were committed in this state, within the preceding 6 months, except:

(a) Any violation of ch. 347, Stats., resulting in the assignment of 2 or fewer demerit points under this chapter, or a similar violation under law of another jurisdiction, except child safety restraint, seat belt and defective speedometer violations.

(b) Illegal riding.

(2)(a) Except as provided in par. (b), the department shall extend graduated driver license restrictions required under s. 343.085(2m)(a), Stats., if the person has committed any offense for which demerit points are assessed under this chapter or any of the following offenses:

1. Operation of a motor vehicle by a person who has not attained the legal drinking age while having an alcohol concentration greater than 0.0 and less than 0.1.

2. Refusal of chemical testing under the implied consent law.

3. Operation of a commercial motor vehicle with an alcohol concentration greater than 0.04 and less than 0.10.

4. Operation of a commercial motor vehicle with an alcohol concentration above 0.0, within 4 hours of having consumed or having been under the influence of an intoxicating beverage, or while possessing an alcoholic beverage.

5. Failure to notify the owner of any property on or adjacent to a highway that is damaged in an accident.

6. Any offense committed in another jurisdiction for which demerit points would be assessed if the offense were committed in this state.

(b) Notwithstanding par. (a), the department may not extend the graduated driver license restrictions required under s. 343.085(2m)(a), Stats., solely for committing any of the following offenses:

1. Any violation of ch. 347, Stats., resulting in the assignment of 2 or fewer demerit points under this chapter, except child safety restraint, seat belt and defective speedometer violations, or a similar violation under the law of another jurisdiction.

2. Illegal riding.

3. Operating with multiple licenses.

4. Operating without having obtained an operator's license, without a proper license endorsement, without proper license classification for the vehicle being operated, or with a license which has expired, and including the following:

a. Operating a commercial motor vehicle without having obtained a commercial driver license.

b. Operating a school bus without having obtained a school bus endorsement.

c. Operating a Type 1 motorcycle without a license authorizing the operation of class "M" vehicles.

NOTE: The Division of Motor Vehicles' charge codes for these offenses are OWL-- "Operating Without a License," s. 343.05(3), Stats., and CUL--"Commercial Unlawful License," s. 343.05(2), Stats.

5. Operating while suspended or revoked.

6. Operating while disqualified.

(c) Only one extension of graduated driver license restrictions may result from any one incident or occurrence.

SECTION 15. Trans 102.20(2)(i) is amended to read:

Trans 102.20(2)(i) "Livestock feeder" means a business that is licensed as ~~an~~ approved veal lot under s. ATCP 11.13 or an approved feed lot under s. ATCP 11.14.

SECTION 16. Trans 102.205 is created to read:

Trans 102.205 Copying of driver licenses. Any person, including the state or federal government, or an agency or political subdivision thereof, may make a copy of a driver license provided the copy is intended to be used for the identification of the person to whom the license has been issued and the person does not sell or transfer the copies to any third person or include the copy of the driver license photo in any electronic or paper library of images. This provision does not prohibit a lender or business from requesting and making a copy of a driver license as part of an application for credit or other business services and forwarding that copy with the application materials in the ordinary course of business when the commercial paper or business is sold or transferred.

NOTE: Amendments to s. 343.43(1)(f), Stats., enacted as part of 1999 Wisconsin Act 9 provide the Department with authority to adopt this rule with respect to driver licenses. No similar authority exists with regard to the general prohibition against copying identification cards found in s. 343.50(12)(e), Stats. See State v. Schwolin, 57 Wis. 2d 764 (1973), for general guidance on the copying of identification cards.

SECTION 17. Trans 103.05(1) is amended to read:

Trans 103.05(1) Except as provided in subs. (2) ~~to (5)~~ and (3), the effective date shall be the date the HTO or repeat HTO order is mailed.

SECTION 18. Trans 103.05(2) and (3) are repealed.

SECTION 19. Trans 103.05(4) and (5) are renumbered (2) and (3).

SECTION 20. Trans 104.03(4) is amended to read:

Trans 104.03(4) **FAILED TESTS.** A person who fails a knowledge or pre-trip inspection test may not retake the test sooner than the next day following the failed test. A person who fails a knowledge or pre-trip inspection test 5 or more times within one year may be authorized another attempt only after requesting and receiving permission from the department to do so. Permission to take more than 5 tests in a one year

period may be granted if the person demonstrates that he or she has received additional instruction, or some other significant circumstance has changed since the last failed exam, which makes successful completion of the exam more likely.

SECTION 21. Trans 104.03(8)(b)6., 7. and 8. are created to read:

Trans 104.03(8)(b)6. Locate and verbally identify the air-brake operating controls and monitoring devices.

7. Ascertain whether the emergency braking system will activate properly.

8. Ascertain, with a fully charged air system and the engine off, the rate at which air is lost from the system.

SECTION 22. Trans 104.055 is created to read:

Trans 104.055 Graduated driver license requirements and waivers.

(1) GRADUATED DRIVER LICENSE REQUIREMENTS. Except as provided in sub.

(2), the department may not issue a probationary driver license to any person less than 18 years of age unless the person has met all of the following requirements:

(a) The person has accumulated at least 30 hours of behind-the-wheel driving experience, at least 10 of which were during hours of darkness. Up to 5 hours of behind-the-wheel driving experience performed with a qualified instructor may be counted at the rate of 2 hours for each hour of actual driving. The department shall require an applicant's adult sponsor under s. Trans 102.21 to certify that the applicant has met this requirement as a condition of issuing a probationary driver license, except that persons who are permitted to file proof of financial responsibility in lieu of sponsorship under s. 343.15(4), Stats., may provide that certification.

(b) The person has not received a citation for an offense described in s. Trans 101.10(1).

(2) WAIVERS FOR DRIVERS PREVIOUSLY LICENSED IN OTHER JURISDICTIONS. (a) *License holders from other jurisdictions.* The department may issue a probationary driver license to a person less than 18 years of age without regard to the length of time the person held any instruction permit and without requiring the certification described in sub. (1) if the person meets all of the following:

1. The person has been issued a driver license, other than an instruction permit, by another jurisdiction prior to the person establishing Wisconsin residency.

2. The person certifies that he or she has not been convicted of a violation of law which prohibits issuance of a probationary driver license to a person under 18 years of age within the preceding 6 months, as provided for in s. Trans 101.10(1).

(b) *Instruction permit holders from other jurisdictions.* The 6 month period during which a driver less than 18 years of age must hold a Wisconsin instruction permit prior to receiving a driver license in Wisconsin under s. 343.085(1)(b), Stats., shall be reduced by any amount of time a driver can show he or she was a resident of another jurisdiction and held an instruction permit issued by that jurisdiction.

(c) The department shall cancel the license of any person who provides a false certification under this subsection.

SECTION 23. Trans 104.06(5)(b) and (6)(a)3. are amended to read:

(5)(b) *Abbreviated skills test.* A person holding a commercial driver license with proper classes who applies only to remove an air-brake restriction may be administered an abbreviated skills test in an air-brake equipped vehicle. ~~A person who fails an~~

~~abbreviated test once shall be required to pass a full skills test in an air brake equipped vehicle to have the air brake restriction removed from the person's license. The department may require a driver to retake a complete CDL skills test if the results of an abbreviated skills test lead the examiner to question whether the driver is competent to safely operate a commercial motor vehicle in compliance with the laws of this state.~~

(6)(a)3. ~~Will~~ Roadside stop and start.

SECTION 24. Trans 104.09(1) and (2) are amended to read:

Trans 104.09(1) ~~A~~ Except as provided in subs. (2) to (5), a person who fails a skills test or special examination ~~solely as a result of committing a moving traffic violation~~ shall wait a minimum of one day before retaking the test.

(2) A person who fails a skills test or special examination by 10 points or less, or who fails a skills test because of dangerous driving behavior described in s. Trans 104.06(13)(a), (b) or (d), shall wait a minimum of one week before retaking the test.

SECTION 25. Trans 104.09(3m) is created to read:

Trans 104.09(3m) A person who fails a CDL skills test solely because he or she failed both the straight-line and curved-path backing tests shall wait a minimum of one week before retaking the CDL skills test.

SECTION 26. Trans 104.09(5) is amended to read:

Trans 104.09(5) A person who fails 5 or more skills tests or special examinations within one year may be authorized ~~a sixth~~ another attempt only after requesting and receiving permission from the department to do so. Permission to take more than 5 tests or exams in a one year period may be granted if the person demonstrates that he or she has received additional instruction, or some other significant circumstance has

changed since the last failed test or exam, which makes successful completion of the test or exam more likely.

SECTION 27. Trans 104.10(title), (1)(d) and (e) are amended to read:

Trans 104.10 (title) ~~Renewal testing~~ **Retesting intervals for certain endorsements.**

(1)(d) If a person with a school bus endorsement fails the abbreviated ~~renewal~~ skills test, ~~a complete driving school bus skills test shall be required~~ the person's school bus endorsement may not be renewed until the person retakes and passes the abbreviated skills test. ~~This test may be taken no sooner than the day following the a failed test.~~ The department may require a driver to retake a complete driving school bus test if the results of an abbreviated skills test lead the examiner to question whether the driver has the ability to exercise ordinary and reasonable control in the operation of a school bus in compliance with the laws of this state.

(e) A person who holds a license with a school bus endorsement that is restricted from operation of air-brake equipped vehicles may not take a school bus endorsement ~~renewal examination~~ abbreviated skills test in an air-brake equipped vehicle unless the person first completes all knowledge and skills examinations required to remove an air-brake restriction under ss. Trans 104.03(2)(f) and (8) and 104.06(5)(b). The air-brake pre-inspection test and abbreviated air-brake skills test may be conducted as part of a school bus ~~renewal examination~~ abbreviated skills test.

SECTION 28. Trans 117.03(3)(j) is created to read:

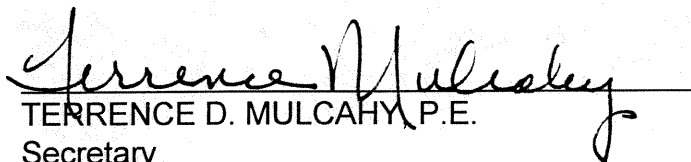
Trans 117.03(3)(j) An occupational license shall include all restrictions that applied to the person's basic driver license, including any graduated driver license restrictions.

NOTE: s. 343.10(5)(a)1., Stats.

(END OF RULE TEXT)

Effective Date. This rule shall take effect on September 1, 2000.

Signed at Madison, Wisconsin, this 26 day of
May, 2000.


TERRENCE D. MULCAHY, P.E.
Secretary
Wisconsin Department of Transportation

PART 4
CR 00-057

ANALYSIS OF FINAL DRAFT OF TRANS 101-104

(a) **Need for Amended Rule.** 1999 Wisconsin Act 9, the 1999 budget bill, incorporated the provisions of 1999 AB 52 and established a Graduated Driver License ("GDL") system for Wisconsin. The general scheme of the legislation is to require drivers to practice more before obtaining their first drivers licenses, to restrict the types of driving activities they may engage in after first obtaining their licenses, and to penalize those that break traffic laws, such as speeding, more harshly than experienced drivers.

This proposed rule making administratively interprets the GDL provisions of 1999 Wis. Act 9 and provides a framework for enforcement of the driver license restrictions applied to new drivers and to implement the harsher demerit point system applied to drivers that are subject to the new law.

In addition to implementing a GDL law, 1999 Wis. Act 9 also amended existing law to provide the Department with authority to regulate the copying of driver licenses. This rule proposes to implement that legislative directive by permitting any business to copy driver licenses for legitimate business purposes, provided they do not compile a library of photographs from the copies, nor sell them.

In addition, where administrative changes in rules being amended were already contemplated by the Department, those changes are incorporated into this rule making.

(b) **Modifications as a Result of Testimony at Public Hearing.** Public hearings were held on April 12, 2000 in Schofield, WI; on April 13, 2000 in Eau Claire, WI; and on April 17, 2000 in Milwaukee. In addition, a public meeting related to these rules and Graduated Driver Licensing was held at the Platteville High School on May 1, 2000. No modifications were made to the rule as a result of testimony at the hearings.

(c) **List of Persons who Appeared or Registered at Public Hearing.** The following persons appeared/registered:

April 12, 2000 - Schofield

Loralee Brumund, Division of State Patrol, P. O. Box 7912, Madison, WI 53707-7912—registered in favor.

Larry Koralewski, Supervisor, Division of Motor Vehicles, 1001 Maple Bluff, Stevens Point, WI 54481—registered in favor.

Mike Hoffart, Driver Education Teacher, D. C. Everest High School, 6500 Alderson Street, Schofield, WI—registered for information.

David Coady, Supervisor, Division of Motor Vehicles, 5301 Rib Mountain Drive, Wausau, WI 54401—spoke in favor.

Cathy Fallos, 465 Scout Road, Mosinee, WI 54455—spoke for information.

Les Norton, Driver Education Instructor, 1211 LeMessurier Street, Wausau, WI 54403—spoke in favor and for information.

April 13, 2000 - Eau Claire

Amy Baumann, WWIB/WOGO News Anchor, 2396 Hwy. 53, Chippewa Falls, WI 54729—registered in favor.

Charlie Carpenter, Driver Education Instructor, Memorial High School, 2225 Keith Street, Eau Claire, WI—registered in favor.

Joseph L. Heil, Sr., 1231 Rowe Street, Eau Claire, WI 54703—registered in favor.

Don Shilts, Program Supervisor, Division of Motor Vehicles, Bureau of Field Services, 3115 Melby Street, Eau Claire, WI 54703—registered in favor.

April 17, 2000 - Milwaukee

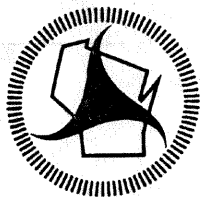
Randall R. Thiel, Alcohol Traffic Safety Consultant, Department of Public Instruction, 125 South Webster Street, P. O. Box 7841, Madison, WI 53707-7841—spoke in favor and for information.

Robin Van Dorn, Driver Education Teacher, Milwaukee Public Schools, 4242 North 64th Street, Milwaukee, WI 53216—registered in favor.

(d) **Response to Legislative Council Recommendations.** Recommendations of the Legislative Council are adopted, except as follows:

The recommendation 5.e. to clarify the language in s. Trans 104.09(3m) was accepted, but the Department further simplified the provisions' language.

(e) **Final Regulatory Flexibility Analysis.** This rule making will have no effect on small businesses, except that it may increase revenues to commercial driving schools to the extent that some parents may have commercial schools provide their children with the training needed to meet the 30 hour practice driving requirements for driver licensing.



Wisconsin Department of Transportation

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September 1, 1999

SEP 03 REC'D
SEP 03 1999

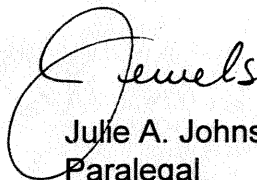
Mr. Gary L. Poulson, Deputy Revisor
Revisor of Statutes Bureau
131 West Wilson Street
Suite 800
Madison, Wisconsin 53703

RE: **STATEMENT OF SCOPE OF PROPOSED RULEMAKING, TRANS 101**

Dear Mr. Poulson:

Enclosed is the Statement of Scope for the proposed amendment of ch. Trans 101. Please publish the Scope Statement in accordance with § 227.135(3), Stats., in the Administrative Register.

Sincerely,



Julie A. Johnson
Paralegal

Enclosures

cc: Richard G. Chandler/DOA State Budget Director
Senator Judy Robson, Co-Chair/JCRAR
Representative Glenn Grothman, Co-Chair/JCRAR
Sandy Beaupre
Mike Goetzman
Roger Cross
John Alley

STATEMENT OF SCOPE

DESCRIPTION OF THE OBJECTIVE OF THE RULE:

Chapter Trans 101 administratively interprets those portions of chs. 343 to 349, Stats., relating to establishing a traffic violation demerit point system. The Department is amending the rule to:

- Conform the rule to statutory changes made in 1997 Wis. Act 84 relating to operating while suspended (OWS) and operating after revocation (OAR).
- Address demerit point reduction for child support cases, a new license withdrawal type created by 1997 Wis. Act 237.
- Conform the rule to s. 343.32(2)(bd) as created by 1997 Wis. Act 135 which requires 6 demerit points be assessed upon conviction for illegally crossing railroad tracks.
- Change criteria used to set the effective dates for demerit point cases.

DESCRIPTION OF EXISTING POLICIES RELEVANT TO THE RULE AND OF NEW POLICIES PROPOSED TO BE INCLUDED IN THE RULE AND AN ANALYSIS OF POLICY ALTERNATIVES:

Amendment #1—Conform ch. Trans 101 to 1997 Wis. Act 84. 1997 Wis. Act 84 simplifies many motor vehicle laws related to revocations and suspensions for the sake of the general public, law enforcement, prosecutors, defense attorneys, courts, and the Department. This rule making will conform the administrative rule to revised s. 343.32, Stats., which makes all demerit point license withdrawals suspensions. No alternatives may be considered by the agency because the rule must conform to the statute.

Amendment #2—Conform ch. Trans 101 to 1997 Wis. Act 237. 1997 Wis. Act 237 allows courts to suspend a person's driver license for non-payment of child support.

Trans 101 allows for the reduction of points upon reinstatement of a driver's license unless the license withdrawal was for one of the non-driving related incidents, specified in Trans 101.05(1). Upon reinstatement, points are reduced to six points. The point reduction applies only to convictions dated before the reinstatement. In essence, this policy treats an existing driver record withdrawal as a withdrawal covering all incidents for the last twelve month period; what may have been multiple withdrawals are treated as concurrent cases for determining length of the withdrawal. Without this policy, some drivers would have consecutive cases resulting in significantly longer withdrawal periods.

The suggested change in ch. Trans 101 simply adds non-payment of child support to the list of non-driving related suspensions for which there is no demerit point reduction upon license reinstatement.

The possible alternative to this proposed change is to leave the rule as it currently is written and allow reinstatements from suspension for non-payment of child support to result in a reduction down to 6 demerit points.

There are no public policy advantages to not amending this rule. Amending the rule will remove a potential incentive for bad drivers to refuse to pay child support. It will also be consistent with Department procedures for other non-payment withdrawal actions and therefore be easier for the public to understand and more administratively efficient.

Amendment #3—Conform ch. Trans 101 to 1997 Wis. Act 135. Section 343.32(2)(bd), as created by 1997 Wis. Act 135, creates stiffer penalties for violations at railroad crossings. Violators will receive more serious sanctions for ignoring signals or driving recklessly at railroad crossings. Ch. Trans 101 needs to be amended to conform to this new statutory mandate. Accordingly, no alternatives are considered.

Amendment #4—Eliminate license surrender date as an element used in calculating the effective date of a demerit point suspension. Current s. Trans 101.04(4) makes the effective date of a suspension contingent on whether and when a person has surrendered his or her driver license to the Department.

This language in Trans 101 has a long history. The implementation of the policy, however, has changed dramatically over time as staff resources for handling department workload have diminished. At one point, probably as recently as the late 1970's or early 1980's, there was a concerted effort to collect licenses from drivers when they appeared in court or by sending law enforcement officers or driver license examiners out to the person's home. Since there is no research to support the premise that taking the license document prevents or dissuades people from driving, this use of valuable resources for this purpose was discontinued.

Until about 1996, a person could surrender a driver's license at one of the Division of Motor Vehicles field offices throughout the state and have it returned to the central office in Madison for recording on the driver licensing system. The division discontinued taking the license in 1996, because of the staff time required to handle the licenses in the field.

In 1996, the division fully implemented a computer image system to store documents and eliminate all paper files for revocations and suspensions cases. Currently, the division has no file system in which to store driver licenses. For the few licenses, about 10,000 per year, that are sent into the Madison central office, the division keys a surrender date and destroys the license. Last year, the division completed 333,000 license revocations or suspensions. The current system -- with a small number of surrenders being keyed online -- results in very unequal application of this portion of Trans 101.

There are two possible alternatives to the proposal of eliminating surrender date:

- Continue the existing system of inconsistently using surrender date in determining the effective date of withdrawal cases.
- Allocate sufficient staff resources to collecting, recording and storing licenses to be able to apply consistently a surrender effective date.

Neither alternative would require a rule change. Making no change, however, would continue the current inconsistent system at a cost in lost processor time for no perceivable benefit. Allocating resources to collect invalid licenses is not possible without significant budget changes to pay for the manpower required to carry out that work.


STATUTORY AUTHORITY FOR THE RULE:

Section 343.32(2)(a), Stats.

ESTIMATES OF THE AMOUNT OF TIME THAT STATE EMPLOYEES WILL SPEND DEVELOPING THE RULE AND OF OTHER RESOURCES NECESSARY TO DEVELOP THE RULE:

35 hours

Signed at Madison, Wisconsin, this 1 day
of September, 1999.


CHARLES H. THOMPSON
Secretary
Wisconsin Department of Transportation