



(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Natural Resources and
Transportation...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**



Egan, Erin

From: cruisers [cruisers4536008@verizon.net]
Sent: Monday, August 14, 2006 9:18 AM
To: 'Egan, Erin'
Subject: Trans. 105 Proposed Changes for today's hearing attached

Erin:

Good morning. I have attached my comments for today's proposed hearing. I am attending but wanted you to have the written comments in hand. Please advise if the location is still Room 254.

We had a WPDSA member question why we could not do our own skills tests for our instructors (bus companies are allowed to test their own drivers). You said at the meeting that a state statute prohibited it. Could you please provide me with the reference number of the statute. Thanks.

Michele S. Kahle, Owner
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FROM WPDSA -
Received 8/14/06 -

STATE OF WISCONSIN

OFFICE OF THE SECRETARY

DEPARTMENT OF TRANSPORTATION

via email

The Wisconsin Department of Transportation proposes an order to repeal TRANS 105.01(1)(f), 105.035(2), 105.05(5), 105.06(2)(a), (11) and (12), and 105.07(1)(b)1.a. and (5)(d); renumber TRANS 105.02(4) and 105.06(11) and (12); renumber and amend TRANS 105.02(2) and (3), and 105.04(3); amend TRANS 105.01(title), 105.02(1), 105.03(1)(b) and (c), 105.035(1), 105.04(title), (1) and (2), 105.05(2)(a)(intro.), (b), (3) and (4), 105.06(2)(intro.), (b) and (e), (7) and (10), 105.07(1)(b), (b)1.(intro.), (b)3.(intro.), (c), (2)(a), (3) and (5) and 105.09(3)(note); repeal and recreate TRANS 105.06(5) and 105.08; and create TRANS 105.003, 105.007, 105.01(4) to (6), 105.015, 105.02(2) and (3), 105.035(2) to (5), 105.04(3), 105.06(3)(f), 105.07(1)(b)1.L. and (7), 105.10, 105.11 and 105.12, relating to licensing of driver schools and instructors

COMMENTS

From
WPDSA

IG

IN

RULE

RED

NOTICE IS HEREBY GIVEN that pursuant to Subchapter VI, Chapter 343, Stats., and interpreting Subchapter VI, Chapter 343, Stats., the Department of Transportation will hold a public hearing in **Room 254** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **14th** day of **August**, 2006, at **1:00 PM**, to consider the amendment of ch. Trans 105, Wisconsin Administrative Code, relating to licensing of driver schools and instructors.

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.

Parking for persons with disabilities and an accessible entrance are available.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: Subchapter VI, Chapter 343, Stats.

Statutory authority: Subchapter VI, Chapter 343, Stats.

Explanation of agency authority: The Department licenses driver training schools and instructors that teach driver's education for a fee. High schools or technical colleges that teach driver's education as part of their regular school program and businesses that provide instruction in the operation of motorcycles are excluded.

Related statute or rule: ss. 343.60 to 343.72, Stats., and ch. Trans 105

Plain language analysis: The purpose of this rule making is to amend ch. Trans 105 to comply with 2005 Wisconsin Act 397. This new law made many substantial changes to the driver schools statutes. Some of the changes include:

- Eliminating the requirement that schools maintain permanently bound books for recordkeeping.
- Implementing a system of progressive enforcement to take action against driver schools or instructors that have violated the law or have compiled multiple substantiated consumer complaints.
- Allowing driver schools to participate in the Cooperative Driver Testing Program, which allows schools to administer the knowledge and signs tests to their own students under the age of 18.
- Requiring driver schools to file a bond with the Department, and maintain a liability insurance policy in the amount established by rule.

Summary of, and preliminary comparison with, existing or proposed federal regulation: None.

Comparison with Rules in the Following States:

Michigan, Iowa, Minnesota, and Illinois have rules relating driver schools, driver school instructors and course content for young drivers to complete driver's education prior to licensure. The rules are similar to this proposed rule.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: A telephone survey was conducted of a sample of driver schools currently conducting business. Responses were compiled, and are shown below. There are approximately 180 driver training schools statewide.

Analysis and supporting documentation used to determine effect on small businesses:

Fiscal impacts:

1. New bonding requirement will cost approximately \$200 per year. Vehicle inspections will increase costs slightly.
2. The new bonding requirement will increase costs, but not substantially. The bond will likely be added to the school's current insurance policy.
3. The new bonding requirement will increase costs. The total amount of the increase is unknown, although the bond will likely be added to an existing insurance policy.

Workload impacts:

1. Some of the changes in ch. Trans 105 will decrease workload, such as removing the requirement that records be kept in a permanently bound book, and lengthening the renewal cycle to two years. The workload reduction will be offset by other changes, such as additional workload required to participate in the Cooperative Driver Testing Program.
2. No workload impact.
3. No change in workload expected. May have a slight decrease.

Other comments:

1. This will make driver schools operated in the State of Wisconsin more professional, and the changes are welcome.
2. Allowing driver schools to participate in the Cooperative Driver Testing Program is a positive for both students and schools. The changes made in the proposed rule are good. Schools that are in compliance that run a quality business will not have a problem.
3. Driver schools must be allowed to operate home-based offices to remain in business. (Note: the proposed rulemaking still allows driver schools to have home-based offices).

Effect on small business: Most driver schools are small businesses, and are already regulated by the Department. This rule making changes how the Department regulates driver schools. The Department's Regulatory Review Coordinator may be contacted by e-mail at andrew.ruiz@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal effect and anticipated costs incurred by private sector: The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education

district, sewerage district, or federally-recognized tribes or bands. The Department estimates that there will be no fiscal impact on state revenues or liabilities. The private sector should not see an increase in costs. Allowing students to take the knowledge and signs test at the driving school, instead of DMV, should decrease travel costs and time away from work for parents.

Agency contact person and place where comments are to be submitted and deadline for submission: The public record on this proposed rule making will be held open until close of business August 15, 2006 to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Erin Egan, Department of Transportation, Division of Motor Vehicles, Room 255, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Egan by phone at (608) 266-1449.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

TEXT OF PROPOSED RULE

SECTION 1. Trans 105.003 is created to read:

Trans 105.003 Introduction. (1) PURPOSE. This chapter construes subch. VI of ch. 343, Stats., by creating rules for the purpose of regulating the following:

(a) The licensing and regulation of commercial driver schools that provide driver training and testing for minors and training of instructors.

(b) The licensing and regulation of commercial driver school instructors who provide classroom and behind-the-wheel instructions to minors.

(2) SCOPE. This chapter applies to all persons operating a commercial driver school for minors or giving instruction in the driving of a motor vehicle to minors except as specifically excluded.

SECTION 2. Trans 105.007 is created to read:

Trans 105.007 Definitions. In this chapter:

(1) "Authorized medical practitioner" means a physician licensed to practice medicine in any state, an advanced practice nurse licensed to practice nursing in any state, a physician assistant licensed or certified to practice in any state, a chiropractor licensed to practice chiropractic in any state, or a Christian Science practitioner residing in this state, and listed in the Christian Science journal.

(2) "Driver school" is defined in s. 343.60(1), Stats.

(3) "Instructor" is defined in s. 343.50(3), Stats.

(4) "Student" means a person less than 18 years of age who is applying or is enrolled at a driver school for instruction in driving a motor vehicle.

(5) "Vehicle" means a 4-wheeled self-propelled device meeting federal motor vehicle safety standards with a minimum capacity of 4 persons.

SECTION 3. Trans 105.01(title) is amended to read:

Trans 105.01 (title) ~~Application forms for driver~~ Driver school and instructor licenses(should the "s" be stricken) applications.

SECTION 4. Trans 105.01(1)(f) is repealed.

SECTION 5. Trans 105.01(4) to (6) are created to read:

Trans 105.01(4) Applicants for a driver school license may self-certify the condition of its school offices and classrooms to the department on the approved department form submitted with the application unless the office is in a home residence. The self-certification of the facilities shall address all of the following:

(a) Address for office and any classroom being self-certified.

(b) Measurement and configuration of office, including entrances, exits, windows, records storage and number of students.

(c) Adequate lighting and temperature control.

(d) Separate entrance and exits for the office and classroom.-stike this..only home businesses need separate entrances without walking through residence.

(e) No other driver school business conducted within the office, unless approved by the department.-we agreed that multiple CDS's could not be operated out of the same office, however we should be able to operate other business...this needs to be wording clearly to reflect only that limitation, incorporating (f).

(f) No other driver business conducted within the driver training office. -same objection as listed above

(g) Zoning verification if the office is located in a non-traditional business location.

(h) Access to restroom facilities for classrooms.

(i) Authorization from school if public classrooms are used to provide instruction.

(5) Driver school offices in a home residence may be conditionally self-certified if:

(a) Facility is visited and approved by the department prior to filing a school license application.

(b) Minor students are not allowed at the office unless accompanied by a parent or sponsor.

(c) Applicant verifies that local zoning allows the office in a non-traditional business location.

(d) The office has a separate entrance and exits from the street.

(6) Applicants who will be owners and managers of driver schools shall submit verification that they passed the department's 50-question test on driver school and instructor criteria. Applicants shall get a minimum score of 80% to pass.

SECTION 6. Trans 105.015 is created to read:

Trans 105.015 Cooperative driver testing program. (1) The department may enter into a cooperative driver testing agreement with the driving school to conduct knowledge tests as permitted by s. 343.16(1)(c), Stats. Driver schools may administer the knowledge and signs test for students who are currently enrolled in driver education. Driver schools that have accumulated 2 or more points in the current licensing period under s. Trans. 105.11 are not eligible to enter into the testing agreement with the department.

(2) The agreement is voluntary and can be terminated by the department. (voluntarily terminated by either party, not just DOT)

(3) Schools that are participating in the cooperative driver testing program under s. 343.16(1)©, Stats., may provide the knowledge and signs test required under s. 343.62(4)(a)1., Stats., to their own instructors.

SECTION 7. Trans 105.02(1) is amended to read:

Trans 105.02(1) Each applicant for an instructor's license shall take the road test. The road test shall be scored in the same manner as are tests given for regular operator's licenses and shall also include an actual demonstration of procedures and techniques used instructing drivers. Tests required by s. 343.6(4), Stats., are required of all applicants for original instructor's license and applicants whose instructor's licenses have lapsed for one or more years. The department may also require retesting

of currently licensed instructors either as a part of a routine retesting program or when it has reasonable cause to doubt the continued competency of any individual instructor. Applicants shall also complete a 20-question test on instructional procedures or demonstrating teaching skills. This test may be administered orally. Applicants shall get a minimum score of 80% to pass.

SECTION 8. Trans 105.02(2) and (3) are renumbered Trans 102.02(4) and (5) and amended to read:

Trans 105.02(4) ~~The~~ Each applicant for an instructor's license shall have a medical statement submitted completed within the prior 24 months by the physician required by s. 343.63(4), Stats., shall be an authorized medical practitioner on a form supplied by the department and submitted to department with the school renewal. If there is a medical condition that impacts safe vehicle operation, the department may request medical documentation more frequently based on ch. Trans 112.

(5) If the information filed by the ~~physician~~ authorized medical practitioner is such as to indicate the person is not physically fit to teach driving, the department may require the applicant to submit to further medical examination or deny the license.

SECTION 9. Trans 105.02(2) and (3) are created to read:

Trans 105.02(2) Instructors that have held an instructor license for both behind the wheel and classroom training, but are no longer eligible for a driver license because of a medical condition, can at the request of the school continue to obtain a classroom-only license. This does not apply to instructors whose instructor license has been withdrawn.

(3) Instructors that fail the skills test twice may petition the department for an alternative test method.

SECTION 10. Trans 105.02(4) is renumbered Trans 105.02(6).

SECTION 11. Trans 105.03(1)(b) and (c) are amended to read:

Trans 105.03(1)(b) Has been involved in 2 or more accidents in a one-year period where the ~~accident~~ crash report indicates that such person may have been causally negligent. If there is no traffic citation resulting in a conviction associated with this crash, the person is not considered negligent.

© Has had his or her operator's license revoked, suspended or cancelled for a traffic violation other than a parking violation, at any time during the past 4 years, based on conviction date or effective date of the withdrawal, whichever is earlier.

SECTION 12. Trans 105.035(1) is amended to read:

Trans 105.035(1) For the purpose of determining the fitness of a person to hold a driver school license under s. ~~343.64(1)(d)~~ 343.62(4)(a)8. and 9., Stats., the department shall consider all relevant arrests and convictions ~~for the past 5 years~~, and make such further examinations and checks as it determines are necessary.

SECTION 13. Trans 105.035(2) is repealed.

SECTION 14. Trans 105.035(2) to (5) are created to read:

Trans 105.035(2) The department shall deny or withdraw the driver school or instructor license issued under s. 343.61, Stats., or s. 343.62, Stats., for a lifetime, if any of the following convictions are recorded in the background check:

Statute	Description
940.01	1 st degree intentional homicide
940.03	Felony murder

940.05	2 nd degree intentional homicide
940.225(1) to (3m)	Sexual assault
940.305	Taking hostages
940.31	Kidnapping
941.32	Administering dangerous or stupefying drug
944.34	Keeping a place of prostitution
946.01	Treason
946.02	Sabotage
946.03	Sedition
948.02(1) and (2)	Sexual assault of a child
948.025	Engaging in repeated acts of sexual assault of the same child
948.03	Physical abuse of a child
948.04	Causing mental harm to a child
948.05	Sexual exploitation of a child
948.055	Causing a child to view or listen to sexual activity
948.06	Incest with a child
948.07	Child enticement
948.075	Use of computer to facilitate a child sex crime
948.08	Soliciting a child for prostitution
948.095	Sexual assault of a student age 16 or older by a school instructional staff person
948.10	Exposing genitals or pubic area to child
948.11(2)(a) or (am)	Exposing a child to harmful material or harmful descriptions or narrations
948.12	Possession of child pornography
948.13(2)	Child sex offender working with children
944.06	Incest
940.22(2)	Sexual exploitation by a therapist

(3) The department shall deny or withdraw the driver school or instructor license issued under s. 343.61, Stats., or s. 343.62, Stats., for 10 years if any of the following convictions are recorded in the background check:

Statute	Description
948.21	Abandonment of a child – neglecting a child
948.23	Concealing death of a child (at birth)
948.30	Abduction of another's child, constructive custody
948.35	Solicitation of a child to commit a felony

961.42(1)	Keep or maintain any place for drug use, manufacture, keeping or delivering
961.41(1)(1) to (1)(j)	Manufacture, distribution or delivery of drugs
961.41 (1m)(a) to (1m)(j)	Possession with intent to manufacture, distribute or deliver drugs
961.41(4)(am)	Distribution or delivery or attempt to deliver or distribute an imitation controlled substance
961.455	Using a child for illegal drug distribution or manufacturing
961.46	Distribution of controlled substances to persons under age 18
944.17	Sexual gratification
944.30	Prostitution
944.31	Patronizing prostitutes
944.32	Soliciting prostitutes
944.33	Pandering
941.21	Disarming a peace officer
943.201	Unauthorized use of an individual's personal identifying information or documents
940.02	1 st degree reckless homicide
940.06	2 nd degree reckless homicide
940.09	Homicide by intoxicated use of vehicle or firearm
943.32	Robbery
948.09(this numbering out of order)	Sexual intercourse with a child age 16 or older(I thought we agreed anything sexual with a child or student was a lifetime offense)

(4) The department shall deny or withdraw the driver school or instructor license issued under s. 343.61, Stats., or s. 343.62, Stats., for 5 years if any of the following convictions are recorded in the background check:

Statute	Description
944.15	Public fornication
944.20	Lewd and lascivious behavior
944.21	Obscene material or performance
944.23	Making lewd, obscene or indecent drawings
944.25	Sending obscene or sexually explicit electronic messages
940.25(1)	Injury by intoxicated use of a vehicle
941.26	Possession of machine guns and other weapons
941.28	Possession of short-barreled shotgun or rifle
941.29	Possession of firearm by felon

941.295	Possession of electric weapon
941.296	Use or possession of a handgun and an armor-piercing bullet during crime
941.298	Firearm silencer
941.30	Reckless endangering safety
941.31	Possession of explosives
941.325	Placing foreign objects in edibles
941.327	Tampering with household products
943.02	Arson of buildings, damage of property by explosives
943.03	Arson of property other than buildings
943.04	Arson with intent to defraud
943.06	Molotov cocktails
944.10	Burglary
943.28	Loan sharking
943.30	Threats to injure or accuse of crime
943.38(1) or (2)	Forgery
946.415	Failure to comply with officer's attempt to take person into custody
946.43	Assaults by prisoners
946.44	Assisting or permitting escape
946.47	Harboring or aiding felons
946.48	Kidnapped or missing persons; false information
946.60	Destruction of documents subject to subpoena
946.65	Obstructing justice
947.015	Bomb scare
961.41(1n)	Possession of piperdine
961.41(3g) (f)	Possession – gamma-hydroxybutyric acid, gamma-butyrolactone, ketamine or flunitrazepam
961.41(1x)	Conspiracy
961.41(2)(a) to (d)	Counterfeit substances
961.41(3g)	Possession
961.43(1) (2)	Acquiring or obtaining possession of controlled substance by fraud or forgery – counterfeit substance or packaging
961.67	Possession or disposal of waste from manufacture of methamphetamine
940.10	Homicide by negligent operation of a vehicle
940.19(2),(4), (5), or (6)	Battery, substantial battery or aggravated battery
940.195	Batter to a pregnant woman or unborn child
940.21	Mayhem
941.38	Criminal gang member solicitation and contact
940.23	Reckless injury
940.285	Abuse of vulnerable adults

940.295	Abuse and neglect of patients and residents
948.40	Contributing to the delinquency of a minor
948.55	Leaving or storing a loaded firearm within reach or easy access of child
948.605	Possession of a firearm in school zone

(5) The department shall deny or withdraw the driver school or instructor license issued under s. 343.61, Stats., or s. 343.62, Stats., for 2 years, if any of the following convictions are recorded in the background check:

Statute	Description
Various	Any felony not listed in subs. (3) to (5)
940.12	Assisting suicide
941.01	Negligent operation of a motor vehicle
941.20	Endangering safety by use of a dangerous weapon
941.37	Obstructing emergency or rescue personnel
943.07	Criminal damage to railroads
941.11	Unsafe burning of a building

SECTION 15. Trans 105.04(title), (1) and (2) are amended to read:

Trans 105.04 (title) ~~Loss or surrender of license~~ **Driver school administrative procedures**. (1) Application for a duplicate of a lost or destroyed license shall contain the information set forth in s. Trans 105.01(1)(a), (b), and (d) and shall be accompanied by a certified statement that the original was lost or destroyed. The fee for a duplicate license is \$5.

(2) If a school terminates active participation in the business of teaching driver training for a fee, the school shall immediately forward such license to the department for cancellation. All unissued course completion slips shall be returned to the department.

NOTE: Form MV3192, course completion slips, may be obtained from the Division of Motor Vehicles, P. O. Box 7920, Madison, WI 53707-7920.

SECTION 16. Trans 105.04(3) is renumbered Trans 105.04(5) and amended to read:

Trans 105.04(5) If an instructor is no longer employed with a driver school ~~or is changing employment from one school to another~~, the instructor shall ~~notify the department of that fact and forward~~ surrender his or her license to the ~~department for cancellation~~ driver school. The driver school shall destroy the instructor's license and notify the department in writing for cancellation of the instructor license.

SECTION 17. Trans 105.04(3) is created to read:

Trans 105.04(3) If a driver school terminates active participation of teaching driver training for a fee, the student shall:

(a) Begin the driver training over if the school does not provide documentation of what instruction was completed.

(b) Receive credit for the completed hours of driver training instruction when documentation is provided, but shall complete the remaining training with another school to meet required driver education requirement

(c) If the driver school does not refund the fees for the training paid for but not provided, the student or his or her parents or guardians may contact the company that issued the bond required under s. Trans 105.10.

SECTION 18. Trans 105.05(2)(a)(intro.), (b), (3) and (4) are amended to read:

Trans 105.05(2)(a)(intro.) The records required by s. 343.71(4) (1m), Stats., shall be ~~contained in a permanently bound book having consecutively numbered pages, on which are set forth~~ kept for 4 years in a readily accessible format, and shall include the following information for each person to whom instruction is given:

(b) The information required under par. (a)1. to 4. shall be ~~entered in the book~~ captured (should we use the word "recorded" captured could be interpreted as having a contact on hand without having to transfer the information to another area) within one working day after the making of a contract or agreement between the school and the student.

(c) The information required under par. (a)5. shall be ~~entered in the book~~ captured within one working day after the last instruction or other service has been received by the student.

(3) The records required by s. 343.71(2), Stats., shall be in the form of an individual ~~permanent~~ student record ~~card~~ on ~~for~~ each person listed in the ~~record book~~ records required by s. 343.71(4) (1m), Stats. Such record ~~card~~ shall show the student's name, date of birth, and address, and contract or agreement number, receipt number, ~~permanent register page number~~, dates, types, duration and fees charged (correct sentence structure here?) ~~for each lesson~~, lecture, tutoring, period of instruction or other service relating to instructions in the operation of motor vehicles; the name and license number of the instructor having given each lesson or period of instruction or service relating to instruction in the operation of motor vehicles, and identification of the vehicle in which any behind-the-wheel instruction was given, ~~including type of transmission~~. The information required by this section shall be entered on the student record ~~card~~ within one working day after the completion of each lesson.

(4) To be approved, the agreement form required to be filed by s. 343.71(3) (1m)(b), Stats., shall be consecutively numbered, contain the date of application, name of school, type or types of lessons, lectures, tutoring or instruction to be given, fee to be

charged or the word none if no charge, the statement, "This constitutes the entire agreement between the school and the student and no verbal statement or promises will be recognized," signature of student, (signature of parent required is minor) address of student, and signature of owner of school or his or her authorized representative.

SECTION 19. Trans 105.05(5) is repealed.

SECTION 20. Trans 105.06(2)(intro.) is amended to read:

Trans 105.06(2)(intro.) To be approved by the department, a driver school's specific place of business required by s. ~~343.72(5)~~ 343.61(4)(b), Stats., shall:

SECTION 21. Trans 105.06(2)(a) is repealed.

SECTION 22. Trans 105.06(2)(b) and (e) are amended to read:

Trans 105.06(2)(b) Be in an area zoned to permit this type of business or obtain a variance that authorizes the business to operate at this address (strike-"function in a residence". (There are business zones that does not authorize schools without a variance so a variance may be needed at locations other than residences.) The department may require the applicant to furnish written proof thereof from the municipality where the driver school is located.

(e) Not consist solely of a telephone answering service. ~~A telephone used in the driver school business for incoming calls shall be located in the office facility. Each school shall have a listed telephone number "in the schools name"-agreed upon~~ wording at last meeting?, for their school.

SECTION 23. Trans 105.06(3)(f) is created to read:

Trans 105.06(3)(f) Availability of restroom facilities.

SECTION 24. Trans 105.06(5) is repealed and recreated to read:

Trans 105.06(5) Licensees may not solicit business within 1500 feet of any department office where official road tests are given. This section does not apply if:

(a) The department relocates or establishes a new office within 1500 feet of an existing driver school.

(b) The municipality where the department office is located has a population less than 10,000 and the business district is less than 1500 feet long.

(c) The department conducts business at the office less than 3 times per month.

(d) The driver school petitions the department for an exception, and the exception is granted by the department.

SECTION 25. Trans 105.06(7) and (10) are amended to read:

Trans 105.06(7) Licensees may advertise only by the school name ~~and specific street address~~ shown on its license.

(10) Approved dual controls required by s. 343.72(12), Stats., include but are not limited to a separate brake for the instructor which is located on the right side of the car so the instructor can safely operate ~~it with the foot normally used to operate the brake and accelerator~~ the controls, and a separate mirror on the right, outside of the car, positioned so the instructor can view traffic to the rear. ~~To assure the safety of students and the public, all driver training cars shall be inspected by the department within 30 days of purchase or lease by the school and, at the department's discretion, may be inspected each year thereafter.~~ An authorized representative of the department may make random inspections to assure compliance with this subsection.

SECTION 26. Trans 105.06(11) and (12) are renumbered Trans 105.06(13) and (14).

SECTION 27. Trans 105.06(11) and (12) are created to read:

Trans 105.06(11) All vehicles used by licensees to conduct behind-the-wheel training that are more than 3 years old shall:

(a) Be certified to meet all manufacture specifications for the vehicle type, model, and year, within 30 days of being put into service. Certification may be completed by an authorized service facility such as licensed dealer or vehicle repair facility.

(b) Submit to an annual vehicle inspection certification by a service facility. The safety certification shall be on a form defined by the department and at a minimum include the date, name of school, vehicle make, vehicle model, vehicle identification number, and a date and signature certifying the vehicle meets or exceeds safety standards.

(12) If the department deems a vehicle of any age unsafe, the department shall order a vehicle out of service until it is repaired. If the only vehicle in the school fleet is ordered out of service, the school will not be able to perform behind the wheel instruction until the vehicle is certified as safe. Any vehicles used after being ordered out of service shall result in points being assessed as provided in s. Trans 105.11.

SECTION 28. Trans 105.07(1)(b) and (b)1.(intro.) are amended to read:

Trans 105.07(1)(b) Requests for initial approval under this section shall be accompanied by a course ~~outline with lesson plans~~ summary. After the course ~~outline with lesson plans~~ summary has been initially approved, the licensee ~~must~~ shall submit to the department for approval any substantial proposed changes prior to their implementation.

(b)1.(intro.) The course ~~outline~~ summary shall specify a minimum of one main topic or more for each hour ~~and be arranged chronologically in the order of presentation~~. The classroom course shall cover, but is not limited to the following:

SECTION 29. Trans 105.07(1)(b)1.a. is repealed.

SECTION 30. Trans 107.07(1)(b)1.L. is created to read:

Trans 105.07(1)(b)1.L. Instruction required under s. 343.71(5), Stats.

NOTE: This includes hazards posed by farm machinery, 30 minutes of instruction on organ and tissue donation, and information on motorcycle, bicycle, and pedestrian awareness.

SECTION 31. Trans 105.07(1)(b)3.(intro.), (c), (2)(a), (3) and (5) are amended to read:

Trans 105.07(1)(b)3.(intro.) Each classroom lesson plan shall cover no more than ~~two~~ 2 hours. Each behind-the-wheel lesson plan shall cover no more than one hour. Lesson plans shall be kept on file with the driver school. The lesson plan shall specify the following:

(c) Students ~~under 18~~ **underline instead of striken?** years of age who satisfactorily complete the approved course and complete financial obligations required by their contract with the school shall be given a certificate of completion on a form approved by the department.

(2)(a) In order to be eligible for approval under this section, a classroom phase of instruction shall consist of 30 clock hours in the classroom, extending over a minimum of 3 weeks for each student at no more than 2 clock hours per day. A course is not approved when students begin the class on alternate days. All students must be present for every session except if a student is absent for any legitimate reason, the

absence must be marked on the student's record(delete the word card to be consistant) card and the ~~sessions~~ content missed must be made up. ~~The maximum number of hours that may be made up is 4. A student who is absent for more than 4 hours cannot continue with that group.~~ Classroom instruction and behind-the-wheel instruction may be given concurrently only if both phases are given by the same school.

(3) ~~Licensees~~ For behind-the-wheel only instruction, licensees may not ~~enroll students for only the~~ begin behind-the-wheel ~~phase~~ training with a new student unless certified proof of completion of an approved classroom phase, ~~on a form provided by the department,~~ is on file with the agreement in the licensee's office. However, this subdivision does not apply if the student is either enrolled in an approved behind-the-wheel phase at a different school or has completed the approved course, and the agreement specifies that the instruction does not qualify the student to apply for a license under s. 343.06(3), Stats.

(5) All applicants for an instructor's license shall have satisfactorily completed ~~100~~ 40 clock hours of classroom instruction in safety and driver education as given by an approved ~~college, university, or technical college,~~ driving school instructor training program as a minimum requirement to teach students ~~under 18~~ (error here ? should this be an underline instead of a strike)years of age except that:

SECTION 32. Trans 105.07(5)(d) is repealed.

SECTION 33. Trans 105.07(7) is created to read:

Trans 105.07(7) Applicants for instructor's license renewal shall attend at least one approved traffic safety related workshop or conference per licensing period.

SECTION 34. Trans 105.08 is repealed.

SECTION 35. Trans 105.09(3)(note) is amended to read:

Trans 105.09(3)(note) NOTE: Applications can be obtained from, and should be returned to: Department of Transportation, Bureau of Driver Licensing Services, Hill Farms State Office Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin 53702.

SECTION 36. Trans 105.10, 105.11 and 105.12 are created to read:

Trans 105.10 Insurance and bond requirements. (1) The school shall hold minimum insurance of not less than \$500,000 because of bodily injury to or death of one person in any one accident and, subject to that limit for one person, to a limit of not less than \$500,000 because of bodily injury to or death of 2 or more persons in any one accident and, if the accident has resulted in injury to or destruction of property, to a limit of not less than \$50,000 because of injury to or destruction of property of others in any one accident. These requirements will be adjusted every 5 years by multiplying the requirement amounts by the percentage increase of the consumer price index from January 1, 2007 to January 1 of the next fifth year [2012, 2017] and adding that amount to the above requirement rounded to the nearest \$10,000 increment. The driver school shall also:

- (a) Maintain a standard liability insurance of not less than \$500,000.
 - (b) File certification of insurance with the department.
 - (c) Require the insurance carrier to file notification of cancellation with the department.
- (2) The schools shall file a bond based on size and performance.

(3) Customer shall apply to bond company if obligations of the training contract cannot be met.

(4) Points are assessed based on violation frequency and severity. Points are assessed based on the system specified in s. Trans 105.11.

(5) The size of the school and points assessed during past license period are used to calculate the bond amount.

CALCULATIONS

Number of Points in 24 Months	0	1-2	3-6	7 or More
School size based on signed completion slips for the prior period				
0-300	\$5,000	\$10,000	\$15,000	\$30,000
301-1100	\$10,000	\$15,000	\$20,000	\$45,000
1101 or more	\$15,000	\$20,000	\$25,000	\$60,000

(6) Certification of bond must be filed with the department at renewal of the school license.

Trans 105.11 Driver school point system. (1) The department may assess points against a driver school and instructor who has violated any provisions in ss. 343.60 to 343.72, or rules interpreting ss. 343.60 to 343.72, Stats., that constitute grounds for the suspension or revocation of their license. The department may also assess points against a driver school or an applicant for a license when the department has reasonable cause to doubt the licensee or applicant's financial responsibility or bond. The department shall provide a licensee or applicant written notice of a point assessment. Written notice of a point assessment shall specify the reasons for the

point assessment. All points assessed by the department shall remain in effect for the duration of the current licensing period, and any new point assessments shall be added to the existing point total for that licensee throughout the current licensing period.

(2) The department shall use the points assessed to determine the amount of bond required for the next licensing period.

(3) The department may also take licensing action under the system of progressive enforcement described in s. Trans 105.12, based on the number of points assessed. If applicable, the written notice specified in sub. (1) may include the issuance of a complaint to revoke or suspend a license, a written stipulation to a conditional license, a civil forfeiture complaint, or notice of denial of a license.

(4) Points shall be assessed according to the following scale:

(a) Six points are assessed for the following:

1. School or instructor license withdrawal.
2. Six or more substantiated customer complaints within a license period.
3. Providing false documentation and information to DMV for the school or instructor license or self-certification.
4. Permitting actions that could harm the customer physically or financially.
5. Performing work duties after consuming any substance (alcohol/drug) that impairs ability to drive a motor vehicle.
6. Failure to comply with DMV warning letter.
7. Substantiated complaint from parent/student of inappropriate conduct or actions with the student.

8. Violation of ss. 343.60 to 343.72, Stats., that negatively impact or harm the customer or highway safety.

(b) Four points are assessed for the following:

1. Not complying with renewal criteria within 30 days of written request by DMV/
2. Five substantiated customer complaints in a license period.
3. Continuing to use a vehicle that is out of service for driver training.
4. School insurance and/or bond not filed with the department.
5. Audit violations or discrepancies are not resolved in time specified.
6. Filing complaints about another school that are not substantiated.
7. Soliciting complaints or providing training prior to licensure.
8. Violations of ss. 343.60 to 343.72, Stats., that result in unfair advantage to a

school or harms another school.

(c) Two points are assessed for the following:

1. Four substantiated customer complaints within a license period.
2. Required vehicle inspections are not filed with the department.
3. The department is not notified when students are no longer enrolled.
4. Discrepancy in student or business records.
5. Providing students with signed MV3001 document prior to "strikeenrollment" to receipt of a properly executed service agreement.-this clarifies what we considered "enrolled" as we did not define that and it has been an issue in the past.
6. Violation of ss. 343.60 to 343.72, Stats., that do not harm the customer or

impact highway safety.

(d) One point is assessed for the following:

1. Three or more substantiated customer complaints within a license period.
2. Violations of ss. 343.60 to 343.72, Stats., relating to office location and facility

locations.

Trans 105.12 Progressive enforcement actions. (1) The department shall:

(a) Record points assessed to driver schools under s. Trans 105.11.

(b) Record points assessed to instructors, as well as the driver schools the instructor has worked for or owned previously.

(c) Tie accumulated points to instructor, as applicable.

(d) Issue a conditional license when appropriate.

(2) Based on the points assessed to driver schools and instructors under s. Trans 105.11 in the current licensing period, the following enforcement actions shall apply:

(a) Level one enforcement action – one point assessed. An advisory letter may be sent to the driver school or instructor, asking for corrective action.

(b) Level two enforcement action – one to 3 points assessed.

1. The department may conduct an on-site inspection or audit.

2. An advisory letter shall be sent.

3. If a situation is unresolved after time specified in the advisory letter, the department may issued a conditional license under s. 343.61 or 343.62, Stats., restricted to classroom instruction only. Vehicles used by the driver school may also be ordered out of service, if the violation is related to the vehicle inspection. The restricted license may remain in effect until situation is resolved.

(c) Level three enforcement action – 4 to 6 points assessed.

1. A warning letter may be sent.
2. The licenses issued under s. 343.61 or 343.62, Stats., shall be revoked, suspended, or denied for 90 days.

(d) Level four enforcement action – 6 or more points assessed. The licenses issued under s. 343.61 or 343.62, Stats., shall be revoked, suspended, or denied for 4 months to one year, based on point accumulation.

(3) All administrative licensing suspensions, revocations, denials, or conditional licenses issued can be appealed under ch. 227, Stats.

(END OF RULE TEXT)

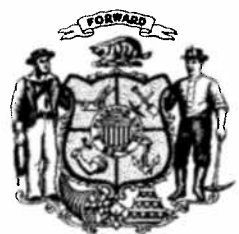
Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Signed at Madison, Wisconsin, this ____ day of July, 2006.

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation



WISCONSIN STATE LEGISLATURE



Egan, Erin ✓

From: dale/chris lutze [dlutze@wi.rr.com]
Sent: Monday, August 14, 2006 4:25 PM
To: erin.egan@dot.state.wi.us
Subject: proposed changes to chapter trans 105-driving schools

Erin...

I was unable to attend the public hearing, but I have reviewed the proposed changes to the driving school statutes. As a small business owner I am certainly sensitive to any proposals that would cause me to incur additional expense at a time when other necessary expenses are also climbing. While the insurance bond and car inspection ideas might seem appropriate on the surface, I must wonder if the State's experience and statistical evidence demonstrate that these changes are warranted. Do other small businesses that are regulated by the State also have to purchase an insurance bond to safeguard clients? Are there a sufficient number of cases of client negligence to show that this provision is necessary or again does it simply seem valuable and appropriate? Similarly, the idea of car inspection at first glance may seem appropriate, but is this required of other vehicules used in State regulated businesses and does experience show that driving schools have been remiss in proper maintenance, etc.? I am abit concerned that dealers will see this as an opportunity to "find" problems and in effect hold the driving school hostage to having repair/maintenance done before its time. Further it may simply be an unnecessary appointment/expense for the vast majority of schools who realize the necessity of properly maintaining a student vehicle; and, afterall, this is no attempt to safeguard the student from safety hazards, etc they may be subject to in the family car!

I am certainly willing to forgo the permanently bound book as I think it is mostly redundant information anyways.

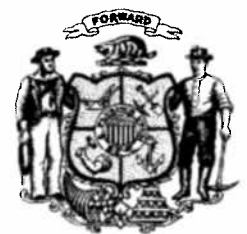
I am hopeful that any proposed changes be well thought out in terms of true need and resulting impact on driving schools where I think most of us attempt to provide a high quality service at a reasonable/affordable price. Thank you for the opportunity to provide feedback.

Sincerely,
Dale Lutze
First Class Driving School
Menomonee Falls, WI.

8/14/2006



WISCONSIN STATE LEGISLATURE



Egan, Erin

From: Alan Musilek [buick01@charter.net]
Sent: Monday, August 14, 2006 11:30 AM
To: erin.egan@dot.state.wi.us
Subject: Trans 105 changes

Hi Erin,

It sure was nice to talk with you. You were very helpful and friendly and that is always a good thing. Below are my comments that I would like the committee to consider for now and in the future.

1. Permanently Bound Book

I guess this is going to be done away with allowing us to keep records on a computer. It is about time! I want to put my comment in on this and say I agree with getting rid of it. The rules regarding how to keep this book including timelines for entries, handwriting, and others were about 20 years out of date.

2. Student Record Card

On the student record card, there are two changes that I would like to see made. One is tied to the Permanently Bound Book and the other is not.

A. Register Page #

How can we record a register page number out of the Permanently Bound Book if we no longer have it? I believe a more appropriate method would be an enrollment number that can be easily found on my database as I put all students as they call in numerical order. This way I can access anyone within a few seconds and pull up all there pertinent information. Another idea might be to just do away with this as we did the book. It really serves very little purpose as I have other ways of finding a student's enrollment number and thus it becomes useless. The student record card is already very cluttered and crowded. Let's clean it up a little.

B. Receipt #

What does this have to do with teaching driver education? The parents pay by check and have their cancelled checks for their receipt. I have less than 1% of the parents request a receipt and when they do, I give them one. How does this belong on the student record card and why was it on there in the first place? I would like to see this taken off also allowing us to leave more room for more important information. Please consider removing this as well.

3. Office Criteria:

Some of the requirements for what qualifies as an "office" are a little out of date also. I currently have my office at Wheatland Center School and store my records there. I also keep information at my home on my home

8/15/2006

computer. This seems to be a little redundant. One of the criteria that really makes very little sense is that you must have a separate outside door leading only to the room where the office is located. My tax preparer has her office in the basement of her home. No outside door. Many small business' have their office in a location without an outside door being attached. Why do we have to meet that criteria? I understand it might make things easier or even more profitable but isn't that a financial matter that we should consider and not a matter of good record keeping? What difference does it make? I refer you to Trans 105.06 (2) (F). The rest makes sense, this clause does not. I would ask you to remove this clause.

4. License Renewals:

School bus drivers in Wisconsin must have a physical and renew their license every two years. They carry upwards of **85** passengers.

Driver Education instructors in Wisconsin must have a physical and renew their license every year. They carry up to **3** passengers.

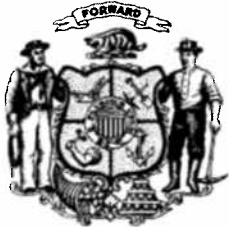
CAN SOMEONE EXPLAIN THIS TO ME????? I know there is talk of changing to every other year but will it happen? It should.

Right now, this is all I can think of. I may send more idea's for future consideration. I would like a response back as decisions are made and I hope all changes will be communicated to the driving schools as they are made. Thank you again for all your help and quick communication.

Alan M. Musilek
Owner and Instructor
Defensive Driving Specialists LLC



WISCONSIN STATE LEGISLATURE



Egan, Erin

From: Joe Ries [riesdrivingschool@voyager.net]

Sent: Monday, August 14, 2006 4:05 PM

To: erin.egan@dot.state.wi.us

Subject: TRANS 105

Erin,

Just a note that Ries Driving School supports the Trans 105 revisions as corrected by WPDSA.
Thank You, Joe Ries



Egan, Erin

From: Defoxcities@aol.com
Sent: Monday, August 14, 2006 3:14 PM
To: erin.egan@dot.state.wi.us
Subject: Trans 105

Good afternoon,
As owner of Driver's Education of the Fox Cities, I support the Trans Rule 105 and support the recommendations made by our Association.

Thank you,
Bob Savitski, Owner



Egan, Erin

From: Fcsdrivingschool@aol.com
Sent: Monday, August 14, 2006 3:03 PM
To: erin.egan@dot.state.wi.us
Subject: Trans 105 Changes

Our school supports the changes to Trans 105 Licensing of Driver Schools and Instructors. We support progressive enforcement and cooperative driver testing, along with all of the other rule changes.

Fred Stair
F.C. Stair School of Driving, Inc.
1100 Kane Street
La Crosse, WI 54603



Comments about DOT hearing on proposed rules for driving schools and instructors.txt
From: Knidrish409@aol.com
Sent: Thursday, August 17, 2006 12:50 PM
To: Rep.Davis; Rep.Ainsworth; Rep.Friske; Rep.Gronemus; Rep.Hahn;
Rep.Lamb; Rep.Ott; Rep.Sheridan; Rep.Sherman; Rep.Steinbrink; Rep.Suder;
Rep.Van Roy; Rep.Vruwink; Sen.Breske; Sen.Kapanke; Sen.Kedzie;
Sen.Robson; Sen.Stepp; Sen.Wirch
Subject: DOT hearing on proposed rules for driving schools and
instructors

Follow Up Flag: Follow up
Flag Status: Purple

On August 14 dot held a public hearing on rules dot proposed to increase regulation and disqualification of driving schools and instructors. This rules development was authorized by Act 397 however the rules themselves strayed from the intent of Act 397 and were overwhelmingly rejected by the speakers at the hearing. 4 instructors owners spoke, 3 in opposition. The only person speaking for the new rules was a person dot had placed on the rules development panel. Her only started argument for was her perception of increased "professionalism."

Bernie Rinehart (sp?) a representative of the largest school group in the state opposed the lack of due process wherein punitive "points" can be arbitrarily assigned to an instructor with no opportunity to appeal wrongful points assignment to an independent trier of fact such as an alj. Points assignment can deny benefits and endanger the instructor's and school's licenses all without due process of law.

Paul Witmer, who represented small driver schools, spoke of lack of protection instructors currently have (and will have) from frivolous complaints (and the points they generate without any independent appeal forum) and how this will diminish instructor authority, classroom discipline and ultimately make the roads less safe.

Atty Ben Grawe of the DeWitt, Ross and Stevens law firm testified as to what the due process problems are and offered a 4 point plan to correct them and thus to prevent instructor's reputations from being unduly tarnished by frivolous or retaliatory complaints. He also spoke on the unfairness of indefinite license denial for convictions which is contrary to Wisconsin's public policy of rehabilitation. This would be especially true in the case of long past convictions which now could deny a license renewal when that license was renewed many times over the years. The rules lack grandfathering. He spoke on behalf of Knight Driver School.

There are very few legitimate complaints against commercial driver schools, especially in comparison to the public school system.

As they currently stand the proposed rules are an unreasonable imposition on what is a part time seasonable business.

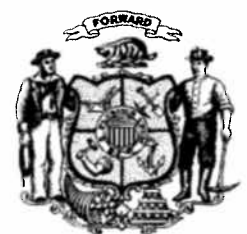
Please take the time to review the testimony and position papers submitted.

Sincerely,

Paul Witmer



WISCONSIN STATE LEGISLATURE



driver school rules from witmer.txt

From: Knidrish409@aol.com

Sent: Saturday, August 26, 2006 4:50 PM

To: Sen.Robson; Rep.Sheridan; Rep.Ainsworth; Rep.Petrowski; Sen.Kedzie;

Hutkowski, Hariah; OBrien, John

Subject: driver school rules

Follow Up Flag: Follow up

Flag Status: Purple

Thank you for sending the final rules draft for driver schools and instructors. The issue of due process (though raised by two speakers) has been totally ignored by the department in the final draft. The proposed internal due process is simply defined by the word "substantiated". A complaint could be substantiated by not merit discipline.

There should be ~~appealability~~ of points assessments to an impartial and qualified person such as an alj at hearings and appeals. This is because points can endanger the license and raise bond requirements. It is unfair to have dot employee be the final arbitor of points assessed because Ch 227 hearings will not consider the merits of individual complaints, only the existence of an aggregate.

The dept has (and apparently will continue to use personnel (clerks) probably with no post high school or legal education to make "substantiated" findings. Further these personnel have never operated a teenage classroom or dealt with parents who are blind to misbehavior (such as is common in the public schools). Further they probably have a mandate to surpress complaints rather than to back instructors who have an over all mission.

Most complaints received are either retaliatory (a parent trying to undo discipline of their teen by the school) or are frivolous. The dept gives out no justification or history or numbers of kinds of complaints it is concerned about. A fair comparison with kinds of complaints public schools receive would give perspective. Frivilous complaints run the gamut and often do not involve any rules violations. I would be happy to give you more examples of the plethora of meritless complaints that dot required us to respond to. Just because a parent is unhappy it doesn't mean the school/instructor did anything wrong.

The complaints are often unreliable because there is no statement required by the involved teen. Parents repackage, and often do so after extensive conversations with dot clerks who aggrevate the complaints by going thru what amounts to a checklist to see if anything can be added. DOT personnel do not focus on the teen history of misbehavior but rather on peripheral issues that may (or may not) technically violate some aspect of the rules.

This unreliability of worstened because there is no accountability for the parent or teen for lying. They are free to exaggerate and color complaints because the school or instructor cannot sue them because they have protection complaining to a state agency. A fair system would require a sworn statement and a recourse option to those unfairly accused.

DOT aggrevates complaints in another way. They have only 2 lines dealing with school response to misbehavior. Page 21 of the current driver school manual says "A student may be dismissed from the class for disruptive behavior. The school may refuse to rufund all or part of the fee if there is a statement to that effect in the contract/agreement." That is the extent of the guidance the DOT gives instructors.

There is nothing to hang your hat on. The parent won't back you and there are no rules you can point to to define the reasonable ness of your response.

what about

other types of behavior, only "disruptive" is mentioned. what about disrespect, vandalism, theft, persistent tardiness, in attention, unwillingness to participate, poor academics? Bet these are in the public school teachers discipline book.

driver school rules from witmer.txt

The Final rules draft overlooks much important testimony that was recorded and misattributes some positions. The e mail and letter submissions were never read at the hearing which seems unfair.

~~Due~~ process has a rightful place in the new legislation and hurting honestly motivated instructors and schools is not in the interest of safer roads.

The foregoing is just a fast response. I may offer detail later.

I would like to meet with as many legislators (or aides) as possible during the 30 day period so the unfair aspects of the rules can be better understood.

Paul Witmer



Phillips, Matt

From: Lepaska, Allyn
Sent: Tuesday, September 05, 2006 9:49 AM
To: Egan, Erin
Cc: Phillips, Matt
Subject: RE: Appeals process for point assessment

I agree with Matt. My understanding is that if the committee and the department were in agreement for a relevant change, that the change would be made while the committee had the rule.

Changes afterward would be limited to minor editing.

-----Original Message-----

From: Egan, Erin
Sent: Tuesday, September 05, 2006 9:29 AM
To: Lepaska, Allyn
Cc: Phillips, Matt
Subject: FW: Appeals process for point assessment

Hi Allyn,

Can you answer Matt's questions?

Matt: Allyn is the DOT attorney drafting the rule.

Thanks!
Erin

-----Original Message-----

From: Phillips, Matt [mailto:Matt.Phillips@legis.state.wi.us]
Sent: Tuesday, September 05, 2006 9:28 AM
To: Egan, Erin
Subject: RE: Appeals process for point assessment

Erin:

A couple of questions for you. Are you talking about the Department making a germane modification to the rule? If so, wouldn't it be better to do so while the Committee has the rule so that we can evaluate the rule in its entirety. Also, if the Department makes a germane modification after the Legislature's review period has expired, doesn't the Department need to send the rule back to the Legislature for another 30 day review (Wis. States 227.19(4)(b)4)?

Matt

From: Egan, Erin
Sent: Friday, September 01, 2006 3:27 PM
To: Phillips, Matt
Subject: FW: Appeals process for point assessment

Hi Matt,

Just an FYI -

I spoke to Justin from Sen. Robson's office. He asked if we could clarify the Chapter 227 appeal for point assessments in the rule. I believe we can do that when the rule comes back to us for final editing. I will confirm that with you early next week as well.

Thanks,
Erin

-----Original Message-----

From: Egan, Erin

Sent: Friday, September 01, 2006 3:25 PM

To: Sargent, Justin

Subject: Appeals process for point assessment

Hi Justin,

Points assessed under the proposed Trans 105 may be appealed under Chapter 227 as contested cases. See s. 227.44 & 227.45 for more information on the process and requirements for evidence. This is the process following currently for points assessed to motor vehicle dealers under Trans 140.

Here's a link to Chapter 227:

http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=29308853&infobase=stats.nfo&jump=ch.%20227

I believe we could add a reference to the additional Chapter 227 appeal for point assessment when the rule draft comes back to us for final editing. The likely spot would be 105.12 (3). I will confirm this with you early next week, after getting confirmation from our attorney.

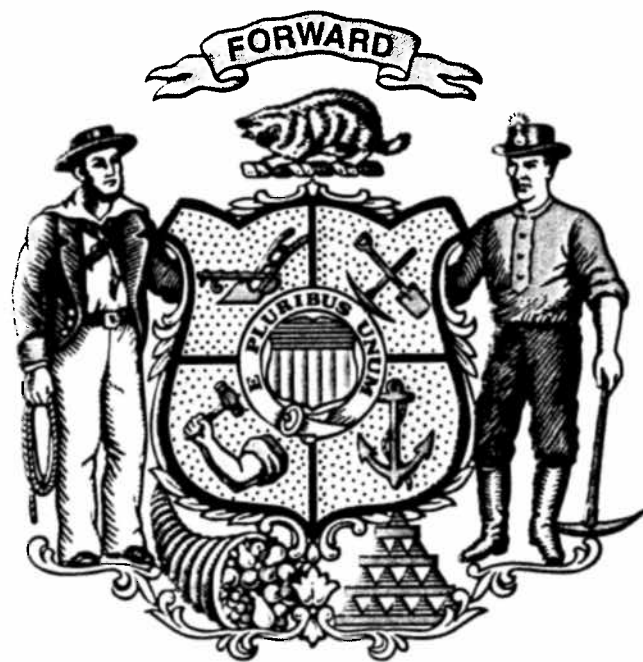
Thanks,

Erin Egan

Legislative Liaison

Division of Motor Vehicles

(608) 266-1449



Phillips, Matt

From: Egan, Erin
Sent: Thursday, September 07, 2006 8:12 AM
To: Redell, Carol
Cc: Hutkowski, Hariah; Phillips, Matt
Subject: RE: Paul Witmer e-mail

Hi Carol,

The DOT response to the six main issues raised by Mr. Witmer is below. Thank you for the opportunity to respond. The amendment referred to in the first answer should be coming to you sometime next week.

Thanks!

Erin Egan
 Legislative Liaison
 Division of Motor Vehicles
 (608) 266-1449

1. Penalty assessments are "punishments" without recourse. They should be subject to arbitration or trial in an independent forum such as DOA hearings and appeals.

DOT response: All penalty assessments, including points, may be appealed to DOA under Chapter 227. We are submitting an amendment to Trans 105 to clarify this issue.

2. "Probable cause" places an insufficient proof burden upon DOT when assessing "points" etc.

DOT response: It is incumbent upon the department to have sufficient evidence to sustain a decision in the Chapter 227 process. Any action taken will be based upon more than substantial evidence. We will not take action that would not be sustained at Hearings and Appeals. Furthermore, the preponderance of evidence test is not used to determine whether an administrative law decision is sustainable.

3. "Nontraditional" facilities is too vague a standard for requiring zoning approval.

DOT response: the purpose of this language in the rule is to allow flexibility for driving schools which may not be located in a traditional office setting, such as a church. It is up to the applicant to verify that the driving school is located appropriately according to their municipal zoning regulations.

4. The 10 day complaint response time is too short.

DOT response: Schools have multiple opportunities to respond before licensing action is taken. The following is a brief summary of the procedure:

1. The customer must submit the complaint to the school first, and allow 10 business days to respond.
 2. Once a complaint is received, the department must determine if the complaint is substantiated and violates Subchapter VI of Chapter 343 or Trans 105. If the department determines that a complaint is substantiated, the department will contact the school and allow them 10 days to respond.
 3. For a level one or two enforcement action (which does NOT result in a licensing action being taken on a school), schools will be sent an advisory letter that will also offer them a chance to respond and/or remedy the situation. There is no time specified in the rule for this response, as it will be determined by the situation.
5. Licensees should not have to face obviously frivolous or retaliatory complaints.

DOT response: The definition of a substantial complaint requires that the complaint involve a matter regulated by Chapter 343 or Trans 105. Unless the complaint falls under Chapter 343 or Trans 105, the department will not consider it. Also, see the response to question #2 above for more information about evidence required.

6. Lifetime license exclusions may be unreasonable.

DOT response: Lifetime license denials are based on convictions only, not arrests. The list of lifetime convictions was modeled after convictions for school bus drivers, with modifications. The disqualifying offenses were discussed and agreed upon by DOT, DPI, and members of the driving school community. Finally, lifetime license denials are reserved for serious offenses such as murder, kidnapping, and sexual abuse of a child.

-----Original Message-----

From: Redell, Carol [mailto:Carol.Redell@legis.state.wi.us]
Sent: Wednesday, September 06, 2006 9:13 AM
To: Egan, Erin
Subject: Paul Witmer e-mail

Erin -- I thought I would forward this e-mail from Paul Witmer stemming from a conversation that he had with Representative Petrowski earlier this week. Could the Department respond in writing to the points that he raised in the event other Committee members reiterate his concerns?

Thank you,

Carol Redell
Committee Clerk
Assembly Transportation Committee
Office of Representative John Ainsworth

-----Original Message-----

From: Knidrish409@aol.com [mailto:Knidrish409@aol.com]
Sent: Tuesday, September 05, 2006 1:52 PM
To: Rep.Ainsworth
Subject: 9-4-06 Telecon with Rep. Petrowski

to: Rep. Ainsworth
from: Paul Witmer
Topic: FYI, telecon with Rep. Petrowski on 9-4 pm

Subj: supplement to 9-4-06 telecon
Date: 9/5/06 11:29:14 AM Central Daylight Time
From: Knidrish409
To: rep.petrowski@legis.state.wi.us

To: Personal attention of Rep. Jerry Petrowski

Thank you for your call last evening. I was pleasantly surprised but surprised none the less, and somewhat unprepared to give you the full view. I had asked for an audience. Let me apologize in advance for e mail program mistakes.

I am a former police officer and I drove for a major trucking firm for many years. My wife is a deputy clerk of court in Rock County nearing retirement.

09/11/2006

She is also a successful UW kidney transplant patient. I need to be able to continue my business because in part because she has very high monthly drug costs that will not be covered when she retires.

Following please find my personal concerns as one who would like to continue my license of 10 years. Also I have included perspective material that could give rise to better, more harmonious law the licensees, the public, and DOT. Additionally, we spoke of teen traffic safety concerns and ideas on that conclude this e mail.

ISSUES THAT COULD AFFECT KNIGHT DRIVER SCHOOL

1. Penalty assessments are "punishments" without recourse. They should be subject to arbitration or trial in an independent forum such as DOA hearings and appeals.

DETAILS: Because they are not "licensing" actions at the time of assessment they cannot be currently appealed to DOA or anywhere else. Worse, the merits of a particular point assessment basis may be difficult to try, with the passage of time, due to the unavailability of witnesses such as now completed students, etc. The rule needs to be modified to authorize hearings and appeals (or some other independent agency) to try point assessment appeals, on request, after the time of issuance. DOA should be consulted to make sure they have no prohibiting internal constraints.

2. "Probable cause" places an insufficient proof burden upon DOT when assessing "points" etc.

DETAILS: The standard civil proof burden is a "preponderance" of the evidence. It takes a "clear and convincing" evidence level to challenge the credentials of the very lawyers who will prosecute driver school owners and instructors with only "probable cause." PC is a very light standard, 51% of the evidence.

3. "Nontraditional" facilities is too vague a standard for requiring zoning approval.

DETAILS: DOT should be more specific to prevent arbitrary application of this vague term. Zoning proof requirements should be specified as not required of class/office facilities in commercial or business buildings and other buildings that have already been approved for group educational use such churches. When a church is zoned the city already knows groups will come and go and gather in groups of different sizes for lectures and that there is office type activity. Churches are by their nature private schools.

Many of today's churches engage in various fund raising type activities and need to so they can carry charitable burdens. My driving school helps to support two Rock County churches, one of which stocks a food bank for the needy. If I am required to get zoning approval these churches may lose thousands of dollars I am now able to provide them. It is not clear that zoning proof will not be required under the rules for churches. Churches should be defined as "traditional" places of gathering and thus clearly permissible for driver school operations.

4. The 10 day complaint response time is too short.

DETAILS: When a licensee gets letter from DOT demanding a response to a complaint it can't be a casual response due to a points assessment possibility. This means that records need to be examined for detail which could help to dispute the complaints. Witness statements may also be needed because DOT adopts a "guilty til proven innocent" approach. This means DOT accepts at face value every negative thing a complainant alleges and the licensee gets no benefit of the doubt.

Further, mom and pop schools can't go on a scheduled vacation of any reasonable length because of 10 day response time specified by the rules.

Driving schools have to schedule instruction weeks and months ahead for customer service reasons and because of the very competitive nature of the business. My mailings need to be 3 months ahead. Ordinarily I have had to inconvenience scheduled students in order to open up time to respond to complaints.

The 10 day response period insures that the complaint will be handled when tempers are still high. Isn't there a wisdom in "cooling off periods." Why is it so important for DOT to get back to an angry parent before the parent has had time to reflect?

5. Licensees should not have to face obviously frivolous or retaliatory complaints.

By the time the school gets to respond to the DOT typed and packaged complaint it has become unreliable. First there is no requirement for it to be sworn as truthful. Secondly the truth may be lost somewhere in the coaching that goes on. Third, there is no consequence for lying because the agency only has penalties for instructors and owners, not for citizens who file false reports.

Many of the complaints are the result of coaching by competing driver schools who tell the would be complainant all sorts of tales to reinforce their inclination to complain. The new rules deal with this but there should be an avenue for one school to complain directly against another's practices without having to "substantiate."

A tip should be enough. DOT should be able to investigate to establish instructional hours shorting, etc. I have such a complaint on my desk now about a competitor who is alleged to be allowing girls basketball team members (typically overcommitted teens) to escape the 6 driving hours if they pass the road test. I can't "substantiate" it, just provide a tip but I don't know if the new rule allows this. DOT can establish hours shortages better than competing schools.

There is an extreme and corrosive competitive environment between driver schools in much of the state. This is because DOT doesn't limit instructor license numbers it issues on the basis of county populations. Also DOT does little follow up on hours cheating information that it has been provided. Cheating on hours reduces school costs and makes the cheating school more popular with students who like the idea of getting out early, as do many parents. No one is going to complain that they got out early (unless they have been coached). However the state hours requirements aren't being met by too many schools. Most schools don't extend class for their break time even though they are supposed to. DOT is primarily concerned about complaints and is far less concerned about instructional hours compliance.

The licensee's motive is the best interest of the group as a whole and has to be, to stay in business. There is no benefit to the licensee in picking on a particular student unless that student is impeding the good order of the class. DOT doesn't seem to recognize this and historically has required response to some absolutely frivolous complaints issues.

When there is no inherent credibility given (by DOT) to instructor actions they become an easy target as are public school teachers. It is impossible to document all aspects of instructional interaction with every student. These students are taught in small to large groups. If only 1 student (or two friends) have complained out of the group their complaint (usually after discipline) should be taken with a grain of salt.

Public schools get complaints too but blow most of them off. The public has been taught by consumerism that "everything is negotiable." This means if they (the parent) don't like something, and yell long enough, they will get your way in a retail environment. If there teen has been excused they might be able to get them back in if they accuse the instructor of enough failings.

DOT should follow the Wisconsin Regulation and Licensing complaint model.

First, there is no coaching of complaints. People who wish to complain must first commit in writing, without any information provided by the clerk. The only thing they will tell you is to "look at the law." DOT clerks have lengthy conversations with would be complainants effectively aiding and aggravating the complaint. They may even provide file information from previous complaints which can affect the allegations in the instant complaint. It hardly seems in the interest of complaint reduction for DOT to facilitate exaggeration (and even false claims) to please one particular complainant. None of the rules require DOT personnel to be classroom qualified or set forth any restrictions on how they handle complaints.

Finally, all state agencies should have a complaint mechanism for complaints about their employees abusing their authority. There is no chain of command information or complaint mechanism should the licensee feel abused by a particular employee.

6. Lifetime license exclusions may be unreasonable.

DETAILS: DOT should be required to consider evidence of rehabilitation. A mistake might be an isolated incident, and it may have had nothing to do with one's performance as an instructor or owner. Conviction denials should be substantially related to performance in that particular role because this is state law governing employer rejection for convictions. Many of the listed conviction areas could involve hunting and other non instructional events.

Convictions should be considered, arrests shouldn't. There should be something of a "firewall" between the personal and occupational life.

Driving instructors don't deal with small children, usually just groups of adolescents, teens who are very near adult age. Instructors are not school bus drivers.

TRAFFIC SAFETY FOR TEENS AND OTHERS:

We spoke of the Governor's traffic safety initiative and an Illinois produced program, advanced by Randy Thiel as promising

due to "involvement" of teens in their learning.

A reliance upon teens taking driving seriously as a result of a restructuring of how information is presented is, I believe, a false promise.

The best way to reduce teen traffic deaths is to raise the independent driving age. The second best way would be to allow and encourage driver schools to become maturity filters for students. Most serious teen involved accidents are the result of bad decisions resulting from immaturity. Teens don't think they personally can die and view the automobile as primarily an entertainment device.

Today's cultural environment shields teens from most consequence and they bring that belief of immunity to the classroom and the road.

Because teens are observed for 30 hours instructors can tell you who will drive safely and who, likely, will not. But, the DOT doesn't factor maturity of applicants. DOT could require decent grades (talk about improving public education). It could require a behavior transcript from the high school and a copy of the juvenile court record. Insurance companies rely on grades and behavior to reduce teen driving premiums, why doesn't the DOT.

Disruptive students would be less so (and pay more attention) if they knew they had to pass another written test, at the DMV, before taking the road test.

Now, they have no reason to pay attention in class once they have passed the instructional permit test, which is atleast 1/2 of the class.

Driver schools need now unavailable tools to do a better job.

DOT makes information hard to get. They are unique in that they charge more than other open records providers and offer poor access to records. Driver schools should get copies of the road test reports. They should get print outs listing students driving records for several years post completion, including convictions and accidents. These should include rankings with other driver schools poor performing schools can adjust their curriculum.

Public school driver's ed programs have unfair advantage in that they can examine the discipline record and thus pick and choose the most promising students.

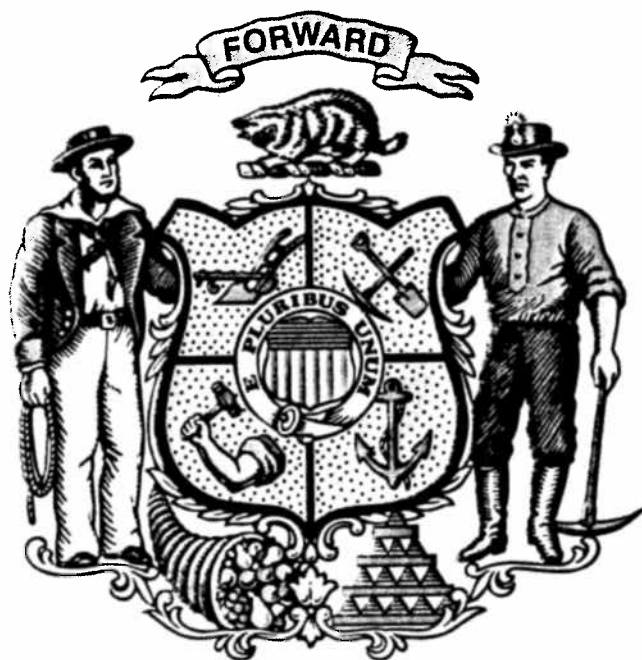
At the point of enrollment I have no way of knowing if a student has felonies and/or a poor high school behavior record. I have to admit them blind and hope to be able to deal with their nature. I very often don't find out such problems until late in the instruction at which point it is a guaranteed complaint if I dismiss them. I have had gang members in class with no heads up from anyone in the government. Juvenile court and public school records should be available to driver schools. Troubled kids should not get driver licenses while still immature.

Lax under 18 student performance standards reach in to the early adult years so we're not just talking teen driving issues.

I may supplement this later.

Thanks for caring.

Paul Witmer



Phillips, Matt

From: Knidrish409@aol.com
Sent: Wednesday, September 20, 2006 9:36 AM
To: Sen.Kedzie
Subject: effect on consumer

Follow Up Flag: Follow up
Flag Status: Purple

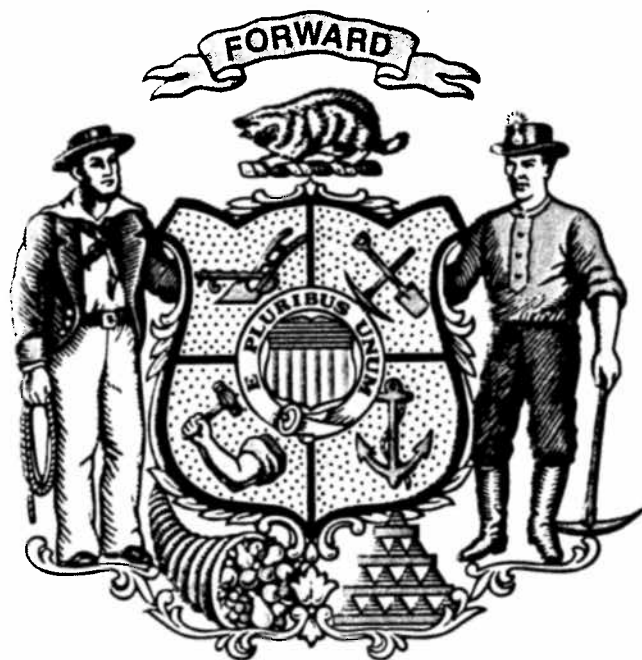
To the personal attention of Senator Neil Kedzie

Please be aware that CR06-089, as is, will dramatically raise driver school tuitions for families in your district. This will be much like another tax increase because it will have been prompted by legislation.

The vast majority of parents and students have been very satisfied with the driver school options they have had over the years.

This legislation will reduce family school choice options and may force students to interrupt current instruction to finish at another school, perhaps one that they may not have preferred, or one with much greater travel time from their home.

Paul Witmer, Knight Driver School, Janesville/Beloit



From Terry EWING ✓
DMV ✓

Chapter Trans. 105, Wisconsin Administrative Code
Questions/Comments

- Section 1 refers to “minors” under 105.003(1)(a),(b) and (2), does this prevent the commercial driving school from instructing adults?
- Section 5 – Ch. Trans. 105.01(6) makes reference to a test for commercial driving school owners and managers, but does not specify “who” conducts the test?
- Section 6 – Ch. Trans. 105.015(1), change the first sentence to include those words below in red. “The department may enter into a cooperative driver testing agreement with the driving school to conduct knowledge tests as permitted by s.343.16(1)(c), Stats. Driver schools may administer the knowledge and highway signs tests for students under the age of 18 who are currently enrolled in driver education.
- Section 6 – Ch. Trans. 105.015(3), add the word highway after signs and an s after the word test.
- Section 7 – Ch. Trans. 105.02(1), Do we need to specify who can conduct the road test? Also, correct the reference to s.343.6(4). Do we need to specify who conducts the 20 question oral test?
- Section 8 – Ch. Trans. 105.02(4), add the word the after “and submitted to the department”.
- Section 9 – Ch. Trans. 105.02(2), Classroom only licenses, are they issued only to those individuals who are no longer eligible for a driver license?
- Section 9 – Ch. Trans. 105.02(3), what is the designated alternative method?
- Section 14 – Ch. Trans. 105.035(2), how will a background check be completed for someone moving to Wisconsin from another

jurisdiction who may have been denied an instructors license in their previous state of residence? CIB check is Wisconsin specific.

- Section 18 – Ch. Trans. 105.05(2)(b), instead of using the word “making” should the term be “signing”?
- Section 18 – Ch. Trans. 105.05(3), the record should also reflect the test scores (knowledge and highway signs) of the student.
- Section 31 – Ch. Trans. 105.07(1)(c), did you intend to cross of the words “years of age” too? What form (completion) would be given to someone age 18 and older? Also, are there established standards for driver education for those age 18 and older?
- Section 31 – Ch. Trans. 105.07(2)(a), should the word “card” be crossed off where it refers to the “record card”?
- Section 31 – Ch. Trans. 105.07(5), did you intend to cross of the words “years of age” too?
- Section 36 – Ch. Trans. 105.10(1)(c), how many days does the insurance carrier have to notify the department of insurance cancellation?