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NOTE: Section 128.21, Stats., voluntary proceeding orders do not stay Ch. 344 license suspension or revocation actions, and are therefore inadequate to resolve a damage judgment suspension or revocation under sub. (5)(b).

(c) Provide proof to the department that the judgment debtor is released from liability on the judgment, or that enforcement of the judgment is stayed, by operation of law.

NOTE: See s. Trans 100.19 regarding the effect of a bankruptcy on a damage judgment revocation.

(d) Provide proof to the department that action upon the judgment is barred by passage of more than 20 years under s. 893.40, Stats.

(e) File with the department an original installment agreement between the judgment debtor and judgment creditor meeting the requirements of s. 344.14(2)(h), Stats., and s. Trans 100.13.

NOTE: Judgment creditors may not seek to re-suspend the operating privilege or vehicle registration of a judgment debtor within 6 months of filing an installment agreement. s. 344.25(2), Stats.

SECTION 58. Trans 100.16(2) is amended to read:

Trans 100.16(2) Self-insurance certificates shall be issued for a period of 3-years one year.

SECTION 59. Trans 100.16(4) is created to read:

Trans 100.16(4)(a) A person shall be considered to have the ability to pay judgments arising out of motor vehicle accidents if the person has unencumbered assets of at least \$60,000 times the square root of the total number of vehicles owned by the person and operated on Wisconsin highways, is paying creditors as the person's debts become due, and does not have any judgment that has remained unpaid more than 30 days.

(b) In this subsection:

1. "Unencumbered assets" means the net worth of the person less the sum of all contingencies and reserved capital.

NOTE: Unencumbered Assets = Net Worth – (Contingencies + Reserved Capital).

2. "Contingencies" means events that have occurred, or that are likely to occur, that if included in the financial statements of the entity, would have a material effect on the financial position of that entity.

NOTE: Examples of contingencies include a lawsuit that could result in the payment of damages or fines that have not been reflected or disclosed on the financial statements or investment losses not yet realized and not reflected or disclosed on the financial statements.

3. "Reserved capital" means any amount reserved by management as required by contract or reserved for a specific activity.

NOTE: Examples of reserved capital include established reserves required by loan agreements, planned purchases of company stock, and planned distributions of capital.

(c) Evidence that a person has the ability to pay judgments shall be provided in the form of audited financial statements or on a United States securities and exchange commission form 10K filing.

NOTE: The provisions of sub. (4) are drawn from the Insurance Industry Committee on Motor Vehicle Administration's recommendations to the American Association of Motor Vehicle Administrators.

SECTION 60. Trans 100.17(1) is amended to read:

Trans 100.17(1) A transfer of ownership of any vehicle whose registration is suspended or revoked or subject to suspension or revocation under s. 344.14, Stats., shall may not be allowed if the under any of the following circumstances:

(a) The owner whose registration is suspended, revoked or subject to revocation suspension continues to have possession of, use of, or receive any benefit from the operation of the vehicle.

(b) The transferee resides at the same address as the transferor.

(c) The transferee is unable to prove that adequate consideration was paid for the vehicle.

SECTION 61. Trans 100.17(1m) is created to read:

Trans 100.17(1m) The department may not issue a title in the name of a purported purchaser for a vehicle if the transaction is impermissible under sub. (1).

SECTION 62. Trans 100.17(2) is amended to read:

Trans 100.17(2) A person's registration shall be considered subject to suspension or revocation under s. 344.14, Stats., when written notice of a security requirement under s. 344.13, Stats., is issued by the department.

SECTION 63. Trans 100.17(3)(intro.), (a) and (b), and (4)(intro.) and (b) are amended to read:

Trans 100.17(3)(intro.) An application for transfer of ownership shall may be accepted and a title may be issued in the name of the purchaser, when either of the following occur:

(a) The vehicle is repossessed by a person who, pursuant to the terms or conditions of any written instrument, is given a right of repossession; ~~or,~~

(b) The purchaser does not reside at the same address as the seller and the full value of the vehicle has been paid to the seller. The department may require proof of

payment of, an affidavit from the buyer or seller as, or other evidence that the proposed transfer is in good faith.

(4) If the department refuses to ~~allow a~~ acknowledge an alleged transfer of ownership and to issue a title in the name of the alleged purchaser, the department shall do all of the following:

(b) Return all fees submitted by with the application to the purchaser with an explanation as to why the transfer of ownership was refused. ~~If the title and registration were issued after the written notice of security was issued to the seller but prior to the revocation of registrations, the fees shall be returned only after the purchaser complies with the department request for return of the title and any registration plates issued.~~

SECTION 64. Trans 100.17(4)(c) is repealed.

SECTION 65. Trans 100.17(5) and (6) are created to read:

Trans 100.17(5) If the department issues a title in violation of s. 344.46, Stats., after it issues a notice of security requirement under s. Trans 100.10(1), the department shall suspend any outstanding title and registration, shall notify the transferee and transferor of that fact, and shall demand return of the mistakenly issued title. Upon return of the title to the department, the department shall provide a duplicate title to the transferor, without fee. A vehicle that is transferred as a gift, is sold for inadequate consideration, that remains in the possession of the transferor, that continues to be used by the transferor, or that is transferred to a spouse, parent, child, spouse's parent, child's spouse, step parent, step child, or any person residing at the same address as

the transferor, shall be presumed to have been transferred for the purpose or with the effect of defeating the purpose of s. 344.46, Stats.

(6) The department may notify any lien holders of record or appearing on alleged purchaser's title application of the department's actions under this section and the reasons for those actions, and may provide copies of any and all materials sent by the department to the alleged purchaser or seller.

SECTION 66. Trans 100.18 is repealed.

See p. 50.

SECTION 67. Trans 100.19 is renumbered Trans 100.20 and, as renumbered, Trans 100.20(1) is renumbered Trans 100.20(2) and amended to read:

Trans 100.20(2) ~~The An accident entry shall may be purged from the driver record after database if more than 4 years from the date of the accident have elapsed when the purge is conducted.~~

SECTION 68. Trans 100.20(1) is created to read:

Trans 100.20(1) The department may purge records of accidents from the department's online database of driver records twice per year or with such increased frequency as the secretary deems appropriate.

SECTION 69. Trans 100.20(2) is renumbered Trans 100.20(3) and amended to read:

Trans 100.20(3) ~~The A safety responsibility suspension or revocation case entry shall may be purged from the driver record after database if 5 years from the effective date of the suspension or revocation, or 3 years from the reinstatement eligibility date, whichever is longer, have elapsed at the time the purge is conducted.~~

SECTION 70. Trans 100.20(4) and (5) are created to read:

Trans 100.20(4) After a damage judgment is satisfied, the damage judgment suspension or revocation case entry may be purged from the database at the time a purge is conducted if 3 years from the date the person meets one of the criteria in s. Trans 100.19(1)(a) or (e), or 5 years from the date of the suspension or revocation, whichever is longer, have elapsed.

(5) After a damage judgment debt is discharged in a bankruptcy proceeding, the damage judgment suspension or revocation case entry may be purged from the database at the time a purge is conducted if 3 years from the date the person is discharged from liability for the accident in a bankruptcy proceeding, or 5 years from the date of the suspension or revocation, whichever is longer, have elapsed.

NOTE: The Department conducts system wide "purges" of its driver database once or twice per year, usually over weekends around the 1st of the year and the 1st of June. A record entry is purged if it meets purge criteria on the date a purge is conducted. Entries are not purged on anniversary dates, but rather, in the first purge conducted after the appropriate anniversary date.

SECTION 71. Trans 100.19 is created to read:

Trans 100.19 Damage judgments. (1) **SUSPENSION.** (a) Upon receipt of a certified damage judgment from a Wisconsin court, the department shall immediately suspend the operating privilege and vehicle registration of the judgment debtor. The suspension shall remain in effect until the person pays all fees required for operating privilege and vehicle registration reinstatement, files any required proof of financial responsibility for the future, and until one of the following conditions is met:

(a) The person files with the department a certified or court stamped copy of a satisfaction of judgment.

(b) The person files with the department a court ordered installment payment schedule meeting the requirements of s. 344.27, Stats.

(c) The person files with the department an installment agreement complying with sub. (3).

(d) The person's suspension or revocation is temporarily or permanently affected under sub. (4) because of a bankruptcy.

(e) More than 20 years from the entry date of the judgment have elapsed.

(2) OUT OF STATE AND TRIBAL COURT JUDGMENTS. Upon receipt of a certified damage judgment naming a Wisconsin resident or licensed driver as judgment debtor from an Indian tribal court in Wisconsin or a court or driver licensing authority from another jurisdiction, the department shall provide notice of the receipt of the certification to the judgment debtor. The department shall suspend the operating privilege of the judgment debtor unless, within 30 days of the issuance of the notice by the department, the driver satisfies one of the requirements of sub. (1)(a) to (e) or, if the notification was received from a driver licensing authority in another jurisdiction, the person files a letter of clearance from the driver licensing authority in the other jurisdiction.

NOTE: Where notice of a judgment debt is sent to the Department by a licensing authority in another state, obtaining a release letter may be required as a precondition to obtaining or keeping a Wisconsin driver license. If the judgment debtor has moved to Wisconsin from the other state, the Department is prohibited from issuing the person a license if the person's operating privilege is suspended or revoked in the other state. s. 343.38(4), Stats. If the person has been issued a license, it will be cancelled. s. 343.25(4), Stats.

(3) INSTALLMENT AGREEMENTS. (a) If a judgment creditor consents to allow a judgment debtor to retain or reinstate the debtor's operating privilege or vehicle

registration under s. 344.25(2), Stats., the parties shall file a copy of the written installment agreement between the parties. The agreement shall meet the requirements of s. Trans 100.13. In applying the requirements of s. Trans 100.13, the term "injured party" shall mean the judgment creditor, and the term "uninsured person" shall mean the judgment debtor. The installment agreement shall provide that upon payment of the sums specified in the agreement, the judgment will be satisfied.

(b) If the department is notified that a judgment debtor has defaulted on a written installment agreement filed under s. 344.25, Stats., and 6 months have not elapsed from the date of the agreement, the department shall advise the person notifying the department of the default that no action may be taken until 6 months have elapsed. If 6 months have elapsed from the date of the agreement, the department shall immediately suspend the person's operating privilege and vehicle registration. The suspension shall remain in effect until the person pays all fees required for operating privilege and vehicle registration reinstatement, files any required proof of financial responsibility for the future, and meets one of the following:

1. Files with the department a certified or court stamped copy of a satisfaction of judgment.
2. Files with the department a copy of a court ordered installment agreement ordered under s. 344.27, Stats.

NOTE: Section 344.25(2), Stats., provides that a reinstatement following filing of a repayment agreement is for a minimum of 6 months. Courts do not have authority to order license reinstatement in voluntary wage earner debt amortization proceedings under s. 128.21, Stats. Amortization orders entered under s. 128.21 will not result in a debtor being able to immediately reinstate his or her operating privilege. In cases where a s. 128.21 proceeding is considered, bringing a parallel s. 344.27 motion to amortize a judgment debt and permit license reinstatement should be considered.

3. Applies for license reinstatement more than 20 years after the entry date of the judgment.

NOTE: See s. 893.40, Stats.

(4) **BANKRUPTCY.** (a) A person whose operating privilege or vehicle registration is suspended or revoked under s. 344.25, Stats., who files a petition in bankruptcy, and from whom collection of a pre-bankruptcy damage judgment debt is stayed under 11 USC s. 362, or whose personal liability for the damage judgment debt is discharged under U. S. bankruptcy laws, may reinstate his or her operating privilege or vehicle registrations. The person shall be subject to all the same reinstatement, filing and fee requirements as any other person seeking license reinstatement who has obtained a satisfaction of judgment following a damage judgment suspension.

NOTE: See *Holder v. DOT*, 40 BR 847 (E.D. Wisc., 1984) regarding the Department's authority to require proof of financial responsibility for the future of a bankruptcy debtor. Tort liability is not "consumer debt" under 11 USC 101 (7). Therefore, Ch. 13 co-debtor stay does not prohibit collection against non-bankrupt persons. In re ALVAREZ, 57 BR 65 (S.D. Fla., 1985).

(b) If a judgment creditor notifies the department that the automatic stay has been lifted to permit collection of the debt evidenced by the damage judgment, the department shall suspend the person's vehicle registration or operating privilege, or both.

(c) If the debtor's bankruptcy case closes or the automatic stay is lifted and the debt is not dischargeable under United States bankruptcy law, the department shall suspend the debtor's operating privilege or vehicle registration, or both, upon receipt of one of the following:

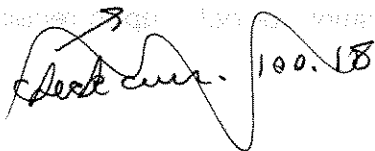
1. If a hearing is required to determine dischargeability of the judgment debt under 11 U.S.C. s. 523(c)(1), a copy of the court order finding the debt to be non-dischargeable.

2. If no hearing is required to determine dischargeability of the judgment debt under 11 U.S.C. s. 523(c)(1), then an affidavit of the claimant that the judgment is not dischargeable under bankruptcy law, citing the appropriate exception to discharge applicable to the judgment debt under 11 U.S.C. s. 523(a), and affirming that the debt was not discharged in the debtor's bankruptcy proceeding, or a court order making a determination that the debt was not discharged by the bankruptcy proceeding.

(d) The department may not permit a person whose operating privilege or vehicle registration was suspended under par. (c) to reinstate the operating privilege or vehicle registration unless the person provides a court order or findings to the department from a proceeding to which the judgment debtor and creditor were parties concluding that the debt was, in fact, discharged by the bankruptcy proceeding or the person meets the reinstatement requirements of sub (1)(a) to (e).

(e) A debtor who alleges a damage judgment was entered and certified to the department in violation of the automatic stay in violation of 11 U.S.C. s. 362 shall be required to provide evidence that the judgment is void or has been vacated or satisfied as a condition of license reinstatement.

SECTION 72. Trans 117.03(2)(k) is created to read:

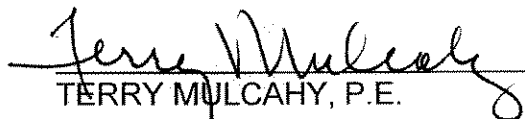
A handwritten signature in black ink, followed by the number "100.18".

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Trans 117.03(2)(k) The CDL occupational license of a person whose operating
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privilege is suspended or revoked under ch. 344, Stats., may not authorize operation of
class D or M vehicles.

(END OF RULE TEXT)

Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Signed at Madison, Wisconsin, this 20 day of
December, 2001.


TERRY MULCAHY, P.E.
Secretary
Wisconsin Department of Transportation



Wisconsin Department of Transportation

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December 20, 2001

The Honorable Judy Robson
Senate Chairman
Joint Committee for Review
of Administrative Rules
Room 15 South, State Capitol
Madison, Wisconsin 53702


The Honorable Glenn Grothman
Assembly Chairman
Joint Committee for Review
of Administrative Rules
Room 15 North, State Capitol
Madison, Wisconsin 53702

RE: **NOTICE OF PUBLIC HEARING** and Text of Proposed Rule, relating to **safety responsibility and damage judgment suspension of operating privileges and vehicle registration**, Trans 100

Dear Senator Robson and Representative Grothman:

Enclosed for your information is a Notice of Public Hearing and Text of Proposed Rulemaking relating to the above-entitled matter. These documents have also been filed with the Revisor of Statutes, the Legislative Council, and the Department of Administration in accordance with the requirements of §§ 227.15 and 227.17, Stats.

Sincerely,


Julie A. Johnson
Paralegal

Enclosure

cc: Alice Morehouse
Mike Goetzman
Roger Cross
Janet Huggins
John Alley

The Wisconsin Department of Transportation proposes an order to repeal TRANS 100.02(9), 100.14(2), 100.15(intro.), 100.17(4)(c) and 100.18; renumber TRANS 100.02(5) and (8), 100.15(1) and (3), and 100.19; renumber and amend TRANS 100.02(4) and (6), 100.09(3), 100.12(3), 100.14(1), 100.15(2), (5) and (6), and 100.20(1) and (2); amend TRANS 100.01(1) and (2)(note), 100.02(intro.) and (1), 100.03(1) and (3), 100.04(3) to (7), 100.05(1), (2), (3)(intro.) and (note), 100.06(1)(intro.), (a) and (b), (2)(intro.), (a), (b) and (3), 100.08(1)(intro.) and (5), 100.09(intro.), (1) and (2), 100.13(1)(intro.), (a) to (d) and (2), 100.16(2), and 100.17(1), (2), (3)(intro.), (a), (b), (4)(intro.) and (b); repeal and recreate TRANS 100.02(3) and (7), 100.03(2), 100.07, 100.08(3), (4) and (6), 100.10, 100.11, 100.12(1), (2), (4) and (5), and 100.15(4); and create TRANS 100.02(2), (4), (5), (6), (8), (12) and (14), 100.025, 100.03(2m), 100.04(1)(title) and (2)(title), 100.06(1)(d) to (h), (2)(c) to (e), 100.08(7) and (8), 100.12(3), 100.13(1)(e) to (g), (3), 100.15(1), (2), (3)(title), (intro.), (d) and (5), 100.16(4), 100.17(1m), (5) and (6), 100.19, 100.20(1), (4) and (5), and 117.03(2)(k), relating to safety responsibility and damage judgment suspension of operating privileges and vehicle registration.

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

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16(1), 227.11 and 343.02,

Stats., and interpreting ss. 343.23(2), 344.01 to 344.27, and 346.70, Stats., the

Department of Transportation will hold a public hearing in **Room 394** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **28th**

day of **January**, 2002, at **9:00 AM**, to consider the amendment of chapter Trans 100, Wisconsin Administrative Code, relating to safety responsibility and damage judgment suspension of operating privileges and vehicle registration.

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 February 1, 2002, 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 Pat McCallum, Section Chief, Traffic Accident Section, Room 804, P. O. Box 7919, Madison, WI 53707-7919.

Parking for persons with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 85.16(1), 227.11 and 343.02, Stats.
STATUTES INTERPRETED: ss. 343.23(2), 344.01 to 344.27, and 346.70, Stats.

General Summary of Proposed Rule. This proposed rule making rewrites much of Ch. Trans 100 to incorporate changes in procedures mandated by 1997 Wis. Act 84, and to bring the chapter up to current drafting standards. In general, this rule making codifies many DMV practices and procedures that are used in the administration of the safety responsibility laws.

The definition of "accident" changed to carry over the exception for parked vehicles formerly contained in s. Trans 100.02(3) remains in the law.

Section Trans 100.025 is created to clarify the circumstances under which the DMV will consider a vehicle to have been involved in an accident. These criteria have been applied by DMV for years in determining whether a vehicle or person was involved in an accident, and are codified in this rule making for clarity. Vehicles or persons are considered to have been involved in an accident if:

- They are injured or damaged in the accident, they contribute to causing the accident.
- They cause damage to another person or property.
- The vehicle is damaged because of a mechanical failure while being driven.
- Something falls from the vehicle and causes an accident.
- The vehicle moves to avoid debris or strikes debris and causes an accident.
- The vehicle moves without being driven, such as situations where parking brakes fail, and causes an accident.
- Where doors or a load extend from a parked vehicle into a traffic lane and an accident results.

Section Trans 100.03(2) is amended and 100.03(2m) created to separate two concepts contained in current s. Trans 100.03(2). First, how does a person who is misidentified in a police report go about correcting the report so that they are not involved in a safety responsibility matter. Second, that the Department accepts filed police reports as accurate in the absence of any correspondence from the drivers involved in an accident.

Section Trans 100.03(3) is amended to better state the Department's practice with regard to records related to accidents that do not meet the reporting criteria of s. 346.70, Stats. The Department discards or returns reports that indicate in Box 1 of the report form that the accident is not reportable. It processes all forms that indicate in that box that the accident is reportable. If the accident is later determined not to be reportable, the Department does not include any reference to the accident or report in public abstracts of the driver's record from that point forward.

Section Trans 100.04(3) is amended to clarify that an apparently uninsured driver who would ordinarily be required to post security may avoid that requirement by proving that he or she was, in fact, insured, or proving that the accident is exempt from the safety responsibility law under s. 344.14(2), Stats.

Section Trans 100.06(2) is amended to clarify that the Department does consider investigator reports and payment claim notices in deciding whether there is no reasonable possibility of a judgment being entered against an uninsured driver.

Section Trans 100.10 is completely rewritten to more clearly lay out the procedural aspects of a safety responsibility hearing. No changes are contemplated with regard to the manner in which these hearings are conducted. Rather, this provision simply codifies the longstanding procedures used by DMV in conducting these hearings.

Section Trans 100.11 is similarly rewritten to clarify the procedures used in connection with the receipt of subrogation notices from subrogated parties. Again,

these provisions codify the DMV's longstanding practices in a manner that should be easier for the legal community and public to use and understand.

Section Trans 100.12 provisions related to releases executed on behalf of a minor is amended to conform to the Department's practices and current law. Under s. 344.24(2)(h), Stats., parents are permitted to settle matters related to minor children if the claim is for \$5000 or less; a legal guardian must be appointed to settle a claim valued in excess of \$5000. This rule is amended to reflect those rules.

Section Trans 100.12 is also amended to include a section on bankruptcy. Federal bankruptcy laws preempt state law in some areas and not in others. The Department has developed a set of procedures for dealing with bankrupt uninsured persons over the years, and codifying those procedures should assist attorneys for uninsured drivers in understanding the repercussions of a bankruptcy filing on a petitioner.

Section 128.21, Stats., state wage earner voluntary debt reorganization, proceedings affect only executions, attachments or garnishments, and do not affect driver license revocations or suspensions. Because those proceedings are referred to commonly as "state bankruptcy proceedings," the Department occasionally deals with debtors under such plans who mistakenly believe a Ch. 344 suspension or revocation will be released if a safety responsibility indebtedness is treated under their s. 128.21, Stats., repayment plan. A damage judgment suspension or revocation may only be affected under state law by a court order entered under s. 344.27, Stats.

Section Trans 100.13 is amended to clarify rules related to the circumstances under which accident claims of a minor may be settled by the minor's parents. In situations where a minor's parent is not authorized to settle a claim under s. 344.14(2)(h), Stats., because it involves a claim valued at more than \$5000, a guardian must be appointed to settle the matter. Similarly, guardians must resolve settlements involving incompetent persons. Trans 100.13 is amended to concisely repeat these statutory and common law rules in a format that requires less general knowledge of the law to understand.

Section Trans 100.15 is amended to codify the policies and procedures related to reinstating a suspended or revoked operating privilege at the end of a safety responsibility or damage judgment suspension or revocation.

Section Trans 100.16 is amended to provide a consistent mechanism for determining whether to permit an organization or entity to self-insure. The primary standard employed is one suggested by the Insurance Industry Committee on Motor Vehicle Administration. The \$60,000 figure from s. 344.37(1) is used as the minimum dollar amount required and is multiplied by the square root of the number of vehicles owned by the self-insurance applicant. The "square root" rule recognizes a risk

management mechanism known as the "law of large numbers" which postulates that the probability of all vehicles being involved in an accident (in a given year, for example) diminishes as the number of vehicles increases. In addition to meeting the capital amount requirements of this calculation, a self-insured must be making payments to creditors as the debts become due and not have any unpaid judgments of record.

Section 344.14(1g), Stats., requires the Secretary to refuse vehicle registration to persons whose registration is revoked for failure to deposit security under the safety responsibility law. DMV has long applied the rule that it would not honor a transfer of vehicle title for a vehicle subject to a registration suspension if the purpose of the transfer was to avoid the repercussions of that statute. Two standards DMV uses to determine whether a transfer was made for the purpose of avoiding the statute are whether a transfer was made without adequate consideration, such as a sale ostensibly for \$1, and whether the transferee shares the same address with the transferor. These criteria are now expressly set forth in the rule.

Section Trans 100.20 is amended to clarify that DMV generally purges information from the driver database twice annually. The language of the existing rule left the impression with some readers that the minute an accident meets the criteria for deletion from the public record that the computers somehow immediately purged the information. To the contrary, a special program is run to purge information from driver records twice per year. If the item is eligible for deletion on the date the purge program runs, the information is deleted at that time.

Trans 100.19 is created to provide guidance beyond the statutory provisions in Ch. 344, Stats., to clarify the procedures related to the suspension or revocation of driver licenses for failure to pay a damage judgment and license reinstatement procedures. Longstanding administrative practices with regard to acceptance of installment agreements and judgment debtor bankruptcies are codified.

Finally, a provision related to occupational licenses issued to commercial driver license holders is moved from s. Trans 100.18 into Ch. Trans 117, which generally deals with occupational licensing.

Fiscal Effect. This rule making largely codifies existing DOT policy with regard to the administration of the safety responsibility and damage judgment laws. The Department does not anticipate any fiscal effect from this codification.

Initial Regulatory Flexibility Analysis. This regulatory change has no impact on small business. This rule making largely codifies existing DOT policy with regard to the administration of the safety responsibility and damage judgment laws. The Department does not anticipate any fiscal effect upon small businesses from this codification.

The proposed amendments to s. Trans 100.16 that propose solvency requirements for entities that self-insure could theoretically impact businesses. Only 12 companies currently self-insure with the state, and they are all utilities or rental car companies. The Department surveyed these entities and they indicated that they would meet or exceed the standard set forth in the rule. Moreover, none qualifies as a "small business" under s. 227.114, Stats. Accordingly, the Department concludes the amendment would have no fiscal impact upon small businesses.

Preparation and Copies of Proposed Rule. Preparation of this proposed rule was done by the Department's Traffic Accident Section. Copies of the proposed rule may be obtained upon request, without cost, by writing to Pat McCallum, Section Chief, Traffic Accident Section, Room 804, P. O. Box 7919, Madison, WI 53707-7919, or by calling (608) 266-1249. Hearing-impaired individuals may contact the Department using TDD (608) 266-0824. 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. 85.16(1), 227.11 and 343.02, Stats., the department of transportation hereby proposes to amend a rule interpreting ss. 343.23(2), 344.01 to 344.27, and 346.70, Stats., relating to safety responsibility and damage judgment suspension of operating privileges and vehicle registration.

SECTION 1. Trans 100.01(1) and (2)(note) are amended to read:

(1) **STATUTORY AUTHORITY.** As authorized by ss. 85.16(1) and, 227.11 and 343.02, Stats., the purpose of this chapter is to administratively interpret s. 343.23(2) Stats., relating to department records, ss. 344.01 to ~~344.22~~ 344.27, Stats., relating to financial responsibility in accidents, and s. 346.70, Stats., relating to accident reporting.

NOTE: For information on occupational licenses, see s. Trans 117.03(2)(k). Forms used in this chapter are ~~MV 3008 notice of suspension and possible vehicle impoundment, MV 3009 order of suspension, MV 3010 order of reinstatement, MV 3016 security deposit receipt, MV 3019 driver's report of accident, MV 3033 notice of suspension unless accident report filed, 3038 resolution authorizing power of attorney under ch. 344, Stats., MV 3039 minors release, MV 3041 release of liability, MV 3043 bond under chapter 344, Wisconsin Statutes, MV 3044 evaluation of property damage, MV 3045 evaluation of~~

personal injuries, MV 3046 evaluation of motor vehicle damage, MV 3069 application for self-insurance, MV 3070 safety responsibility self-insurance certificate, MV 3100 notice of incomplete report, MV 3128 installment agreement to pay damages, MV 3343 compliance notification, MV 3347 emergency vehicle involvement, MV 3384 safety responsibility information, MV 3385 informational letter to injured party, and MV 3387 reinstatement instructions, MV 4000 Wisconsin motor vehicle accident report. Forms may be obtained, free of charge, from Wisconsin Department of Transportation, Uninsured-Motorist-Unit Traffic Accident Section, P.O. Box 7919, Madison, WI 53707-7919.

SECTION 2. Trans 100.02(intro.) and (1) are amended to read:

Trans 100.02 Definitions. The words and phrases defined in ss. 340.01, 343.01, 343.04 and 344.01(2), Stats., have the same meaning in this chapter unless a different definition is specifically provided. Unless otherwise indicated, where terms are defined in more than one of those sections and in s. 344.01(2), the definition in s. 344.01(2) shall control. In this chapter:

(1) "Accident" means ~~an occurrence that originates or terminates on a traffic way, which involves at least one motor vehicle in transport and is reportable to the department under s. 346.70(1), Stats.~~ "Accident" includes acts by the operators of motor vehicles which contribute to the cause of an accident regardless of physical contact and, for the purpose of ch. 344, Stats., includes a happening involving a motor vehicle that is not legally parked that results in damage or injury, including occurrences caused by "acts of God," negligence or intentional acts.

SECTION 3. Trans 100.02(2) is created to read:

Trans 100.02(2) "Damage judgment" means a judgment as defined in s. 344.01(2)(a), Stats., that is certified to the department as specified in s. 344.05, Stats.

SECTION 4. Trans 100.02(3) is repealed and recreated to read:

Trans 100.02(3) "Depositor" means a person who deposits security with the department under s. 344.17, Stats.

SECTION 5. Trans 100.02(4) is renumbered Trans 100.02(9) and amended to read:

Trans 100.02(9) "Legally parked" means a motor vehicle which is parked under ss. 346.03(2)(a) or 346.51 to s. 346.54, Stats., or is indicated in writing to be legally parked at the time of the accident by the investigating law enforcement agency or other operators involved in the accident. ~~This definition does not include parked motor vehicles~~ A vehicle parked with doors or any part of a load extending open into the traffic way or vehicle load extended into a traffic way an adjoining space intended for vehicular travel may not be considered "legally parked."

SECTION 6. Trans 100.02(4) is created to read:

Trans 100.02(4) "Emergency medical technician" or "EMT" has the meaning in s. 146.50(1)(e), Stats.

SECTION 7. Trans 100.02(5) is renumbered Trans 100.02(10).

SECTION 8. Trans 100.02(5) is created to read:

Trans 100.02(5) "Firefighter" has the meaning set forth in s. 102.475(8)(b), Stats.

SECTION 9. Trans 100.02(6) is renumbered Trans 100.02(11) and amended to read:

Trans 100.02(11) "Motor vehicle" has the meaning specified in s. 346.66, Stats., ~~for purposes of applicability and accident reporting, and the meaning specified in s. 344.01(2)(b), Stats., for purposes of financial responsibility.~~

SECTION 10. Trans 100.02(6) is created to read:

Trans 100.02(6) "First responder" has the meaning set forth in s. 146.53(1)(d), Stats.

NOTE: See s. 343.23(2)(a)3.

SECTION 11. Trans 100.02(7) is repealed and recreated to read:

Trans 100.02(7) "Injured party" means a person who suffers personal injury or whose property is damaged in an accident.

SECTION 12. Trans 100.02(8) is renumbered Trans 100.02(13) and, as renumbered, Trans 100.02(13)(note) is amended to read:

Trans 100.02(13)(note) Forms MV 4000--Wisconsin Motor Vehicle Accident Report and, MV 4002 Driver Report of Accident and MV 4004, Report Supplement, are available from the DOT Traffic Accident Section, P. O. Box 7919, Madison, WI 53707-7919.

SECTION 13. Trans 100.02(8) is created to read:

Trans 100.02(8) "Law enforcement officer" has the meaning set forth in s. 165.85(2)(c), Stats.,

NOTE: See s. 343.23(2)(a)1., Stats.

SECTION 14. Trans 100.02(9) is repealed.

SECTION 15. Trans 100.02(12) and (14) are created to read:

Trans 100.02(12) "Owner" or "vehicle owner" has the meaning set forth in ss. 340.01(42) and 344.01(2)(cm), Stats.

(14) "Winter highway maintenance worker" means a person involved in the types of winter highway maintenance described in s. 343.23(2)(a)2., Stats.

SECTION 16. Trans 100.025 is created to read:

Trans 100.025 Accident involvement. A vehicle or person shall be considered to have been involved in an accident if any of the following conditions are met:

- (1) The person is injured by an accident.
- (2) The person or the vehicle's driver commits some act that contributes to cause an accident, regardless of physical contact.
- (3) The vehicle is damaged in an accident.
- (4) The vehicle makes contact with any other person or property and causes damage.
- (5) The vehicle is damaged by a failure of a mechanical or electrical system resulting in fire or accident when it is in use primarily for moving persons or property, including the vehicle itself, from one place to another and is in motion, or in readiness for motion, and is not legally parked and unattended in a designated parking area.
- (6) Property, parts or debris falls from the motor vehicle and causes an accident.
- (7) A vehicle contacts or avoids debris or property on a roadway that has fallen from another motor vehicle or is not ordinarily found in a roadway, and causes an accident.
- (8) The vehicle moves without a driver controlling its movements and causes an accident.
- (9) One or more doors or any part of the load of a parked vehicle extends into an adjoining space intended for vehicular travel and an accident occurs as a result of that extension.

NOTE: Accidents may be the result of "acts of God," or negligence or intentional acts. s. Trans 100.02(1).

SECTION 17. Trans 100.03(1) is amended to read:

Trans 100.03(1) A law enforcement agency investigating a reportable accident involving a motor vehicle under s. 346.70(1), Stats., shall report the accident to the department as required under s. 346.70(4), Stats. If a law enforcement agency does not investigate and report the accident within 10 days after the accident, the operators of the vehicles involved in the accident shall report the accident to the department as required under s. 346.70(2), Stats. The department may accept or require a report of the accident to be filed by the occupant or the owner in lieu of a report by the operator.

SECTION 18. Trans 100.03(2) is repealed and recreated to read:

Trans 100.03(2) Persons misidentified as a driver in a law enforcement report may file a written report with the department regarding that fact. Upon receipt of such a report, the department may require the person claiming to have been misidentified to provide the department with either of the following:

(a) An amended law enforcement agency report.

(b) A copy of court findings meeting any of the following criteria:

1. From any type of proceeding that identifies the true operator of the vehicle at the time of the accident.

2. From a criminal, traffic forfeiture or civil proceeding that concludes the person was not a vehicle driver involved in the accident.

3. From a civil court proceeding related to establishing liability issues related to the accident that the court cannot determine whether the person was the driver of a vehicle involved in the accident.

SECTION 19. Trans 100.03(2m) is created to read:

Trans 100.03(2m) If a person filing a report under sub. (2) does not respond, the department shall accept the original police report as true. In all other cases involving the integrity of information on its accident reports, the department shall make a determination of its authenticity based on a court finding or, in the absence of a court finding, on the credibility of the evidence.

SECTION 20. Trans 100.03(3) is amended to read:

Trans 100.03(3) The department shall assume that all accident reports it receives from enforcement agencies or operators that indicate the accidents they report are reportable meet the reporting criteria under of s. 346.70(1), Stats. An accident report that indicates an accident is not reportable shall be returned to the reporting agency or discarded. If the department determines from credible evidence received, which could include property damage estimates or signed statements, that an accident that has been abstracted as part of a driver's record does not meet the minimum reporting criteria, the department will not keep a record of the accident will not be included in a public abstract of the driver's driver record maintained under s. 343.23, Stats.

NOTE: On the current Wisconsin Motor Vehicle Accident Report form, MV4000, reporters indicate whether they believe an accident is reportable by so indicating in Box 1 of the form.

SECTION 21. Trans 100.04(1)(title) and (2)title are created to read:

Trans 100.04(1) ACCIDENT REPORT FORM REQUIRED.

(2) INCOMPLETE REPORTS.

SECTION 22. Trans 100.04(3) to (7) are amended to read:

Trans 100.04(3)(title) LACK OF INSURANCE REPORTED. When the police, owner or operator indicates on the any accident report or notice from a person or insurer filed with the department within one year of an accident indicates that a driver or vehicle involved in an accident had no liability insurance coverage was in effect at the time of the an accident, the department may require the operator or owner, or both, to do any of the following:

(a) deposit Deposit security under s. 344.13, Stats.

(b) Provide evidence that a policy was, in fact, in effect.

(c) Provide evidence that the accident is exempt from the requirements of s. 344.14(1) and (1m), Stats.

NOTE: See s. 344.14(2), Stats.

(4)(title) INCOMPLETE INSURANCE INFORMATION. When If the liability insurance company name or policy holder's name, or both, are absent from the accident report form, the department may contact the operator or owner, or both, to obtain additional insurance information. If the operator or owner provide complete insurance information, the department shall assume that the liability insurance policy specified by the owner or operator was in force at the time of the accident. The department shall accept a written notice of non-insurance for up to one year following the date of the accident except as provided in s. 344.15(4), Stats. Upon receipt of a written notice of non-insurance, the department may require the operator or owner to deposit security under s. 344.13, Stats.

(5)(title) SELF INSURED PERSONS. When the If a vehicle owner is self-insured under s. 344.16, Stats., the department may mail notice of the self-insurance to the

address furnished by the self-insured owner. The department shall assume that the operator of the vehicle is exempt under s. 344.14(2)(d), Stats., from the security requirements unless the self-insured notifies the department otherwise within 30 days of mailing or other information is received by the department indicating that the self-insured certificate does not apply to the operator.

(6)(title) ABSENCE OF POLICY HOLDER NAME ON REPORT. ~~When the~~ If a liability insurance company name is listed on the accident report, but the a policy holder's name is not, and the operator and owner of the vehicle involved in the accident are the same person, the department will assume that a valid policy with the liability insurance company specified on the accident report form was in force at the time of the accident for the owner listed.

(7)(title) REQUESTING ADDITIONAL INFORMATION. The department may contact the operator or owner, or both, of a vehicle involved in an accident for additional insurance information ~~at the request of an insurer, operator or owner~~ any time. If the operator or owner provides complete insurance information, the department may verify the credibility of the information by contacting the insurance company listed. ~~When~~ If an insurer determines that the operator or owner who provided the insurance information is not insured, or denies coverage for the claim, the insurer shall immediately notify the department of the person's ~~non-insured~~ uninsured status.

SECTION 23. Trans 100.05(1), (2), (3)(intro.) and (note) are amended to read:

Trans 100.05(1) All reportable accidents in which the operator was involved shall be recorded reported on a public abstract of the operator's driving record prepared under s. 343.23(2), Stats., except:

(a) when if the vehicle was legally parked.

(b) If the accident did not meet the criteria requiring reporting to the department under s. 346.70(1), Stats.

~~(2) If an accident occurs in the course of a licensee's employment as a law enforcement officer, fire fighter, emergency medical technician-paramedic technician, first responder, or winter highway maintenance worker, the accident shall be recorded on the accident report, the on-duty notation shall be placed on the accident report, and then, upon receipt, the is involved in an accident in the course of that employment, the person filing the accident report shall note that the person involved in the accident was on duty at the time of the accident. The department shall place an note that on-duty notation status on the licensee's driving record public driver record abstract entry related to the accident.~~

NOTE: See s. 343.23(2), Stats. See also s. Trans 100.02 for the definitions of law enforcement officer, EMT, first responder, winter highway maintenance worker and fire fighter.

(3) Notwithstanding sub. (1), a law enforcement officer, emergency medical technician-paramedic and technician-first responder or firefighter may request a reportable accident not be removed from or not listed on reported on a public abstract of their driving record by submitting the approved form. The licensee must show that one or more of the following conditions existed at the time of the accident:

NOTE: Form MV 3347--Emergency Vehicle Involvement. Highway maintenance workers are not eligible for suppression of an accident report under this subsection.

SECTION 24. Trans 100.06(1)(intro.), (a) and (b) are amended to read:

Trans 100.06(1)(intro.) The department may use any of the following sources of information to determine whether an uninsured operator or owner, based on a preponderance of evidence, is exempted exempt under s. 344.14(2)(k), Stats., from the security and revocation requirements under of ch. 344, Stats.:

(a) Operator reports of accidents.

(b) Law enforcement agency reports of accidents.

SECTION 25. Trans 100.06(1)(d) to (h) are created to read:

Trans 100.06(1)(d) Records of convictions or other information on file with the department.

(e) Accident reconstruction reports.

(f) Notices of payment of claims issued by insurance companies.

(g) Coroner reports, except blood test results received by the department under s. 346.71(2).

NOTE: Blood test results obtained from police reports or other sources may be considered by the Department.

(h) Investigator reports.

SECTION 26. Trans 100.06(2)(intro.), (a) and (b) are amended to read:

Trans 100.06(2)(intro.) An uninsured operator or owner shall will not be required to deposit security when there is no reasonable possibility of a judgment being rendered against the uninsured operator. The department shall may consider the

following factors to determine whether a person is exempt under s. 344.14(2)(k), Stats., from the security and revocation requirements under ch. 344, Stats. in making that determination:

(a) Violation Whether the person committed a violation of any rule of the road set out in ch. 346, 347, 348 or 350, Stats.

(b) Failure Whether the person failed to exercise ordinary care, based on information from the sources listed in sub. (1).

SECTION 27. Trans 100.06(2)(c) to (e) are created to read:

Trans 100.06(2)(c) Notices of payment of claims from insurance companies.

(d) Investigator reports.

(e) Any other relevant information provided by the parties.

NOTE: See s. 344.14(2)(k), Stats.

SECTION 28. Trans 100.06(3) is amended to read:

Trans 100.06(3) If the department requires a person to deposit security under s. 344.13, Stats., and, after receiving additional information, determines that no reasonable possibility of a judgment against the person exists, the department shall may rescind the security requirement. The additional information may be in the form of notarized witness statements, enforcement agency reports, coroner reports or investigative reports from independent investigators or the injured party's insurance company department may accept any evidence of probative value including the types of evidence identified in sub. (1).

SECTION 29. Trans 100.07 is repealed and recreated to read:

Trans 100.07 Determination of security amount. (1) **DEFINITIONS.** In this section, "evaluation report" means an evaluation of personal injury report, evaluation of property damage report or evaluation of motor vehicle damage report submitted by a person to the department to document the amount of a claim resulting from an accident.

NOTE: Forms MV 3045 evaluation of personal injury report, MV 3044 evaluation of property damage report and MV 3046 evaluation of motor vehicle damage report, are provided to persons in appropriate cases by the Division of Motor Vehicles Uninsured-Motorist Accident Records Unit, P. O. Box 7919, Madison, WI 53707-7919, (608) 266-1249 266-8753.

(2) **EVALUATION REPORTS.** (a) If the department determines that one or more people involved in an accident were uninsured, the department may mail evaluation reports to all other persons involved in the accident. The date on which the department first mails evaluation reports to any person shall be considered the "mailing date" under this subsection. Evaluation reports shall be mailed to the address provided in the accident report.

(b) In determining the amount of security required:

1. The department shall consider evaluation reports filed with the department within 21 days of the mailing date.

2. The department may consider an evaluation report filed with the department more than 21 days after the mailing date if it meets all of the following requirements:

a. No final determination of the amount of security required has been made.

b. The report is received by the department within one year of the accident date.

(3) **ELEMENTS OF A CLAIM.** (a) The department may consider court costs, which are reasonably estimated or determined, but do not exceed \$500.00, when determining the amount of security to be deposited under s. 344.13(1) and (2), Stats.

(b) The department may consider the following documentation in support of a claim in setting the amount of security required under s. 344.13, Stats., for a personal injury:

1. A certification of personal injury, completed by a person skilled in the evaluation of personal injuries.

NOTE: Form MV 3045—Evaluation of Personal Injuries.

2. A certification of loss of wages as a result of the accident based on written information provided by the claimant's employer.

3. A computation of an amount sufficient to satisfy a court award for pain and suffering of the injured person. The department may consider the following factors when computing an amount for pain and suffering:

a. The location, permanency, and potential cost of cosmetic surgery of scars resulting from the accident.

b. The age of the injured person.

c. The occupation and lifestyle of the injured person, if the occupation or lifestyle of the injured person will be affected.

d. The duration and severity of pain, and degree of consciousness of the injured party.

e. The length and type of temporary or permanent disability.

f. The diagnosis of the injury.

(c) The department may consider the following documentation when determining the amount of security required under s. 344.13, Stats., for property damage:

1. A certification of motor vehicle damage, not to exceed the value of the vehicle prior to the accident, completed by an authorized representative of an insurance company or body shop. If the vehicle was a total loss, a salvage dealer may complete the certification.

NOTE: Form MV 3046—Evaluation of Motor Vehicle Damage.

2. A certification of property damage, not to exceed the value of the property prior to the accident, completed by a person skilled in the evaluation of damages to the type of property damaged.

NOTE: Form MV 3044—Evaluation of Property Damage.

3. Credible evidence that a claimant has incurred actual towing and replacement vehicle rental costs if damages excluding those under this paragraph equal or exceed the minimum damage amount under s. 344.12 or 344.14(2)(e), Stats.

NOTE: The minimum damage amount under s. 344.12, Stats., is currently \$1000.

4. Proof that a motor vehicle was being operated without permission of the owner at the time of an accident as specified in s. Trans 100.09 in connection with any claim for damages to a motor vehicle that was operated without the owner's permission by the owner of that vehicle.

(4) The amount of security required when a death is involved shall be the minimum provided for under s. 344.15(1), Stats.

(5) The department shall make a determination of the amount of security required for an accident within 90 days of receiving an accident report, or at such later date as individual circumstances of an accident may require.

NOTE: Determinations made more than 90 days after receipt of an accident report by the Department are valid. See DOT vs. Warner, 102 Wis. 2d 232 (Ct. App. 1981).

(6) After a final determination of the amount of security is made by the department, the amount of security required may be increased only under either of the following circumstances:

(a) To correct any administrative error on the part of the department.

(b) To include the claim of a person if all of the following criteria are met:

1. The claim is filed one year or less after the accident.
2. No evaluation report was mailed to the person under sub. (2)(a).
3. The department has not suspended the uninsured driver's operating privilege.
4. The uninsured has not deposited security.

SECTION 30. Trans 100.08(1)(intro.) is amended to read:

Trans 100.08(1)(intro.) Acceptable forms of security required under ss. 344.14 and 344.17, Stats., include are any of the following:

SECTION 31. Trans 100.08(3) and (4) are repealed and recreated to read:

Trans 100.08(3) Security deposited with the department shall be held in trust for the benefit of any claimant involved in the accident. Any balance remaining after the termination of the security filing period and payments to claimants shall be remitted to the depositor.

(4) No interest or dividends shall be paid to a depositor.

SECTION 32. Trans 100.08(5) is amended to read:

Trans 100.08(5) If the owner and operator are separate persons, the deposit may be made by one of them, or they may cooperate in depositing the security. The

security may shall be applied to the payment of judgments or assignments for damages arising out of the accident rendered against either the operator or owner regardless of who made the deposit.

SECTION 33. Trans 100.08(6) is repealed and recreated to read:

Trans 100.08(6) If notice has been filed with the secretary by any claimant that an action has been commenced by any party in interest, the security deposit shall be retained until one of the following conditions is met:

(a) A judgment is entered and the court orders the department to apply the security deposit to the judgment.

(b) The case is dismissed on the merits and with prejudice and the driver or owner is determined not to be liable.

(c) The case is dismissed for any reason, has not been refiled, and more than one year from the date of deposit or the date the person's operating privilege was suspended, whichever is later, has passed.

(d) A judgment is entered, and a satisfaction of the judgment is filed with the department.

SECTION 34. Trans 100.08(7) and (8) are created to read:

Trans 100.08(7) A security deposit may only be returned after one of the following conditions are met:

(a) All judgments or assignments filed with the department related to the accident have been paid and all legal actions related to the accident of which the department has received notice have been resolved.

(b) More than one year after the date of deposit or date of suspension, whichever is later, has passed and no notice of the commencement of an action has been filed by a party in interest.

(8) Final disposition of security deposits shall be made in accordance with s. 344.20, Stats. Unless otherwise specified in writing by all depositors, any security deposit remaining may be returned to any depositor by check made jointly payable to all depositors.

SECTION 35. Trans 100.09(intro.), (1) and (2) are amended to read:

Trans 100.09 Proof of operating without permission. The owner of a motor vehicle involved in an accident is ~~exempted under s. 344.14(2)(g), Stats.,~~ exempt from depositing security under s. 344.14(2)(g), Stats., if the owner or the owner's insurer produces proof that the vehicle was operated or parked without permission at the time of the accident. Acceptable proof includes any of the following:

(1) ~~A letter~~ Written notice from the law enforcement agency where the offense occurred stating that the vehicle was reported stolen prior to the accident or that the law enforcement agency investigated the report and found it to be a stolen vehicle, ~~or,~~

(2) ~~A letter~~ Written notice from the a district attorney that the owner has filed a complaint against the operator and that the operator is being charged with operating without the owner's consent, ~~or an~~ or another crime indicating the operator's involvement in the theft of the vehicle.

(3) An affidavit signed by the operator stating that the vehicle was being operated without the owner's expressed or implied consent is filed with the department.

~~An affidavit~~ This paragraph does not exempt apply to an owner who is the sponsor of an the operator, as defined in under s. 343.15, Stats., or

SECTION 36. Trans 100.09(3) is renumbered Trans 100.09(4) and amended to read:

~~Trans 100.09(4) Under s. 344.15(4), Stats., an An affidavit, filed by an insurer under s. 344.15(4), Stats., that is signed by the owner and attests that the operator did not have permission to operate the vehicle at the time of the accident. In a lease situation the department may accept an affidavit signed by the lessee as agent of the owner of the vehicle. Any affidavit made under this subsection with respect to a leased vehicle shall be made by the vehicle lessee rather than the vehicle owner, unless the vehicle owner affirms that possession and control over the motor vehicle had transferred from the lessee to the owner by repossession or other operation of law at the time of the accident.~~

NOTE: A lessee is considered an "owner" under s. 344.01(2)(cm). Because the lessee ordinarily has direct control of a leased vehicle, the lessee should ordinarily provide an affidavit under sub. (4) rather than the lessor or titled owner.

SECTION 37. Trans 100.10 and 100.11 are repealed and recreated to read:

Trans 100.10 Hearing and suspension procedure. (1) If proof of damages have been filed under s. Trans 100.07, and the department has determined that a reasonable possibility of a judgment being entered against an uninsured driver exists, the department shall mail a notice to the last known address on file with the department for the uninsured driver and vehicle owner. The notice shall require the uninsured driver or owner, or both, to deposit security with the department. The amount of security shall be that sum that is sufficient in the Secretary's judgment to satisfy any

judgment for damages resulting from the accident that may be recovered against either the driver or vehicle owner. The notice shall require security be deposited by a certain date, and advise the uninsured driver or vehicle owner that his or her operating privilege or vehicle registrations, or both, will be suspended if security is not deposited by the date required in the notice. The notice shall advise the uninsured driver or vehicle owner of actions they may take to avoid operating privilege and vehicle registration suspension. It shall also notify them that they may request a hearing on the department's determination before the suspension date established in the notice.

(2) Prior to the suspension date specified in the notice, the uninsured driver or vehicle owner may request one 20-day extension of time to deposit security.

(3) If no hearing is requested and none of the safety responsibility compliance requirements set forth in the notice have been met by the suspension date, or the extended suspension date, the department shall issue an order suspending the uninsured driver's operating privilege and suspending all vehicle registrations for vehicles owned by the vehicle owner.

(3m) The department may grant a hearing on the propriety of a suspension order issued under sub. (3) to any person requesting a hearing within 14 days of the mailing date indicated on the suspension order.

(4) A request for a hearing will not affect the uninsured drivers license or vehicle registration status. Drivers and owners who request a hearing prior to the department issuing a suspension order will not have their operating privileges or vehicle registrations suspended for failure to deposit security until the conclusion of hearing

procedures. Drivers who request a hearing after the department issues an operating privilege suspension order shall remain subject to the order unless the suspension is overturned as a result of the hearing. Vehicle registrations that are suspended before a request for a hearing is received by the department shall remain suspended unless the suspension is overturned as a result of the hearing.

(5) If a hearing is requested, the division of motor vehicles shall notify the interested parties of the date, time and place of the hearing. A person may request postponement or rescheduling of a hearing for any reason if the request is made within 8 calendar days of the date of the notice of hearing. Requests for postponement or rescheduling made after 8 calendar days of the date of the notice of hearing may be granted only where an emergency makes attendance unduly burdensome on a party.

(6) The department may dismiss a driver's or owner's request for a hearing if the driver or owner fails to appear for the hearing at the time and place designated in the notice. A hearing dismissed under this subsection may be reopened upon motion of the driver or owner and for good cause shown.

NOTE: s. 344.02(1), Stats.

(7) Hearings shall be informal. Hearsay and documentary evidence may be received by the hearing examiner. Telephone testimony may not be permitted.

(8) Hearings shall be tape recorded for the purpose of preserving a record. Copies of recorded hearings may be purchased by a party for the cost to the department of copying the tape.

NOTE: The current cost for copying a tape is \$7.00 per tape.

(9) The hearing examiner shall have all the duties and powers available to a hearing examiner under ch. 227, Stats.

(10) In a hearing under this chapter, or any administrative hearing before the department, all parties and their counsel shall be respectful of the hearing examiner and behave in a professional manner. A hearing examiner may exclude a person or attorney from a hearing for engaging in disrespectful, contemptuous, or disruptive conduct. An attorney who is repeatedly excluded from hearings for such conduct may be barred from participating in administrative hearings before the department.

(11) An examiner may hold the record open at the end of a hearing to receive additional evidence not available at the hearing.

(12) The department shall enter a decision within 30 days of the date of the hearing, or as soon as practicable thereafter.

(13) A person may request a rehearing as provided for in s. 227.49, Stats.

(14) Appeals of decisions under this section shall be made in accordance with s. 344.03, Stats.

Trans 100.11 Notice of subrogation. (1) An insurer may file a notice of subrogation with the department at any time.

(2) Acceptable notice of subrogation are any of the following:

(a) A copy of a subrogation receipt signed by the insured.

(b) Proof of payment made as follows:

1. A copy of the insurer's cancelled check endorsed by the insured or a third party that provided services to the insured for damages resulting from the accident, such as an automobile repair facility.

2. If a copy of the endorsement is not readily available, a written certification of the insurer that payment was accepted by the payee named on the check.

3. If a copy of the check is not readily available, an insurer may submit a copy of a corporate payment record together with a certification that said payment was accepted by the insured party or a third party that provided services to the insured for damages resulting from the accident, such as an automobile repair facility.

(3) If an uninsured deposits security with the department, the department shall provide notice of the filing to any person that has filed a notice of subrogation with the department at the address set forth in the subrogation notice or, if the subrogee is an insurer, at the address on file with the department for correspondence with the insurer.

(4) Disposition of any deposited security shall be made in accordance with s. Trans 100.08 and s. 344.20, Stats.

(5) Releases and installment agreements filed after the filing of a subrogation notice with the department will not have any effect unless each subrogated party and insured has joined in or filed a release or installment agreement.

(6) Releases or installment agreements received before notice of subrogation is received and filed by the department will not be affected by the filing of the subrogation notice.

SECTION 38. Trans 100.12(1) and (2) are repealed and recreated to read:

Trans 100.12(1) EFFECT OF RELEASE. The department may not suspend the license of an owner or operator who has been released from liability by all persons on whose behalf a security deposit has been required by the department under s. Trans 100.07 or s. 343.13, Stats., and all persons who have filed subrogation notices with the department for such claims.

NOTE: See ss. 344.14(2)(h) and 344.18(1)(b), Stats.

(2) VALIDITY OF RELEASE. A release shall be considered valid under ss. 344.14(2)(h) and 344.18(1)(b), Stats., if it meets all of the following criteria:

(a) *Releases shall be written.* A release shall be made in writing.

(b) *Consideration required.* A release shall state that it is made for consideration, such as an exchange of money or something that has money value.

NOTE: Forms MV 3039—Minors Release, and MV 3041—Release of Liability.

(c) *Competent approval.* 1. 'Injured parties.' If a party sustains property damage or personal injuries, the release shall include the witnessed or notarized signature of each subrogated party and the witnessed or notarized signature of the injured party, except as provided in subds. 2. and 3.

2. 'Minors with claims less than \$5,000.' If an injured party is less than 18 years old, and the amount of deposit required by the department under s. 344.13, Stats., does not exceed \$5000, the witnessed or acknowledged signature of that injured party's parent or legal guardian, and if any personal injury to the injured party occurred, a doctor's certification that the injury is not permanent.

NOTE: s. 344.14(2)(h), Stats.

3. 'Minors with claims exceeding \$5,000.' If an injured party is less than 18 years old and the amount of deposit required by the department under s. 344.13, Stats., exceeds \$5000, or the injured party is incompetent, a guardian's signature in his or her capacity as guardian is required, together with a court order authorizing the guardian for the injured party to execute the release.

NOTE: ss. 807.10, 344.14(2)(h) and 344.18(1)(b), Stats.

SECTION 39. Trans 100.12(3) is renumbered Trans 100.12(2)(c)4. and amended to read:

Trans 100.12(2)(c)4. Deceased parties. If the injured party died as a result of the accident, the release shall include one of the following:

(a) a. The witnessed or notarized signature of the personal representative or administrator of the estate of the deceased accompanied by a copy of the court order appointing the personal representative or administrator.

(b) b. The witnessed or notarized signature of parents with legal custody or the legal guardian of the deceased when the deceased was a minor at the time of the accident.

(c) c. The witnessed or notarized signature of the primary heir of the estate of the deceased accompanied by an affidavit of heirship from the releasing party and assurance that the estate will be settled without appointment of a personal representative. Acceptable The department may accept either of the following as assurance shall be under this paragraph:

1. i. A copy of a petition filed under ch. 867, Stats., or

2. ii. A court order assigning property under ch. 867, Stats.

(d) d. The witnessed or notarized signature of the primary heir of the estate of the deceased accompanied by an affidavit of heirship from the releasing party and a certified medical statement attesting that the deceased had no pain and suffering.

SECTION 40. Trans 100.12(3) is created to read:

Trans 100.12(3) **DISMISSAL OF CLAIMS.** A final judgment on the merits and with prejudice dismissing all claims against the uninsured driver or owner shall be treated as a release of liability for that uninsured driver or owner as to all parties to that court action.

SECTION 41. Trans 100.12(4) and (5) are repealed and recreated to read:

Trans 100.12(4) **SATISFACTION OF JUDGMENT.** A satisfaction of judgment against the uninsured driver or owner for claims arising out of the accident shall be treated as a release of liability for that uninsured driver or owner as to all parties to the court action.

(5) BANKRUPT UNINSURED PERSONS UNDER SAFETY RESPONSIBILITY

LAW. (a) *Effect on deposited security.* Notwithstanding the imposition of a stay at the commencement of a bankruptcy proceeding or the issuance of an order of discharge in a bankruptcy proceeding, any security that is deposited with the department shall be held in trust by the department for the benefit of any injured party on whose behalf a security deposit has been required under s. Trans 100.07 or s. 343.13, Stats.

(b) *Bankruptcy that precedes safety responsibility suspension.* In any case in which the department is notified of a pending bankruptcy proceeding and applicability of a stay under 11 U.S.C. s. 362, the department may not suspend the operating privilege

or vehicle registration of the debtor until the stay is no longer in effect and the department is notified by an injured party or their subrogated insurer that the debt was not discharged and that suspension under s. 343.14 or 343.18, Stats., is appropriate.

(c) *Effect on operating privilege and vehicle registration.* 1. 'Reinstatement.' An uninsured driver or vehicle owner whose operating privilege or vehicle registration is suspended under s. 344.14 or 344.18, Stats., who files a petition in bankruptcy, and from whom collection of a pre-bankruptcy debt arising from an accident occurring prior to the filing of the petition is stayed under 11 U.S.C. s. 362, or whose liability for damages resulting from an accident is discharged under United States bankruptcy laws may reinstate his or her operating privilege or vehicle registration. The person shall be subject to all the same reinstatement, filing and fee requirements as any other person seeking license reinstatement who has obtained a release from the injured party.

NOTE: See *Holder v. DOT*, 40 BR 847 (E.D. Wisc., 1984) regarding the Department's authority to require proof of financial responsibility for the future of a bankruptcy debtor. Tort liability is not "consumer debt" under 11 USC 101 (7). Therefore, Ch. 13 co-debtor stay does not prohibit collection against non-bankrupt persons. In re ALVAREZ, 57 BR 65 (S.D. Fla., 1985).

2. 'Release of suspension ordered in violation of automatic stay.' If the department is notified that a stay prohibiting action against a debtor under 11 U.S.C. s. 362 was in effect at the time the department ordered revocation or suspension of the debtor's operating privilege or vehicle registration under the financial responsibility law, the department shall release the financial responsibility revocation or suspension and reinstate the bankruptcy debtor's operating privilege without any reinstatement fee.

3. 'Reimposition of suspension.' The department may suspend a debtor's operating privilege or vehicle registration that was released under subd. 1. or 2. upon a

showing by an injured party that the debt for damages resulting from the accident was not discharged or satisfied within the bankruptcy proceeding and that the bankruptcy stay is not in effect or upon notification that the case has been dismissed.

4. 'Proof.' The department may require satisfactory proof that the debtor's liability to all injured parties and their subrogated insurers have been discharged in a bankruptcy proceeding in any case where a debtor seeks to reinstate an operating privilege or vehicle registration or operating privilege after the case is closed or dismissed, a discharge has been granted, or the automatic stay has been lifted, terminated, annulled or modified. Acceptable proof may include copies of the schedules for the bankruptcy case listing the injured party as a claimant in the bankruptcy, proof of the filing date, such as the notice of bankruptcy filing mailed by the bankruptcy court or a copy of the petition containing the clerks file stamp showing the date the petition was filed, and an affidavit that the debt is dischargeable under 11 U.S.C. s. 523 and has been discharged.

5. 'Disputes.' In any case where a debtor uninsured driver and an injured party dispute whether a discharge has affected the injured party's claim, the department may require one or both parties to obtain a court order that decides whether the claim is discharged.

6. 'Court determinations.' The department shall accept court findings or orders regarding discharge of a claim in an action between the debtor uninsured driver and an injured party as determinative, and may impose or release a suspension under ch. 344 in accordance with the determination of the court.

NOTE: While the Department does not have authority to require debtors to provide a certain type of notice of bankruptcy filing to it under federal law, debtors who are subject to financial responsibility filing requirements will find that the Department's reaction to a bankruptcy filing is faster and more predictable under this section if the Department is listed on the mailing matrix for the proceeding with an address of Wisconsin Department of Transportation, Uninsured Motorists Unit, P.O. Box 7919, Madison, WI 53707-7919.

(d) The department may not release a safety responsibility or damage judgment or suspension or revocation based solely upon a court order entered under s. 128.21, Stats.

NOTE: Voluntary wage earner proceedings affect only executions, attachments or garnishments, and do not affect suspensions and revocations of operating privileges. s. 128.21(1), Stats. Debtors using state procedures to reorganize debts may use a s. 344.27, Stats., process to obtain a court ordered repayment plan for an unpaid damage judgment.

SECTION 42. Trans 100.13(1)(intro.) and (a) to (d) are amended to read:

Trans 100.13(1)(intro.) For the purpose of s. 344.14(2)(h) or 344.25(2), Stats., the a written agreement providing for payment in installments of an agreed amount for all claims for injury or damage resulting from the accident shall contain all of the following:

(a) An A promise by the uninsured person to pay an amount of money or to transfer ownership of something that has money value agreed to by all parties to the agreement an injured party as settlement for all claims by the parties party for damages or injuries arising out of the accident.

(b) At least 2 The date of the first installment payments payment, the frequency of payments if payments are to be made other than on a monthly basis, and the calculated date final payment is due under the payment plan.

(c) The notarized or duly acknowledged signature of the uninsured operator or owner making the payments, and. If that person is less than 18 years of age, a parent

or sponsor under s. 343.15, Stats., shall co-sign the installment agreement as a person responsible for making the payments, or a legally appointed guardian may sign on behalf of the minor pursuant to court authorization of their signing the agreement as guardian.

(d) The witnessed signatures of all other parties who are accepting the agreed amount in the installment payments agreement.

SECTION 43. Trans 100.13(1)(e) to (g) are created to read:

Trans 100.13(1)(e) The names and addresses of all parties to the agreement.

(f) If an injured party to the agreement is less than 18 years old, and the amount of deposit required by the department under s. 344.13, Stats., does not exceed \$5000, the witnessed or acknowledged signature of the injured party's parent or legal guardian, and if any personal injury to the injured party occurred, a doctor's certification that the injury is not permanent.

NOTE: s. 344.14(2)(h), Stats.

(g) If an injured party to the agreement is less than 18 years old and the amount of deposit required by the department under s. 344.13, Stats., exceeds \$5000, or the injured party is incompetent, a guardian's signature in his or her capacity as guardian is required, together with a court order authorizing the guardian for the injured party to enter into the agreement.

NOTE: ss. 807.10, 344.14(2)(h) and 344.18(1)(b), Stats.

NOTE: Form MV 3128--Installment Agreement to Pay Damages.

SECTION 44. Trans 100.13(2) is amended to read:

Trans 100.13(2) An amended agreement shall be accepted if the original agreement filed is valid and, the amended agreement is signed by all parties to the original agreement, and any required court approval under sub. (1)(g) is filed. Parties who have released their claims prior to the amendment may not be required to join in any amendment.

SECTION 45. Trans 100.13(3) is created to read:

Trans 100.13(3) Notwithstanding s. 344.18(3), Stats., a person who has been released from liability for debts arising from an accident may not be subjected to operating privilege or vehicle registration suspension based upon a default in a written installment agreement for the liability that has been released.

SECTION 46. Trans 100.14(1) is renumbered Trans 100.03(4) and amended to read:

Trans 100.03(4) The department shall may not revoke suspend a person's operating privileges privilege for failure to file an accident report, under s. 344.08, Stats., if no further information is needed from the person who failed to file the report.

NOTE: s. 346.66, which defines where accident reporting is required, provides as follows:

346.66 Applicability of sections relating to accidents and accident reporting. In addition to being applicable upon highways, ss. 346.67 to 346.70 are applicable upon all premises held out to the public for use of their motor vehicles, all premises provided by employers to employees for the use of their motor vehicles and all premises provided to tenants of rental housing in buildings of 4 or more units for the use of their motor vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof. These sections do not apply to private parking areas at farms or single-family residences or to accidents involving only snowmobiles, all-terrain vehicles or vehicles propelled by human power or drawn by animals.

SECTION 47. Trans 100.14(2) is repealed.

SECTION 48. Trans 100.15(intro.) is repealed.

SECTION 49. Trans 100.15(1) is renumbered Trans 100.15(3)(a).

SECTION 50. Trans 100.15(1) is created to read:

Trans 100.15(1) FEE REQUIREMENTS. Except as provided in sub. (3), a person shall pay the following fees as a condition of reinstating an operating privilege or vehicle registration that is suspended or revoked under ch. 344, Stats.:

(a) A person whose vehicle registration has been suspended or revoked under ch. 344, Stats., shall pay the reinstatement fee specified in s. 341.36(1m), Stats.

(b) A person whose operating privilege has been suspended or revoked under ch. 344 shall pay the reinstatement fee specified in s. 343.21(1)(j), Stats.

(c) Persons subject to both vehicle registration and operating privilege suspensions shall pay all fees required under pars. (a) and (b).

SECTION 51. Trans 100.15(2) is renumbered Trans 100.15(3)(b) and amended to read:

Trans 100.15(3)(b) The person submits written verification to the department that an insurance policy or bond meeting the requirements of s. 344.15, Stats., was in effect at the time of the accident. This written verification shall be submitted during the revocation suspension period.

SECTION 52. Trans 100.15(2) is created to read:

Trans 100.15(2) PROOF OF INSURANCE REQUIREMENT. Except as provided in sub. (3), a person reinstating his or her operating privilege or vehicle registration shall satisfy the following proof of financial responsibility for the future requirements:

(a) If the person was suspended or revoked for failing to deposit security, the person shall meet the proof of financial responsibility for the future requirements of s. 344.18(1m), Stats., for 3 years from the date the person meets one of the requirements under sub. (4).

(b) If the person was suspended or revoked for failure to pay a damage judgment, the person shall meet the proof of financial responsibility for the future requirements of s. 344.26(1), Stats. If the department imposed the revocation or suspension before September 1, 2000, and 3 years has not passed since the entry of judgment, the person shall keep proof of financial responsibility for the future on file with the department until 3 years have elapsed from the date of the entry of judgment. If the revocation or suspension was imposed by the department on or after September 1, 2000, and the judgment has been stayed, satisfied or discharged, the person shall keep proof of financial responsibility for the future on file with the department until 3 years have elapsed from the date the judgment was stayed, satisfied or discharged. If the revocation or suspension was imposed by the department on or after September 1, 2000, and a court has ordered that the judgment debtor be allowed to pay the judgment in installments under s. 344.27(2), Stats., the person shall keep proof of financial responsibility for the future on file with the department until 3 years have elapsed from the date that order is filed with the department. In the event the person defaults on the installment agreement and is subjected to another operating privilege or vehicle registration suspension, and the judgment is stayed, satisfied or discharged, the person

will be required to post proof of responsibility for the future for a 3 year period from the date the judgment was stayed, satisfied or discharged.

NOTE: See 1999 Wis. Act 80, s. 9348, for authority on provisions involving the date September 1, 2000.

SECTION 53. Trans 100.15(3) is renumbered Trans 100.15(3)(c).

SECTION 54. Trans 100.15(3)(title), (intro.) and (d) are created to read:

Trans 100.15(3)(title) FEES AND PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE NOT REQUIRED. (intro.) No fee or future proof of insurance is required when any of the following occur:

(d) A stay imposed under United States bankruptcy laws prohibited suspension or revocation of the person's operating privilege at the time the department suspended or revoked the person's operating privilege.

SECTION 55. Trans 100.15(4) is repealed and recreated to read:

Trans 100.15(4) RESOLVING CLAIM IN SAFETY RESPONSIBILITY CASES. A person whose operating privilege or vehicle registration is suspended or revoked for failure to deposit security under s. 344.14 or 344.18(3), Stats., shall meet one of the following conditions as a prerequisite to reinstating the operating privilege or vehicle registration:

(a) Deposit security as required by s. 344.18(1)(a), Stats., in the amount and form required under ss. Trans 100.07 and 100.08.

(b) File evidence with the department that the person has been released from liability or adjudicated not to be liable as required by s. 344.18(1)(b), Stats., in a form acceptable under s. Trans 100.12.

(c) File a written agreement with the department as required by s. 344.18(1)(c), Stats., in the form and manner required by s. Trans 100.13.

(d) Be subject to an operating privilege or vehicle registration suspension or revocation for a period of more than one year, provided that no notice is filed with the department by an injured party or claimant in interest that an action has been commenced in the form and manner required by s. 344.18(1)(d), Stats.

SECTION 56. Trans 100.15(5) and (6) are renumbered Trans 100.15(3)(e) and (f) and amended to read:

Trans 100.15(3)(e) The revocation suspension is a result of administrative error on the part of the department.

(f) A person revoked suspended under ch. 344, Stats., petitions the department and a hearing examiner determines there is no reasonable possibility of a judgment against a person.

SECTION 57. Trans 100.15(5) is created to read:

Trans 100.15(5) **RESOLVING CLAIM IN DAMAGE JUDGMENT CASES.** A person whose operating privilege or vehicle registration was suspended or revoked for failure to pay a damage judgment shall meet one of the following conditions as a prerequisite to reinstating the operating privilege or vehicle registration:

(a) File with the department a court stamped or certified copy of a satisfaction of judgment.

(b) File with the department a copy of a court order entered under s. 344.27(2), Stats., permitting the judgment debtor to pay the judgment in installments.

NOTE: Section 128.21, Stats., voluntary proceeding orders do not stay Ch. 344 license suspension or revocation actions, and are therefore inadequate to resolve a damage judgment suspension or revocation under sub. (5)(b).

(c) Provide proof to the department that the judgment debtor is released from liability on the judgment, or that enforcement of the judgment is stayed, by operation of law.

NOTE: See s. Trans 100.19 regarding the effect of a bankruptcy on a damage judgment revocation.

(d) Provide proof to the department that action upon the judgment is barred by passage of more than 20 years under s. 893.40, Stats.

(e) File with the department an original installment agreement between the judgment debtor and judgment creditor meeting the requirements of s. 344.14(2)(h), Stats., and s. Trans 100.13.

NOTE: Judgment creditors may not seek to re-suspend the operating privilege or vehicle registration of a judgment debtor within 6 months of filing an installment agreement. s. 344.25(2), Stats.

SECTION 58. Trans 100.16(2) is amended to read:

Trans 100.16(2) Self-insurance certificates shall be issued for a period of ~~3~~ one year.

SECTION 59. Trans 100.16(4) is created to read:

Trans 100.16(4)(a) A person shall be considered to have the ability to pay judgments arising out of motor vehicle accidents if the person has unencumbered assets of at least \$60,000 times the square root of the total number of vehicles owned by the person and operated on Wisconsin highways, is paying creditors as the person's debts become due, and does not have any judgment that has remained unpaid more than 30 days.

(b) In this subsection:

1. "Unencumbered assets" means the net worth of the person less the sum of all contingencies and reserved capital.

NOTE: Unencumbered Assets = Net Worth – (Contingencies + Reserved Capital).

2. "Contingencies" means events that have occurred, or that are likely to occur, that if included in the financial statements of the entity, would have a material effect on the financial position of that entity.

NOTE: Examples of contingencies include a lawsuit that could result in the payment of damages or fines that have not been reflected or disclosed on the financial statements or investment losses not yet realized and not reflected or disclosed on the financial statements.

3. "Reserved capital" means any amount reserved by management as required by contract or reserved for a specific activity.

NOTE: Examples of reserved capital include established reserves required by loan agreements, planned purchases of company stock, and planned distributions of capital.

(c) Evidence that a person has the ability to pay judgments shall be provided in the form of audited financial statements or on a United States securities and exchange commission form 10K filing.

NOTE: The provisions of sub. (4) are drawn from the Insurance Industry Committee on Motor Vehicle Administration's recommendations to the American Association of Motor Vehicle Administrators.

SECTION 60. Trans 100.17(1) is amended to read:

Trans 100.17(1) A transfer of ownership of any vehicle whose registration is suspended or revoked or subject to suspension or revocation under s. 344.14, Stats., shall ~~may~~ not be allowed if the under any of the following circumstances:

(a) The owner whose registration is suspended, revoked or subject to revocation suspension continues to have possession of, use of, or receive any benefit from the operation of the vehicle.

(b) The transferee resides at the same address as the transferor.

(c) The transferee is unable to prove that adequate consideration was paid for the vehicle.

SECTION 61. Trans 100.17(1m) is created to read:

Trans 100.17(1m) The department may not issue a title in the name of a purported purchaser for a vehicle if the transaction is impermissible under sub. (1).

SECTION 62. Trans 100.17(2) is amended to read:

Trans 100.17(2) A person's registration shall be considered subject to suspension or revocation under s. 344.14, Stats., when written notice of a security requirement under s. 344.13, Stats., is issued by the department.

SECTION 63. Trans 100.17(3)(intro.), (a) and (b), and (4)(intro.) and (b) are amended to read:

Trans 100.17(3)(intro.) An application for transfer of ownership shall may be accepted and a title may be issued in the name of the purchaser, when either of the following occur:

(a) The vehicle is repossessed by a person who, pursuant to the terms or conditions of any written instrument, is given a right of repossession; ~~or,~~

(b) The purchaser does not reside at the same address as the seller and the full value of the vehicle has been paid to the seller. The department may require proof of

payment or, an affidavit from the buyer or seller as, or other evidence that the proposed transfer is in good faith.

(4) If the department refuses to allow a acknowledge an alleged transfer of ownership and to issue a title in the name of the alleged purchaser, the department shall do all of the following:

(b) Return all fees submitted by with the application to the purchaser with an explanation as to why the transfer of ownership was refused. ~~If the title and registration were issued after the written notice of security was issued to the seller but prior to the revocation of registrations, the fees shall be returned only after the purchaser complies with the department request for return of the title and any registration plates issued.~~

SECTION 64. Trans 100.17(4)(c) is repealed.

SECTION 65. Trans 100.17(5) and (6) are created to read:

Trans 100.17(5) If the department issues a title in violation of s. 344.46, Stats., after it issues a notice of security requirement under s. Trans 100.10(1), the department shall suspend any outstanding title and registration, shall notify the transferee and transferor of that fact, and shall demand return of the mistakenly issued title. Upon return of the title to the department, the department shall provide a duplicate title to the transferor, without fee. A vehicle that is transferred as a gift, is sold for inadequate consideration, that remains in the possession of the transferor, that continues to be used by the transferor, or that is transferred to a spouse, parent, child, spouse's parent, child's spouse, step parent, step child, or any person residing at the same address as

the transferor, shall be presumed to have been transferred for the purpose or with the effect of defeating the purpose of s. 344.46, Stats.

(6) The department may notify any lien holders of record or appearing on alleged purchaser's title application of the department's actions under this section and the reasons for those actions, and may provide copies of any and all materials sent by the department to the alleged purchaser or seller.

SECTION 66. Trans 100.18 is repealed.

SECTION 67. Trans 100.19 is renumbered Trans 100.20 and, as renumbered, Trans 100.20(1) is renumbered Trans 100.20(2) and amended to read:

Trans 100.20(2) The An accident entry shall may be purged from the driver record after database if more than 4 years from the date of the accident have elapsed when the purge is conducted.

SECTION 68. Trans 100.20(1) is created to read:

Trans 100.20(1) The department may purge records of accidents from the department's online database of driver records twice per year or with such increased frequency as the secretary deems appropriate.

SECTION 69. Trans 100.20(2) is renumbered Trans 100.20(3) and amended to read:

Trans 100.20(3) The A safety responsibility suspension or revocation case entry shall may be purged from the driver record after database if 5 years from the effective date of the suspension or revocation, or 3 years from the reinstatement eligibility date, whichever is longer, have elapsed at the time the purge is conducted.

SECTION 70. Trans 100.20(4) and (5) are created to read:

Trans 100.20(4) After a damage judgment is satisfied, the damage judgment suspension or revocation case entry may be purged from the database at the time a purge is conducted if 3 years from the date the person meets one of the criteria in s. Trans 100.19(1)(a) or (e), or 5 years from the date of the suspension or revocation, whichever is longer, have elapsed.

(5) After a damage judgment debt is discharged in a bankruptcy proceeding, the damage judgment suspension or revocation case entry may be purged from the database at the time a purge is conducted if 3 years from the date the person is discharged from liability for the accident in a bankruptcy proceeding, or 5 years from the date of the suspension or revocation, whichever is longer, have elapsed.

NOTE: The Department conducts system wide "purges" of its driver database once or twice per year, usually over weekends around the 1st of the year and the 1st of June. A record entry is purged if it meets purge criteria on the date a purge is conducted. Entries are not purged on anniversary dates, but rather, in the first purge conducted after the appropriate anniversary date.

SECTION 71. Trans 100.19 is created to read:

Trans 100.19 Damage judgments. (1) **SUSPENSION.** (a) Upon receipt of a certified damage judgment from a Wisconsin court, the department shall immediately suspend the operating privilege and vehicle registration of the judgment debtor. The suspension shall remain in effect until the person pays all fees required for operating privilege and vehicle registration reinstatement, files any required proof of financial responsibility for the future, and until one of the following conditions is met:

(a) The person files with the department a certified or court stamped copy of a satisfaction of judgment.

(b) The person files with the department a court ordered installment payment schedule meeting the requirements of s. 344.27, Stats.

(c) The person files with the department an installment agreement complying with sub. (3).

(d) The person's suspension or revocation is temporarily or permanently affected under sub. (4) because of a bankruptcy.

(e) More than 20 years from the entry date of the judgment have elapsed.

(2) OUT OF STATE AND TRIBAL COURT JUDGMENTS. Upon receipt of a certified damage judgment naming a Wisconsin resident or licensed driver as judgment debtor from an Indian tribal court in Wisconsin or a court or driver licensing authority from another jurisdiction, the department shall provide notice of the receipt of the certification to the judgment debtor. The department shall suspend the operating privilege of the judgment debtor unless, within 30 days of the issuance of the notice by the department, the driver satisfies one of the requirements of sub. (1)(a) to (e) or, if the notification was received from a driver licensing authority in another jurisdiction, the person files a letter of clearance from the driver licensing authority in the other jurisdiction.

NOTE: Where notice of a judgment debt is sent to the Department by a licensing authority in another state, obtaining a release letter may be required as a precondition to obtaining or keeping a Wisconsin driver license. If the judgment debtor has moved to Wisconsin from the other state, the Department is prohibited from issuing the person a license if the person's operating privilege is suspended or revoked in the other state. s. 343.38(4), Stats. If the person has been issued a license, it will be cancelled. s. 343.25(4), Stats.

(3) INSTALLMENT AGREEMENTS. (a) If a judgment creditor consents to allow a judgment debtor to retain or reinstate the debtor's operating privilege or vehicle

registration under s. 344.25(2), Stats., the parties shall file a copy of the written installment agreement between the parties. The agreement shall meet the requirements of s. Trans 100.13. In applying the requirements of s. Trans 100.13, the term "injured party" shall mean the judgment creditor, and the term "uninsured person" shall mean the judgment debtor. The installment agreement shall provide that upon payment of the sums specified in the agreement, the judgment will be satisfied.

(b) If the department is notified that a judgment debtor has defaulted on a written installment agreement filed under s. 344.25, Stats., and 6 months have not elapsed from the date of the agreement, the department shall advise the person notifying the department of the default that no action may be taken until 6 months have elapsed. If 6 months have elapsed from the date of the agreement, the department shall immediately suspend the person's operating privilege and vehicle registration. The suspension shall remain in effect until the person pays all fees required for operating privilege and vehicle registration reinstatement, files any required proof of financial responsibility for the future, and meets one of the following:

1. Files with the department a certified or court stamped copy of a satisfaction of judgment.
2. Files with the department a copy of a court ordered installment agreement ordered under s. 344.27, Stats.

NOTE: Section 344.25(2), Stats., provides that a reinstatement following filing of a repayment agreement is for a minimum of 6 months. Courts do not have authority to order license reinstatement in voluntary wage earner debt amortization proceedings under s. 128.21, Stats. Amortization orders entered under s. 128.21 will not result in a debtor being able to immediately reinstate his or her operating privilege. In cases where a s. 128.21 proceeding is considered, bringing a parallel s. 344.27 motion to amortize a judgment debt and permit license reinstatement should be considered.

3. Applies for license reinstatement more than 20 years after the entry date of the judgment.

NOTE: See s. 893.40, Stats.

(4) BANKRUPTCY. (a) A person whose operating privilege or vehicle registration is suspended or revoked under s. 344.25, Stats., who files a petition in bankruptcy, and from whom collection of a pre-bankruptcy damage judgment debt is stayed under 11 USC s. 362, or whose personal liability for the damage judgment debt is discharged under U. S. bankruptcy laws, may reinstate his or her operating privilege or vehicle registrations. The person shall be subject to all the same reinstatement, filing and fee requirements as any other person seeking license reinstatement who has obtained a satisfaction of judgment following a damage judgment suspension.

NOTE: See *Holder v. DOT*, 40 BR 847 (E.D. Wisc., 1984) regarding the Department's authority to require proof of financial responsibility for the future of a bankruptcy debtor. Tort liability is not "consumer debt" under 11 USC 101 (7). Therefore, Ch. 13 co-debtor stay does not prohibit collection against non-bankrupt persons. In re ALVAREZ, 57 BR 65 (S.D. Fla., 1985).

(b) If a judgment creditor notifies the department that the automatic stay has been lifted to permit collection of the debt evidenced by the damage judgment, the department shall suspend the person's vehicle registration or operating privilege, or both.

(c) If the debtor's bankruptcy case closes or the automatic stay is lifted and the debt is not dischargeable under United States bankruptcy law, the department shall suspend the debtor's operating privilege or vehicle registration, or both, upon receipt of one of the following:

1. If a hearing is required to determine dischargeability of the judgment debt under 11 U.S.C. s. 523(c)(1), a copy of the court order finding the debt to be non-dischargeable.

2. If no hearing is required to determine dischargeability of the judgment debt under 11 U.S.C. s. 523(c)(1), then an affidavit of the claimant that the judgment is not dischargeable under bankruptcy law, citing the appropriate exception to discharge applicable to the judgment debt under 11 U.S.C. s. 523(a), and affirming that the debt was not discharged in the debtor's bankruptcy proceeding, or a court order making a determination that the debt was not discharged by the bankruptcy proceeding.

(d) The department may not permit a person whose operating privilege or vehicle registration was suspended under par. (c) to reinstate the operating privilege or vehicle registration unless the person provides a court order or findings to the department from a proceeding to which the judgment debtor and creditor were parties concluding that the debt was, in fact, discharged by the bankruptcy proceeding or the person meets the reinstatement requirements of sub (1)(a) to (e).

(e) A debtor who alleges a damage judgment was entered and certified to the department in violation of the automatic stay in violation of 11 U.S.C. s. 362 shall be required to provide evidence that the judgment is void or has been vacated or satisfied as a condition of license reinstatement.

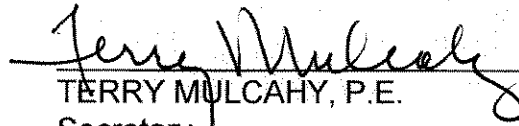
SECTION 72. Trans 117.03(2)(k) is created to read:

Trans 117.03(2)(k) The CDL occupational license of a person whose operating privilege is suspended or revoked under ch. 344, Stats., may not authorize operation of class D or M vehicles.

(END OF RULE TEXT)

Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Signed at Madison, Wisconsin, this 20 day of December, 2001.



TERRY MULCAHY, P.E.

Secretary

Wisconsin Department of Transportation