

CR 95-44

CERTIFICATE

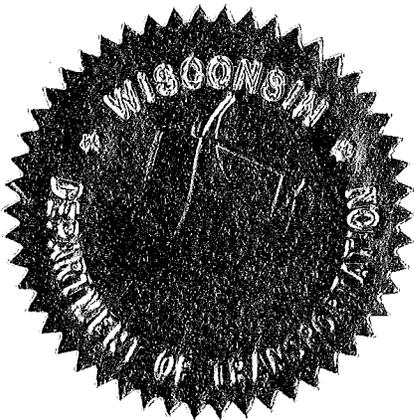
STATE OF WISCONSIN)
) ss.
DEPARTMENT OF TRANSPORTATION)



TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, CHARLES H. THOMPSON, Secretary of the Wisconsin Department of Transportation and custodian of the official records, do hereby certify that the rule, relating to **Habitual Traffic Offenders**, was duly approved and adopted by this Department on August 31, 1995.

I further certify that this copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Transportation at 4802 Sheboygan Avenue, in the City of Madison, Wisconsin, this 31 day of **August**, 1995.

Charles H. Thompson

CHARLES H. THOMPSON
Secretary

11-1-95



The Wisconsin Department of Transportation adopts an order to create ch. TRANS 103, relating to Habitual Traffic Offenders.

ORDER ADOPTING RULE

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 85.16 and 351.02(1)(f), Stats.

STATUTES INTERPRETED: ss. 351.02 and 351.025, Stats.

General Summary of Rule. This rule making is intended to perform two functions. First, it specifies which offenses will not be used in the determination of Habitual Traffic Offender (HTO) status as required by s. 351.02(1)(f), Stats. Second, the rule making is intended to enact reasonable and uniform policies regarding the treatment of HTOs as are necessary to the effective administration of the Department's duties under Ch. 351, Stats., the Habitual Traffic Offender law.

With regard to designating offenses that will not be used by the Department in determining HTO status, this rule making excludes all but two traffic offenses for which no points are assessed under the current demerit point system [Trans 101.02(5)]. The two offenses which are not demerit point offenses, but which would be counted for HTO status determination, are related to alcohol offenses: the absolute sobriety restrictions on underage drivers in s. 346.63(2m), Stats.; and the .04 to .10 alcohol concentration prohibition for commercial drivers in s. 346.63(5)(a), Stats.

Other provisions of this rule are aimed at administrative matters, such as calculating the length of a revocation period, what action the Department will take when convictions are reported for persons already under revocation as habitual traffic offenders, and how to handle out-of-state drivers who come to Wisconsin and may be subject to revocation in this state based on violations committed in other states. Finally, certain provisions have been incorporated into this rule making to incorporate judicial decisions interpreting the provisions of Chapter 351, Stats.

The provisions of s. Trans 103.05 deal with the determination of the effective date of an HTO revocation order. The general rules for determining effective date, as laid out in s. 351.025(2)(a) and (b), Stats., are repeated in subs. (1) to (3). The provisions relating to the application of the HTO law to out-of-state drivers [Trans 103.05(4)] and to Wisconsin drivers who are not promptly revoked because of an error by the Department or a delay by a court [Trans 103.05(5)] are necessary to the effective and equitable administration of the law. Without the provisions included in this draft, some drivers may be subjected to revocation of their operating privileges for up to 10 years. The Secretary interprets Chapter 351, Stats., as providing for 5-year revocations of habitual traffic offenders, and this rule implements that interpretation.

The "Repeat HTO Window" defined in s. Trans 103.06(1) refers to the time period following the issuance of an occupational license to a habitual traffic offender during which the driver faces a second 5-year HTO license revocation if he or she commits certain offenses. The highly technical rules describing how offenses are counted for this purpose are laid out in s. 351.02(1m), Stats.

The remaining provisions of s. Trans 103.06 deal with how the Department handles reports of convictions that arrive after the Secretary revokes a person as an HTO. The basic rule is that if the offense could have been listed on the original order, the original order may be amended to include it.

The credit for time served provisions of s. Trans 103.07 detail when the Department will reduce an HTO revocation period based on time previously served by the individual on a related HTO revocation.

Fiscal Effect. The Department has been administratively revoking Habitual Traffic Offenders (HTO) since the passage of 1985 Act 71. Prior to that, the Department certified to the local district attorney when the Department records showed that a person was subject to an HTO revocation. The Department, prior to the law change, set up an HTO revocation only on an order of the court.

The number of HTO revocations have increased from 560 in 1984, the year before Act 71, to 7,325 in 1994. It is assumed that promulgation of this rule will not affect the total numbers of HTO revocations in Wisconsin.

The Department estimates that the rule will have no fiscal effect on liabilities or revenues of any local units of government. The Department estimates that the rule will have no fiscal effect on state revenues or liabilities.

Final Regulatory Flexibility Analysis. This rule will have no impact on small businesses.

Contact Person. For more information or to request a copy of this rule, contact Wes Geringer, Division of Motor Vehicles, Bureau of Driver Services, P. O. Box 7920, Room 351, Madison, WI 53707-7920, or by calling (608) 266-0614. Hearing-impaired individuals may contact the Department using TDD (608) 266-0396. Also, alternate formats of the rule will be provided to individuals at their request.

TEXT OF RULE

Under the authority vested in the state of Wisconsin, department of transportation, by s. 85.16 and 351.02(1)(f), Stats., the department of transportation hereby adopts an order to create a rule interpreting ch. 351, Stats., relating to habitual traffic offenders.

SECTION 1. Chapter Trans 103 is created to read:

HABITUAL TRAFFIC OFFENDERS

Trans 103.01 PURPOSE AND SCOPE. The purpose of this chapter is to administratively interpret ch. 351, Stats., and to establish department policy and procedure relating to habitual traffic offenders and repeat habitual traffic offenders.

Trans 103.02 DEFINITIONS. The words and phrases defined in ss. 340.01, 343.01 and 351.02, Stats., have the same meaning in this chapter unless a different definition is specifically provided. In this chapter:

(1) "Driver record" means the abstract of convictions and other information related to a driver maintained by the department in its computer database.

(2) "HTO" means habitual traffic offender.

(3) "License" means operator's license.

(4) "Major offense" means a conviction for any offense specified in s. 351.02(1)(a), Stats.

(5) "Minor offense" means a conviction under ss. 346.63(2m), 346.63(5)(a), Stats., or for any offense specified in s. 351.02(1)(b), Stats., that is not a major or petty offense.

(6) "Petty offense" means a conviction for which demerit points are not assessed under s. Trans 101.02(5), except convictions for violation of ss. 346.63(2m) or 346.63(5)(a), Stats.

(7) "Release" means the action taken by the department to temporarily or permanently withdraw a suspension or revocation of an operating privilege.

(8) "Repeat HTO" means repeat habitual traffic offender.

NOTE: The Department's rationale for distinguishing petty offenses from other offenses is discussed in Lewandowski v. State, 140 Wis. 2d 405, 411 N.W.2d 146 (Ct. App. 1987).

Trans 103.03 HTO DETERMINATION. (1) In determining the number of offenses accumulated during a 5-year period, the department shall use the date each violation was committed as the basis for the determination.

NOTE: The use of violation date rather than conviction date was upheld in DeBruin v. State, 140 Wis. 2d 631, 412 N.W.2d 130 (Ct. App. 1987).

(2) The department may count any combination of major and minor convictions to establish an HTO revocation under s. 351.02(1)(b), Stats.

(3) The department may not count petty offenses for any purpose in determining whether a person is a habitual traffic offender.

(4) In determining whether to revoke a person's operating privilege, the department may not count a refusal to submit to chemical testing as a separate incident in determining HTO or repeat HTO status if the refusal arises out of the same incident as a conviction under s. 346.63(1), Stats., or a local ordinance in conformity therewith, ss. 346.63(2), 940.09 and 940.25, Stats., or a conviction under the law of another jurisdiction with substantially similar terms or any law enacted by a federally-recognized American Indian tribe or band in this state.

(5) Multiple offenses arising out of one occurrence may be counted as one offense under s. 351.02(1)(d), Stats., only if the person's driver record does not show any convictions for minor or major offenses that occurred in the 5-year period preceding the date of the multiple offenses.

(6) Convictions for violations occurring on the same date in different counties shall be presumed to have resulted from separate occurrences for purposes of s. 351.02(1)(d), Stats.

Trans 103.04 REPEAT HTO DETERMINATION. (1) The department shall revoke the operating privilege of a person as a repeat habitual traffic offender if the person is convicted of either:

(a) Two minor offenses committed during an HTO or repeat HTO revocation period and within one year following issuance of an occupational license to the person pursuant to s. 351.07, Stats., or

(b) One major offense or 4 minor offenses committed during an HTO or repeat HTO revocation period and within 3 years following issuance of an occupational license to the person pursuant to s. 351.07, Stats.

(2) The revocation under sub. (1) shall be imposed regardless of the type of license under which the person was operating a motor vehicle, the classification of the vehicle being operated, or whether the person's license or operating privilege was valid at the time of the offense.

Trans 103.05 EFFECTIVE DATES. The effective date of HTO and repeat HTO revocations under this chapter shall be the earliest date determined under subs. (1) to (5) as follows:

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

(2) If the person's license has been surrendered and the person's operating privilege has been suspended or revoked, the effective date shall be the date of license surrender or the date of the latest conviction that is used as a basis for the HTO or repeat HTO revocation, whichever is later.

(3) If the person's license has been surrendered, was valid on the date of surrender, and was revoked or suspended between the time of surrender and the date

of issuance of the HTO or repeat HTO revocation order, the effective date shall be the date of the first revocation or suspension following the license surrender, or the date of the latest conviction that is used as a basis for the HTO or repeat HTO revocation, whichever is later.

(4) If all convictions that formed the basis for an HTO or repeat HTO revocation order occurred in another jurisdiction, the effective date of the HTO or repeat HTO revocation order shall be the date of the latest conviction in another jurisdiction that forms the basis of the HTO or repeat HTO revocation.

(5) If an HTO or repeat HTO revocation order is not mailed within 6 months of the date of the latest conviction that forms the basis for the HTO or repeat HTO revocation order, the effective date of the revocation is the date 6 months after the latest conviction that forms the basis for the HTO or repeat HTO revocation.

Trans 103.06 AMENDMENTS. (1) For purposes of this section, "repeat HTO window period" shall mean that period of time following the issuance of an occupational license pursuant to s. 351.07, Stats., during which a person may be subject to revocation as a repeat habitual traffic offender under s. Trans 103.04.

(2) An amended HTO order shall supersede the HTO revocation that it amends and shall state the basis for the HTO revocation as amended and the effective date of the revocation.

(3) An HTO revocation order may be amended when a person is convicted of an offense that occurred during the 5-year period following the date of the earliest offense that formed the basis for the HTO revocation order, except where the offense would make the person a repeat HTO.

NOTE: If the conviction qualifies the person as a repeat habitual traffic offender, the driver's operating privilege is revoked as a repeat habitual traffic offender.

(4) A repeat HTO revocation order may be amended when a person is convicted of an offense that occurred during the repeat HTO window period.

(5) An amended HTO or repeat HTO revocation order shall include the offense which prompted an amendment under sub. (2) or (3) and all offenses that were used in the original revocation order, including offenses that may have been purged from the driver's record at the time of the amendment, but excluding convictions for offenses that have been overturned or vacated or for which a revocation or suspension is stayed pending appeal.

NOTE: Section 343.325, Stats., requires certain license actions be stayed pending appeal.

Trans 103.07 CREDIT FOR TIME PREVIOUSLY SERVED. (1) If an HTO or repeat HTO revocation is released because of an appeal, or a court order to reopen, stay or vacate a conviction that was used as the basis for the revocation, and another HTO or repeat HTO revocation is subsequently imposed using one-half or more of the identical convictions used in the original case, the period of revocation imposed shall be reduced by the period of revocation served under the original revocation.

(2) If an HTO or repeat HTO revocation is released because of an appeal, or a court order to reopen, stay or vacate a conviction that was used as the basis for the revocation, the person is subsequently convicted of the charge or an amended charge, and the person will continue to be classified as a habitual traffic offender under ss. Trans 103.03 and 351.02(1), Stats., the released HTO or repeat HTO revocation order shall be reimposed and the revocation period imposed shall be reduced by the period of revocation previously served under that revocation order.

Trans 103.08 RELEASE OF REPEAT HTO REVOCATIONS. A repeat HTO

revocation may be released if the underlying HTO or repeat HTO revocation is released and the person would no longer qualify as a habitual traffic offender or repeat habitual traffic offender.

NOTE: If the person would qualify as an HTO or Repeat HTO, the original revocation order may be amended under s. Trans 103.06.

(END OF RULE TEXT)

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

Signed at Madison, Wisconsin, this 31 day of August, 1995.


~~CHARLES H. THOMPSON~~
Secretary
Wisconsin Department of Transportation