

Report From Agency

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

CR 07-084

The Wisconsin Department of Transportation proposes an order to repeal TRANS 129.09(3) and 129.10(2)(b); to amend TRANS 129.01(intro.) and (2), 129.02(1) and (2)(d), 129.03(1)(b), 129.08(1)(a), 129.09(1)(f) and (2)(e), 129.10(1), (2)(c), (d) and (4)(c), 129.12(1)(j) and 129.15(2)(c)(intro.); to repeal and create 129.20; and to create TRANS 129.10(2)(e), 129.11(3) and (4), 129.19, 129.21 and 129.22, relating to motorcycle courses.

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

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

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

Part 2--Rule text in final draft form.

Part 3--Recommendations of the Legislative Council.

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

Submitted by:

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PART 1
Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: ss. 85.30, 343.06(1)(c), 343.07(4)(b) and 343.16(1)(a), Stats.

Statutory authority: ss. 85.16(1), 85.30 and 227.11, Stats.

Explanation of agency authority: Under the law, the Department is responsible for the motorcycle safety program. That requirement includes establishment and approval of motorcycle rider courses.

Related statute or rule: Chapter Trans 105

Plain language analysis: This rule making will amend ch. Trans 129, relating to motorcycle courses, by changing the maximum number of motorcycles allowed on the range as prescribed in the Basic Rider Course and Experienced Rider Course curriculums developed by the Motorcycle Safety Foundation (MSF). It will also require a 10-day reporting time frame for site inspection reports. Finally, it will make changes necessary as a result of removing private motorcycle training schools from ch. Trans 105, including background checks and insurance and bond requirements.

Summary of, and preliminary comparison with, existing or proposed federal regulation: 32 CFR 636.28(h) requires persons operating motorcycles at Fort Stewart, Georgia, to attend an approved motorcycle defensive driving course.

Comparison with Rules in the Following States:

Michigan: R257.1701 to 1727, Mich. Adm. Code. The Michigan motorcycle safety education rules are similar, but the course is based upon the MSF standards entitled Motorcycle Rider Course, January 1989. Michigan appears to provide more public funding than Wisconsin for students of the course.

Illinois: 92 Ill. Adm. Code 455. The proposed rule of Illinois incorporates by reference the most current editions of the MSF's Rider Coach Guide and Rider Course Suite. The current Illinois rule is similar to, but more detailed than, the proposed Wisconsin rule. The rule provides for more state funding than Wisconsin. The proposed Illinois rule has higher insurance limits than the proposed Wisconsin rule but no bonding requirement.

Iowa: 761 Iowa Adm. Code 635. The Iowa Motorcycle Rider Education rules are similar to the proposed Wisconsin rules, but classroom size has not been reduced, insurance requirements are higher, they do not refer specifically to the MSF courses, and there is not a bonding requirement.

Minnesota: Ch. 7411, Minn. Adm. Code. The Minnesota motorcycle rider training rules are similar to the proposed Wisconsin rules. They do incorporate the MSF Basic Rider Course Manual, 2001.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: This proposed rule does not change the regulatory approach chosen. It continues to follow the procedures and curriculum proscribed by the MSF as they have been updated. It also includes some regulations previously applicable but removed from ch. Trans 105 as a result of the change in the definition of driver schools.

Analysis and supporting documentation used to determine effect on small businesses: There were approximately 10,000 Motorcycle Safety students in public school courses and 3,000 students in commercial rider education schools each year. The vast majority of the schools comply with current MSF's requirements, and proposed rule change, as to class size and number of motorcycles allowed on the range. Some of the commercial schools may not currently have bonding. Bond costs for entities with good credit are minimal.

Effect on small business: These proposed changes will have minimal effect upon small businesses. The Department's Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal effect: 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.

Anticipated costs incurred by private sector: The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities.

Agency contact person and copies of rule: Copies of the proposed rule can be obtained, without cost, by writing to Ron Thompson, Department of Transportation, Division of State Patrol, Transportation Safety Programs, Room 551, P. O. Box 7936, Madison, WI 53707-7936. You may also contact Mr. Thompson by phone at (608) 266-7855 or via e-mail: ron.thompson@dot.state.wi.us.

PART 2
TEXT OF PROPOSED RULE

SECTION 1. Trans 129.01(intro.) and (2) are amended to read:

Trans 129.01 Purpose and scope. The purpose of this chapter, as authorized by ss. 85.16(1), 85.30, 227.11, 343.06(1)(c), 343.07(4)(b) and 343.16(1)(a), Stats., is as follows:

(2) To establish the department's administrative interpretation of ~~ss. 343.60 to 343.73, Stats.~~, with regard to motorcycle instruction schools.

SECTION 2. Trans 129.02(1) and (2)(d) are amended to read:

Trans 129.02(1) The words and phrases defined in ss. 340.01, and 343.01 ~~and 343.60, Stats.~~, have the same meaning in this chapter unless a different definition is specifically provided.

(2)(d) "Motorcycle instruction school" means a ~~driver~~ commercial school that provides training on the operation of Type 1 motorcycles.

SECTION 3. Trans 129.03(1)(b) is amended to read:

Trans 129.03(1)(b) Provide proof that the person has completed a basic rider course ~~on or after January 1, 1992.~~ The proof may be in the form of a waiver authorization form meeting the requirements of s. Trans 129.13 or other proof from another jurisdiction showing the person is entitled to a waiver under s. Trans 129.07. The waiver shall be valid for one year from the date of rider course completion. The waiver validity period may be extended for a person serving in the military and unable to apply for a license within the one-year period. Waivers shall be original documents.

SECTION 4. Trans 129.08(1)(a) is amended to read:

Trans 129.08(1)(a) Hold any license required ~~under s. 343.61(1), Stats.~~

SECTION 5. Trans 129.09(1)(f) and (2)(e) are amended to read:

Trans 129.09(1)(f) Class size may not exceed ~~36~~ 24 students in the classroom or ~~15~~ 12 students on the range ~~except as permitted under sub. (3). The department may make approval of a course contingent on range class sizes of less than 15 students if the physical layout of the range may not safely accommodate a 15-student class or if~~

~~the physical layout of the range would not be conducive to the education of a group as large as 15 students.~~

(2)(e) Class size may not exceed 24 students in the classroom or ~~45~~ 12 students on the range, ~~except as provided in sub. (3).~~ ~~The department may make approval of a course contingent on range class sizes of less than 15 students if the physical layout of the range may not safely accommodate a 15-student class or if the physical layout of the range would not be conducive to the education of a group as large as 15 students.~~

SECTION 6. Trans 129.09(3) is repealed.

SECTION 7. 129.10(1) is amended to read:

Trans 129.10(1) APPLICATION. Instructors seeking authorization to participate in the waiver of skills test program shall complete and submit an application to the department on the department's form.

NOTE: Application forms can be obtained from and should be submitted to the Department of Transportation, Transportation Safety Programs, P. O. Box 7920, Room 551, Madison, WI 53707-7920. You may also access the form at <http://www.dot.wisconsin.gov/forms/docs/mv3574.doc>.

SECTION 8. Trans 129.10(2)(b) is repealed.

SECTION 9. Trans 129.10(2)(c) and (d) are amended to read:

Trans 129.10(2)(c) The instructor ~~teaches an average of one~~ shall teach three range ~~or~~ and three classroom course ~~per year for each full year of~~ courses during an authorization period.

(d) The instructor ~~attends~~ shall attend a minimum of one department-conducted or approved pre-approved instructor in-service program during each authorization period. At least 70 percent of the agenda shall be curriculum oriented.

SECTION 10. Trans 129.10(2)(e) is created to read:

Trans 129.10(2)(e) The instructor shall successfully complete all knowledge tests and all skill tests and other evaluations required for instructor certification.

SECTION 11. Trans 129.10(4)(c) is amended to read:

Trans 129.10(4)(c) An applicant for authorization under this section, or an instructor currently authorized under this section, may utilize demerit point reduction pursuant to s. Trans 101.07. If sufficient point reduction to bring the demerit point total below 7 points is thereby achieved, the applicant or instructor may reapply for authorization immediately. A rider course is not acceptable for demerit point reduction.

SECTION 12. Trans 129.11(intro.), (1) and (2) are renumbered Trans 129.11(1), (1)(a) and (b), respectively.

SECTION 13. Trans 129.11(2) and (3) are created to read:

Trans 129.11(3) An on-site evaluation may not be conducted by a person who teaches at that site.

(4) On-site evaluation reports shall be submitted to the department within 10 days of the evaluation.

SECTION 14. Trans 129.12(1)(j) is amended to read:

Trans 129.12(1)(j) The motorcycle ~~instruction school or instructor~~ does not hold a license required by s. ~~343.61(1) or 343.62~~, Stats.

SECTION 15. Trans 129.15(2)(c)(intro.) is amended to read:

Trans 129.15(2)(c)(intro.) The department may award a grant or provide funding under this chapter to a ~~vocational~~, Wisconsin technical college ~~or adult education~~ district, a school district, a unit of state, county, or municipal government, or any other person or legal entity that provides motorcycle education courses that does all of the following:

SECTION 16. Trans 129.19 is created to read:

Trans 129.19 Motorcycle instruction school licensing. (1) A person providing training on the operation of Type 1 motorcycles for compensation shall be licensed.

(2) An application shall be on the form provided by the department.

NOTE: Application forms can be obtained from and should be submitted to the Department of Transportation, Transportation Safety Programs, P. O. Box 7936, Room 551, Madison, WI 53707-7936.

SECTION 17. Trans 129.20 is repealed and recreated to read:

Trans 129.20 Fitness for rider education school or instructor license.

(1) For the purpose of determining the fitness of a person to hold a rider education school or instructor license, the department shall consider all relevant arrests and convictions and make such further examinations and checks as it determines are necessary.

(2) The department may not issue or renew a rider education school or instructor license to any person who, during the person's lifetime, was convicted of any of the following state laws; any local ordinance in conformity with any of the following state laws; or any federal law or law of a federally recognized American Indian tribe or band in this state or law of another jurisdiction that would be a violation of any of the following state laws if the person had committed the offense in this state and been convicted of the offense under the laws of this state:

Statute	Description
940.01	1 st degree intentional homicide
940.03	Felony murder
940.05	2 nd degree intentional homicide
940.22(2)	Sexual exploitation by a therapist
940.225(1) to (3)	Sexual assault
940.305	Taking hostages

Statute	Description
940.31	Kidnapping
941.32	Administering dangerous or stupefying drug
944.06	Incest
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(2)	Physical abuse of a child
948.04(1)	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 or a person who works or volunteers with children
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

(3) The department may not issue or renew a rider education school or instructor license to any person who, within the past 10 years immediately preceding the date of application, was convicted of any of the following state laws; any local ordinance in conformity with any of the following state laws; or any federal law or law of a federally recognized American Indian tribe or band in this state or law of another jurisdiction that would be a violation of any of the following state laws if the person had committed the offense in this state and been convicted of the offense under the laws of this state:

Statute	Description
940.02	1 st degree reckless homicide
940.06	2 nd degree reckless homicide
940.09	Homicide by intoxicated use of vehicle or firearm
941.21	Disarming a peace officer
943.201	Unauthorized use of an individual's personal identifying information or documents
943.32	Robbery
944.17	Sexual gratification
944.30	Prostitution
944.31	Patronizing prostitutes
944.32	Soliciting prostitutes
944.33	Pandering
948.09	Sexual intercourse with a child age 16 or older
948.20	Abandonment of a child
948.23	Concealing death of a child (at birth)
948.30	Abduction of another's child, constructive custody
961.41(1)(a) to (1)(j)	Manufacture, distribution or delivery of drugs
961.41 (1m)(a) to (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
961.42(1)	Keep or maintain any place for drug use, manufacture, keeping or delivering
961.455	Using a child for illegal drug distribution or manufacturing
961.46	Distribution of controlled substances to persons under age 18

(4) The department may not issue or renew a rider education school or instructor license to any person who, within the past 5 years immediately preceding the date of application, was convicted of any of the following state laws; any local ordinance in conformity with any of the following state laws; or any federal law or law of a federally recognized American Indian tribe or band in this state or law of another jurisdiction that would be a violation of any of the following state laws if the person had committed the offense in this state and been convicted of the offense under the laws of this state:

Statute	Description
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
940.23	Reckless injury
940.25(1)	Injury by intoxicated use of a vehicle
940.285	Abuse of vulnerable adults
940.295	Abuse and neglect of patients and residents
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	Recklessly endangering safety
941.31	Possession of explosives
941.325	Placing foreign objects in edibles
941.327	Tampering with household products
941.38	Criminal gang member solicitation and contact
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
943.10	Burglary
943.28	Loan sharking
943.30	Threats to injure or accuse of crime
943.38(1) or (2)	Forgery
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
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

Statute	Description
947.015	Bomb scare
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
961.41(1n)	Possession of piperidine
961.41(1x)	Conspiracy
961.41(2)(a) to (d)	Counterfeit substances
961.41(3g)	Possession of controlled substance
961.41(3g) (f)	Possession – gamma-hydroxybutyric acid, gamma-butyrolactone, ketamine or flunitrazepam
961.43(1) and (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

(5) The department may not issue or renew a rider education school or instructor license to any person who, within the past 2 years immediately preceding the date of application, was convicted of any of the following state laws; any local ordinance in conformity with any of the following state laws; or any federal law or law of a federally recognized American Indian tribe or band in this state or law of another jurisdiction that would be a violation of any of the following state laws if the person had committed the offense in this state and been convicted of the offense under the laws of this state:

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

(6) Notwithstanding any conviction of a listed law or ordinance in this section, if the person convicted presents evidence satisfactory to the department that the conviction was for a misdemeanor, the department may reduce the period of disqualification.

SECTION 18. Trans 129.21 and Trans 129.22 are created to read:

Trans 129.21 Insurance and bond requirements. (1) A commercial rider education school shall do all of the following:

(a) 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.

(b) Adjust the insurance amounts under par. (a) 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 amounts in par. (a) rounded to the nearest \$10,000 increment.

(c) Maintain a standard liability insurance of not less than \$500,000.

(d) File certification of insurance with the department with the application for license.

(e) Require the insurance carrier to notify the department not less than 30 days before the policy expires or is materially changed or canceled.

(2) The school shall obtain a surety bond or provide an acceptable alternative based on size.

School Size Based on Signed Completion Slips for the Prior Period	
0-300	\$20,000
301-1100	\$30,000
1101 or more	\$40,000

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

(4) A copy of the bond or evidence of acceptable alternative shall be provided to the department with the application for license.

Trans 129.22 Cooperative rider education testing program. The department may enter into a cooperative driver testing agreement with a basic rider course provider to conduct knowledge tests as permitted by s. 343.16(1)(c), Stats. A basic rider course provider may administer the knowledge and highway signs tests to students who are currently enrolled in motorcycle rider education.

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 **November**, 2007.

FRANK J. BUSALACCHI
 Secretary
 Wisconsin Department of Transportation

PART 4
CR 07-084

ANALYSIS OF FINAL DRAFT OF TRANS 129

(a) **Basis and Purpose of Rule.** This rule making will amend ch. Trans 129, relating to motorcycle courses, by changing the maximum number of motorcycles allowed on the range as prescribed in the Basic Rider Course and Experienced Rider Course curriculums developed by the Motorcycle Safety Foundation (MSF). It will also require a 10-day reporting time frame for site inspection reports. Finally, it will make changes necessary as a result of removing private motorcycle training schools from ch. Trans 105, including background checks and insurance and bond requirements.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on October 30, 2007. No modifications were made to the proposed rule as a result of testimony at the hearing.

(c) **List of Persons who Appeared or Registered at Public Hearing.** No one appeared or registered at the hearing.

(d) **Summary of Public Comments and Agency Response to those Comments:** No public comments were received.

(e) **Explanation of any Changes Made to the Plain Language Analysis or Fiscal Estimate:** No changes were made.

(f) **Response to Legislative Council Recommendations.** The Legislative Council report contained numerous comments, all of which have been addressed.

(g) **Final Regulatory Flexibility Analysis.** These proposed changes will have minimal effect upon small businesses.