

## Chapter Trans 100

## ACCIDENT REPORTING AND SAFETY RESPONSIBILITY

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**Note:** Chapter MVD 10 as it existed on October 31, 1985 was repealed and a new chapter Trans 100 was created effective November 1, 1985.

**Trans 100.01 Purpose and scope. (1) STATUTORY AUTHORITY.** As authorized by ss. 85.16 (1), 227.11 and 343.02, Stats., the purpose of this chapter is to administratively interpret s. 343.23 (2), Stats., relating to department records, ss. 344.01 to 344.48, Stats., relating to financial responsibility in accidents, and s. 346.70, Stats., relating to accident reporting.

**(2) APPLICABILITY.** This chapter applies to any person involved in a motor vehicle accident in Wisconsin as specified in ss. 344.12, 344.25 and 346.70, Stats.

**Note:** For information on occupational licenses, see s. Trans 117.03 (2) (k). Forms used in this chapter are MV 3038 resolution authorizing power of attorney under ch. 344, Stats., MV 3039 minors release, MV 3041 release of liability, MV 3044 evaluation of property damage, MV 3045 evaluation of personal injuries, MV 3046 evaluation of motor vehicle damage, MV 3069 application for self-insurance, MV 3070 safety responsibility self-insurance certificate, MV 3100 notice of incomplete report, MV 3128 installment agreement to pay damages, MV 3343 compliance notification, MV 3347 emergency vehicle involvement, MV 3384 safety responsibility information, MV 3385 informational letter to injured party, and MV 3387 reinstatement instructions, MV 4000 Wisconsin motor vehicle accident report. Forms may be obtained, free of charge, from Wisconsin Department of Transportation, Traffic Accident Section, P.O. Box 7919, Madison, WI 53707-7919.

**History:** Cr. Register, October, 1985, No. 358, eff. 11-1-85; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1987, No. 384; r. and recr. (1), Register, April, 1994, No. 460, eff. 5-1-94; CR 01-156: am. (1) and (2) Register October 2005 No. 598, eff. 11-1-05.

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

**(1) "Accident"** means a happening involving a vehicle that results in damage or injury, including occurrences caused by "acts of God," negligence or intentional acts.

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

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

**(4) "Driver record"** means the public record of a person's driver history maintained by the department in accordance with s. 343.23, Stats., or the records maintained by the department for a person who has been issued an identification card.

**(4m) "Emergency medical technician" or "EMT"** has the meaning in s. 256.01 (5), Stats.

**(5) "Fire fighter"** has the meaning set forth in s. 102.475 (8) (b), Stats.

**(6) "First responder"** has the meaning set forth in s. 256.01 (9), Stats.

**Note:** See s. 343.23 (2) (a) 3.

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

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

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

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

**(10) "Licensee"** means a person to whom the department has granted an operator's license.

**(11) "Motor vehicle"** has the meaning specified in s. 344.01 (2) (b), Stats.

**Note:** s. 344.01 (2) (b), Stats.

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

**(13) "Report"** means an accident report received on an approved form or one received in an automated format approved by the department.

**Note:** Forms MV 4000—Wisconsin Motor Vehicle Accident Report, MV 4002 Driver Report of Accident and MV 4004, Report Supplement, are available from the DOT Traffic Accident Section, P. O. Box 7919, Madison, WI 53707-7919.

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

**History:** Cr. Register, October, 1985, No. 358, eff. 11-1-85; am. (intro.), (1), (3), r. (2), r. and recr. (5), (6), renum. (7) to be (9) and am. (9), cr. (7), (8), Register, April, 1994, No. 460, eff. 5-1-94; CR 01-156: am. (intro.) and (1), cr. (2), (4), (4m), (5), (6), (8), (12) and (14), r. and recr. (3) and (7), renum. (4) to be (9), (6) to be (11), (8) to be (13) and am., renum. (5) to be (10), r. (9) Register October 2005 No. 598, eff. 11-1-05; corrections in (4m) and (6) made under s. 13.92 (4) (b) 7., Stats.

**Trans 100.025 Accident involvement. (1)** A vehicle or person shall be considered to have been involved in an accident if any of the following conditions are met:

(a) The person is injured by an accident.

(b) The person or the vehicle's operator commits some act that contributes to cause an accident, regardless of physical contact.

(c) The vehicle is damaged in an accident.

(d) The vehicle makes contact with any other person or property and causes damage.

(e) The vehicle is damaged by a failure of a mechanical or electrical system resulting in fire or accident when it is in use primarily for moving persons or property, including the vehicle itself, from one place to another and is in motion, or in readiness for motion, and is unattended and not legally parked in a designated parking area.

(f) Property, parts or debris falls from the vehicle and causes an accident.

(g) A vehicle contacts or avoids debris or property on a roadway that has fallen from another vehicle or is not ordinarily found in a roadway, and causes an accident.

(h) The vehicle moves without an operator controlling its movements and causes an accident.

(i) One or more doors or any part of the load of a parked vehicle extends into an adjoining space intended for vehicular travel and an accident occurs as a result of that extension.

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

(2) Except as provided in sub. (1) (i), the operator of a vehicle shall be considered to not have been involved in an accident if the vehicle was legally parked at the time of any damage to the vehicle.

**History:** CR 01-156; cr. Register October 2005 No. 598, eff. 11-1-05.

**Trans 100.03 Reporting an accident. (1)** In this section, "reportable" refers to an accident in which the minimum damage requirements of s. 346.70, Stats., are met or exceeded, and for which reporting the accident is mandatory under that section, or an accident to which the safety responsibility law applies under s. 344.12, Stats.

**Note:** Section 346.66, Stats., makes the accident reporting requirements of s. 346.70, Stats., applicable only as follows:

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

Section 344.12, Stats., makes the safety responsibility law apply as follows:

344.12 Applicability of provisions relating to deposit of security for past accidents. Subject to the exceptions contained in s. 344.14, the provisions of this chapter requiring deposit of security and requiring suspension for failure to deposit security apply to the operator and owner of every motor vehicle which is in any manner involved in an accident in this state which has resulted in bodily injury to or death of any person or damage to property of any other person of \$1,000 or more.

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

**Note:** Forms MV 4000 Wisconsin Motor Vehicle Accident Report and MV 4002 Driver Report of Accident.

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

(a) Have the agency that filed the report file an amended law enforcement agency report with the department.

(b) Provide the department with a copy of court findings meeting any of the following criteria:

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

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

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

(2m) If a person filing a report under sub. (2) does not meet one of the requirements of sub. (2) (a) or (b), the department shall accept the identification of the operator in the original police report as correct. If all operators involved in an accident that was reported by a person other than a police agency and all owners of vehicles involved in that accident stipulate that a person was mis-

identified in an accident report and identify another person as the actual operator, the department may accept the newly identified person as the actual operator of the vehicle and release the misidentified person from further responsibility under this chapter. In all other cases involving the identification of an operator in an accident report, the department shall make a determination of the accuracy of the identification of the operator based on the credibility of the evidence submitted at hearing.

(3) The department shall assume that all accident reports it receives from enforcement agencies or operators meet the reporting criteria of s. 346.70 (1), Stats., or the minimum requirements for safety responsibility act under s. 343.12, Stats. An accident report filed by a police agency for an accident that is not reportable shall be returned to the reporting agency. A report from another source for an accident that is not reportable shall be discarded. If the department determines from credible evidence received, which could include property damage estimates or signed statements, that an accident that has been abstracted as part of a driver's record is not reportable, the accident will not be included in a public abstract of the driver's driver record maintained under s. 343.23, Stats.

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

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

**History:** Cr. Register, October, 1985, No. 358, eff. 11-1-85; r. and recr. (1) and (3), am. (2), Register, April, 1994, No. 460, eff. 5-1-94; CR 01-156; renum. (1) to be (1m) and am., (4) renum. from Trans 100.14 (1) and am., cr. (1) and (2m), r. and recr. (2), am. (3) Register October 2005 No. 598, eff. 11-1-05.

#### Trans 100.04 Required accident information.

(1) ACCIDENT REPORT FORM REQUIRED. Under s. 346.70 (2), (3m) and (4), Stats., the police, operator, owner or occupant shall complete and submit all accident information requested on the forms or in the automated format approved by the department.

**Note:** Forms MV 4000 Wisconsin Motor Vehicle Accident Report and MV 4002 Driver Report of Accident.

(2) INCOMPLETE REPORTS. The department may accept an accident report with incomplete accident information if the information is provided to the department from another credible source or is not available.

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

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

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

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

**Note:** See s. 344.14 (2), Stats.

(4) INCOMPLETE INSURANCE INFORMATION. If the liability insurance company name or policy holder's name, or both, are absent from the accident report form, the department may contact the operator or owner, or both, to obtain additional insurance information. If the operator or owner provide complete insurance information, the department shall assume that the liability insurance policy specified by the owner or operator was in force at the time of the accident.

(5) SELF-INSURED PERSONS. If a motor vehicle owner is self-insured under s. 344.16, Stats., the department may mail notice of the self-insurance to the address furnished by the self-insured owner. The department shall assume that the operator of the motor vehicle is exempt under s. 344.14 (2) (d), Stats., from the security requirements unless the self-insured person notifies the department otherwise within 30 days of mailing or other information is

received by the department indicating that the self-insured certificate does not apply to the operator.

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

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

**Note:** Form MV 3464—Request for Insurance Verification, Form MV 3462—Request for Complete Insurance.

**History:** Cr. Register, October, 1985, No. 358, eff. 11-1-85: r. and recr. (1), am. (2), renum. (3) and (4) to be (4) and (5) and am. cr. (3), (6), (7), Register, April, 1994, No. 460, eff. 5-1-94; **CR 01-156: am. (3) to (7) Register October 2005 No. 598, eff. 11-1-05.**

**Trans 100.05 Recording accident on operator's record.** (1) All accidents in which the operator was involved shall be identified on a public driver record abstract prepared under s. 343.23 (2), Stats., unless any of the following apply:

(a) The vehicle was legally parked as described in s. Trans 100.025 (2).

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

**(2)** If a law enforcement officer, fire fighter, emergency medical technician, first responder, or winter highway maintenance worker is involved in an accident in the course of that employment, any person filing an accident report shall note that the person involved in the accident was on duty at the time of the accident. The department shall note that on-duty status on a public abstract of the on-duty operator's driver record with the entry related to the accident.

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

**(3)** Notwithstanding sub. (1), a law enforcement officer, emergency medical technician, first responder or fire fighter may request a reportable accident not be reported on a public abstract of his or her driver record by submitting the approved form. The licensee must show that one or more of the following conditions existed at the time of the accident:

(a) The operated vehicle was legally parked under the exemptions of s. 346.03, Stats., and the flashing, oscillating or rotating warning lights were in use.

(b) The operator of the emergency vehicle intentionally collided with the other vehicle.

(c) The operator of the other vehicle intentionally collided with the emergency vehicle.

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

**History:** Cr. Register, October, 1985, No. 358, eff. 11-1-85; renum. Trans 100.05 to be (1), cr. (2), (3), Register, April, 1994, No. 460, eff. 5-1-94; **CR 01-156: am. (1), (2) and (3) (intro.), (b) and (c) Register October 2005 No. 598, eff. 11-1-05.**

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

(a) Operator reports of accidents.

(b) Law enforcement agency reports of accidents.

(c) Other information, such as statements of witnesses to the accident and supplementary reports from the investigating law enforcement agency.

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

(e) Accident reconstruction reports.

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

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

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

(h) Investigator reports.

**(2)** An uninsured operator or owner may not be required to deposit security when there is no reasonable possibility of a judgment being rendered against the uninsured operator. The department may consider the following in making that determination:

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

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

(c) Notices of payment of claims from insurance companies.

(d) Investigator reports.

(e) Any other relevant evidence provided by witnesses or the parties.

(f) Coroner reports.

**Note:** See s. 344.14 (2) (k), Stats.

**(3)** If the department requires a person to deposit security under s. 344.13, Stats., and, after receiving additional information, determines that no reasonable possibility of a judgment finding the person liable exists, the department may rescind the security requirement. The department may accept any evidence of probative value including the types of evidence identified in sub. (1). The department may not rescind the security requirement solely because the owner, operator or other person who posted the bond files a bankruptcy petition. In the event of a bankruptcy proceeding involving an owner, operator, or person who filed a bond, the department shall retain the bond pending determination of liability for the accident and damages caused, and the application of the bond proceeds toward the judgment amount, regardless of whether the bankrupt debtor remains personally liable for that debt.

**Note:** Where the Department has received a safety responsibility bond, it holds that bond in trust for the victims of the accident. No bond shall be released upon the filing of a bankruptcy, but shall be held in trust for the benefit of the injured parties. The injured parties may commence a suit to determine liability of the bankrupt debtor and to recover from the trust res.

**History:** Cr. Register, October, 1985, No. 358, eff. 11-1-85; am. (1) (intro.), (2) (intro.), r. (3), renum. (4) to be (3), Register, April, 1994, No. 460, eff. 5-1-94; **CR 01-156: am. (1) (intro.), (a) and (b), (2) (intro.), (a) and (b) and (3), cr. (1) (d) to (h) and (2) (c) to (f) Register October 2005 No. 598, eff. 11-1-05.**

**Trans 100.07 Determination of security amount.**

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

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

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

(b) In determining the amount of security required:

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

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

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

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

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

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

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

**Note:** Form MV 3045—Evaluation of Personal Injuries.

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

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

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

b. The age of the injured person.

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

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

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

f. The diagnosis of the injury.

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

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

**Note:** Form MV 3046—Evaluation of Motor Vehicle Damage.

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

**Note:** Form MV 3044—Evaluation of Property Damage.

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

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

(d) The department may consider whether a motor vehicle was being operated without permission of the owner at the time of an accident in the manner specified in s. Trans 100.09 in connection with any claim for damages to a vehicle that was allegedly operated without the owner's permission.

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

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

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

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

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

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

1. The claim is filed one year or less after the accident.

2. No evaluation report was mailed to the person under sub. (2) (a).

3. The department has not suspended the uninsured person's operating privilege.

4. The uninsured has not deposited security.

**History:** Cr. Register, October, 1985, No. 358, eff. 11-1-85; am. (1), (7) and (8), Register, April, 1994, No. 460, eff. 5-1-94; CR 01-156: r. and recr. Register October 2005 No. 598, eff. 11-1-05.

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

(a) Cash.

(b) A cashier's check.

(c) A money order.

(d) A financial institution draft.

(e) A certified personal or business check.

(f) An attorney trust account draft.

(g) A surety bond.

**Note:** Forms MV 3016—Security Deposit Receipt, MV 3043—Bond under Chapter 344 Stats., and MV 3385—Informational Letter to Injured Parties.

**(2)** A person other than the uninsured owner or operator may deposit security if the person specifies in writing on whose behalf the deposit is made and to whom the deposit should be returned.

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

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

**(5)** If the owner and operator are separate persons, the deposit may be made by one of them, or they may cooperate in depositing the security. The security shall be applied to the payment of judgments or assignments for damages arising out of the accident rendered against either the operator or owner regardless of who made the deposit.

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

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

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

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

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

**(7)** A security deposit may be returned only after one of the following conditions is met:

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

(b) More than one year after the date of deposit or date of suspension, whichever is later, has passed and no notice of the commencement of a court action has been filed by a party in interest. In calculating the time period under this subsection, any period of time a claimant was stayed from commencing an action against the owner, operator or bond because of a bankruptcy proceeding may not be considered.

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

**History:** Cr. Register, October, 1985, No. 358, eff. 11-1-85; am. (1), Register, April, 1994, No. 460, eff. 5-1-94; **CR 01-156; am. (1) (intro.), (5), r. and rec. (3) and (4) and (6), cr. (7) and (8) Register October 2005 No. 598, eff. 11-1-05.**

**Trans 100.09 Proof of operating without permission.** (1) A person operating a motor vehicle shall be presumed to have done so with the express or implied permission of the owner. Any owner contesting this presumption has the burden of proving the driver did not have permission to operate the vehicle.

(2) A person who operates a motor vehicle with the express permission of a person who has control of a motor vehicle has the implied consent of the owner to operate the vehicle.

(3) Any affidavit, police report or statement of a person other than the owner contending the motor vehicle was parked or operated with the owner's permission shall result in an initial determination that the operator did have permission to operate the vehicle.

(4) The owner of a motor vehicle involved in an accident is exempt from depositing security under s. 344.14 (2) (g), Stats., if the owner or the owner's insurer produces uncontroverted proof that the motor vehicle was operated or parked without permission at the time of the accident. Acceptable proof shall be in one of the following forms:

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

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

(c) An affidavit signed by the operator stating that the motor vehicle was being operated without the owner's expressed or implied consent is filed with the department. This paragraph does not apply to an owner who is the sponsor of the operator, under s. 343.15, Stats.

**Note:** See Plevin v. WisDOT, 267 Wis. 2d 281 (Ct. App. 2003).

(5) An affidavit, filed by an insurer under s. 344.15 (4), Stats., that is signed by the owner and attests that the operator did not have permission to operate the motor vehicle at the time of the accident.

(6) Any affidavit made under sub. (4) (c) or (5) with respect to a leased motor vehicle shall be made by the vehicle lessee rather than the vehicle owner, unless the vehicle owner affirms that possession and control over the vehicle had transferred from the lessee to the owner by repossession or other operation of law at the time of the accident.

**Note:** A lessee is considered an "owner" under s. 344.01 (2) (cm). Because the lessee ordinarily has direct control of a leased vehicle, the lessee should ordinarily provide an affidavit under sub. (4) (c) or (5) rather than the lessor or titled owner.

**History:** Cr. Register, October, 1985, No. 358, eff. 11-1-85; am. (1), Register, April, 1994, No. 460, eff. 5-1-94; **CR 01-156; renum. (intro.) and (1) to be (4) (intro.) and (a), (2) to be (4) (b) and (c), (3) to be (5) and am. cr. (1), (2), (3) and (6) Register October 2005 No. 598, eff. 11-1-05.**

#### **Trans 100.10 Hearing and suspension procedure.**

(1) If proof of damages has been filed under s. Trans 100.07, and the department has determined that a reasonable possibility of a

judgment being entered against an uninsured operator or owner exists, the department shall mail a notice to the last known address on file with the department for the uninsured operator and motor vehicle owner. The notice shall require the uninsured operator or owner, or both, to deposit security with the department. The amount of security shall be that sum that is sufficient in the secretary's judgment to satisfy any judgment for damages resulting from the accident that may be recovered against either the operator or motor vehicle owner. The notice shall require security be deposited by a certain date, and advise the uninsured operator that his or her operating privilege will be suspended or advise the motor vehicle owner that his or her motor vehicle registration will be suspended if security is not deposited by the date required in the notice. The notice shall advise the uninsured operator or motor vehicle owner of actions they may take to avoid operating privilege or motor vehicle registration suspension. It shall also notify them that they may request a hearing on the department's determination before the suspension date established in the notice.

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

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

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

(4) A request for a hearing will not affect the uninsured person's operating privilege or motor vehicle registration status. Operators and owners who request a hearing prior to the department issuing a suspension order will not have their operating privileges or motor vehicle registrations suspended for failure to deposit security until the conclusion of hearing procedures. Operators who request a hearing after the department issues an operating privilege suspension order shall remain subject to the order unless the suspension is overturned as a result of the hearing. Motor vehicle registrations that are suspended before a request for a hearing is received by the department shall remain suspended unless the suspension is overturned as a result of the hearing.

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

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

**Note:** s. 344.02 (1), Stats.

(7) Hearings shall be informal. Hearsay and documentary evidence may be received by the hearing examiner and relied upon as the basis for a decision. Telephone testimony of persons involved in the accident may not be permitted.

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

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

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

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

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

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

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

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

**History:** Cr. Register, October, 1985, No. 358, eff. 11-1-85; am. (1) and (2), Register, April, 1994, No. 460, eff. 5-1-94; CR 01-156: r. and recr. Register October 2005 No. 598, eff. 11-1-05.

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

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

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

(b) Proof of payment made as follows:

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

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

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

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

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

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

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

**History:** Cr. Register, October, 1985, No. 358, eff. 11-1-85; am., Register, April, 1994, No. 460, eff. 5-1-94; CR 01-156: r. and recr. Register October 2005 No. 598, eff. 11-1-05.

**Trans 100.12 Release of liability.** (1) EFFECT OF RELEASE. The department may not suspend the operating privilege of an operator or motor vehicle registrations of a vehicle owner under s. 344.14, Stats., if that person has been released from liability by all persons on whose behalf a security deposit has been required by the department under s. Trans 100.07 or s. 344.13, Stats., and all persons who have filed subrogation notices with the department for such claims.

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

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

(a) *Written release required.* A release shall be made in writing.

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

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

(c) *Competent approval.* 1. 'Injured parties.' If a party sustains property damage or personal injuries, the release shall include the witnessed or notarized signature of each subrogated party and the witnessed or notarized signature of the injured party, except as provided in subds. 2. to 4.

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

**Note:** s. 344.14 (2) (h), Stats.

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

**Note:** ss. 807.10, 344.14 (2) (h) and 344.18 (1) (b), Stats. Parents are not "legal guardians" unless appointed by a court.

4. 'Incompetents.' If an injured party is incompetent, a witnessed or notarized guardian's signature in his or her representative capacity is required together with a court order authorizing the guardian to execute the release.

5. 'Deceased parties.' If the injured party died as a result of the accident, the release shall include one of the following:

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

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

c. The witnessed or notarized signature of the primary heir of the estate of the deceased, accompanied by an affidavit of heirship from the releasing party and assurance that the estate will be settled without appointment of a personal representative. The department may accept a copy of a petition filed under ch. 867, Stats., or a court order assigning property under ch. 867, Stats., as assurance under this subd.

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

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

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

(5) BANKRUPT UNINSURED PERSONS UNDER SAFETY RESPONSIBILITY LAW. (a) *Effect on deposited security.* Notwithstanding the imposition of a stay at the commencement of a bankruptcy proceeding or the issuance of an order of discharge in a bankruptcy proceeding, any security that is deposited with the department shall be held in trust by the department for the benefit of any

injured party on whose behalf a security deposit has been required under s. Trans 100.07 or s. 343.13, Stats.

(b) *Bankruptcy that precedes safety responsibility suspension.* In any case in which the department is notified of a pending bankruptcy proceeding and applicability of a stay under 11 USC 362, the department may not suspend the operating privilege or motor vehicle registration of the debtor until the stay is no longer in effect and the department is notified by an injured party or their subrogated insurer that the debt was not discharged and that suspension under s. 343.14 or 343.18, Stats., is appropriate.

**Note:** 11 USC 362 is the bankruptcy code's automatic stay provision.

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

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

2. 'Release of suspension ordered in violation of automatic stay.' If the department is notified that a stay prohibiting action against a debtor under 11 USC 362 was in effect at the time the department ordered revocation or suspension of the debtor's operating privilege or motor vehicle registration under ss. 344.14, Stats., the department shall release the s. 344.14, Stats., revocation or suspension and, if the debtor is otherwise eligible to be licensed, reinstate the bankruptcy debtor's operating privilege and motor vehicle registration without any reinstatement fee.

**Note:** 11 USC 362 is the bankruptcy code's Automatic Stay provision.

3. 'Reimposition of suspension.' The department may suspend a debtor's operating privilege or motor vehicle registration that was released under subd. 1. or 2. upon a showing by an injured party that the debt for damages resulting from the accident was not discharged or satisfied within the bankruptcy proceeding and that the bankruptcy stay is not in effect or upon notification that the case has been dismissed.

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

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

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

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

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

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

**History:** Cr. Register, October, 1985, No. 358, eff. 11-1-85; renum. (4) (intro.) to be (4) and am. r. (4) (a) to (c), cr. (5), Register, April, 1994, No. 460, eff. 5-1-94; **CR 01-156: r. and recr. (1), (2), (4) and (5), renum. (3) to be (2) (c) 5. and am., cr. (3) Register October 2005 No. 598, eff. 11-1-05.**

### Trans 100.13 Written installment agreement.

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

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

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

(c) The notarized or duly acknowledged signature of the uninsured operator or owner making the payments. If that person is less than 18 years of age, a parent or sponsor under s. 343.15, Stats., shall co-sign the installment agreement as a person responsible for making the payments, or a legally appointed guardian may sign on behalf of the minor pursuant to court authorization of their signing the agreement as guardian.

(d) The witnessed signatures of all other parties in the installment agreement.

**Note:** Form MV 3128—Installment Agreement to Pay Damages.

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

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

**Note:** s. 344.14 (2) (h), Stats.

(g) If an injured party to the agreement is less than 18 years old and the amount of deposit required by the department under s. 344.13, Stats., exceeds \$5,000, or a doctor's certification that the injury is not permanent is not filed with the department, a guardian's signature in his or her capacity as guardian is required, together with a court order authorizing the guardian for the injured party to enter into the agreement.

(h) If an injured party to the agreement is incompetent, a guardian's signature in his or her capacity as guardian is required, together with a court order authorizing the guardian for the injured party to enter into the agreement.

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

**Note:** Form MV 3128—Installment Agreement to Pay Damages.

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

(3) Notwithstanding s. 344.18 (3), Stats., a person who has been released from liability for debts arising from an accident may

not be subjected to operating privilege or motor vehicle registration suspension based upon a default in a written installment agreement for the liability that has been released.

**History:** Cr. Register, October, 1985, No. 358, eff. 11-1-85; **CR 01-156: am. (1) (intro.), (a) to (d) and (2), cr. (1) (e) to (h) and (3) Register October 2005 No. 598, eff. 11-1-05.**

**Trans 100.14 Revocation and reinstatement. History:** Cr. Register, October, 1985, No. 358, eff. 11-1-85; am. (1), r. (2), (3), renum. (4) to be (2) and am. Register, April, 1994, No. 460, eff. 5-1-94; **CR 01-156: renum. (1) to be s. Trans 100.03 (4) and am., r. (2), Register October 2005 No. 598, eff. 11-1-05.**

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

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

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

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

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

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

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

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

**(3) FEES AND PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE NOT REQUIRED.** No operating privilege or motor vehicle registration reinstatement fee or future proof of insurance is required when any of the following occur:

(a) The person submits credible evidence to the department that he or she was not the driver or owner of the vehicle involved in the accident.

(b) The person submits written verification to the department that an insurance policy or bond meeting the requirements of s. 344.15, Stats., was in effect at the time of the accident. The written verification must be submitted prior to the person reinstating his or her operating privilege or motor vehicle registration.

(c) The department's decision is reversed by a circuit or higher court in a petition for review.

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

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

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

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

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

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

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

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

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

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

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

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

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

**Note:** See s. Trans 100.18 regarding the effect of a bankruptcy on a damage judgment revocation.

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

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



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

**History:** Cr. Register, October, 1985, No. 358, eff. 11-1-85; r. and recr., Register, April, 1994, No. 460, eff. 5-1-94; **CR 01-156: r. (intro.), renum. (1) to be (3) (a), (3) to be (3) (c), cr. (1), (2) and (5), renum. (2) to be (3) (b), (5) and (6) to be (3) (e) and (f) and am., r. and recr. (4), Register October 2005 No. 598, eff. 11-1-05.**

**Trans 100.16 Self-insurance. (1)** The department shall issue a certificate of self-insurance to a person under the following conditions:

(a) The person owns more than 25 motor vehicles which are registered in Wisconsin;

(b) An application for self-insurance is completed, and

(c) The person's application and a financial statement, signed during the last calendar year, indicate that the person has and will continue to have the ability to pay judgments arising out of motor vehicle accidents.

**Note:** Forms MV 3069—Application for Self-Insurance and MV 3070—Safety Responsibility Self-Insurance Certificate.

**(2)** Self-insurance certificates shall be issued for a period of one year.

**(3)** Renewal of a certificate requires submittal of a new self-insurance application and a financial statement.

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

(b) In this subsection:

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

**Note:** Unencumbered Assets = Net Worth - (Contingencies + Reserved Capital).

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

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

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

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

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

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

**History:** Cr. Register, October, 1985, No. 358, eff. 11-1-85; **CR 01-156: am. (2), cr. (4) Register October 2005 No. 598, eff. 11-1-05.**

**Trans 100.17 Transfer of vehicle ownership. (1)** A transfer of ownership of any motor vehicle that has its registration suspended or revoked or is subject to suspension or revocation under s. 344.14, Stats., may not be allowed under any of the following circumstances:

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

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

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

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

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

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

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

(b) The purchaser does not reside at the same address as the seller and the full value of the motor vehicle has been paid to the seller. The department may require proof of payment, an affidavit from the buyer or seller, or other evidence that the proposed transfer is in good faith.

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

(a) Create a new title, without charge, in the name of the seller and send it to the seller with a letter explaining why the transfer of ownership was refused.

(b) Return all fees submitted with the application to the purchaser with an explanation as to why the transfer of ownership was refused.

**(5)** If the department issues a title in violation of s. 344.46, Stats., after it issues a notice of security requirement under s. Trans 100.10 (1), the department shall suspend any outstanding title and registration, shall notify the transferee and transferor of that fact, and shall demand return of the mistakenly issued title. Upon return of the title to the department, the department shall provide a duplicate title to the transferor, without fee. A vehicle that is transferred as a gift, is sold for inadequate consideration, that remains in the possession of the transferor, that continues to be used by the transferor, or that is transferred to a spouse, parent, child, spouse's parent, child's spouse, step parent, step child, or any person residing at the same address as the transferor, shall be presumed to have been transferred for the purpose or with the effect of defeating the purpose of ch. 344, Stats.

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

**History:** Cr. Register, October, 1985, No. 358, eff. 11-1-85; am. (1), (2) and (4) (b), Register, April, 1994, No. 460, eff. 5-1-94; **CR 01-156: am. (1), (2), (3) (intro.), (a) and (b), and (4) (intro.) and (b), cr. (1m), (5) and (6), r. (4) (c), Register October 2005 No. 598, eff. 11-1-05.**

**Trans 100.18 Damage judgments. (1)** **SUSPENSION.** Upon receipt of a certified damage judgment from a Wisconsin court, the department shall immediately suspend the judgment debtor's operating privilege and the registration of the judgment debtor's motor vehicles. The suspension shall remain in effect until the person pays all fees required for operating privilege and motor vehicle registration reinstatement, files any required proof of financial responsibility for the future, and until one of the following conditions is met:

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

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

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

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

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

**(2) OUT-OF-STATE AND TRIBAL COURT JUDGMENTS.** (a) *Out-of-state judgments.* Upon receipt of a certified damage judgment naming a Wisconsin resident or licensed operator as judgment debtor from a court or driver licensing authority in another jurisdiction, the department shall provide notice of the receipt of the certification to the judgment debtor. The department shall suspend the operating privilege and motor vehicle registrations of the judgment debtor unless, within 30 days of the issuance of the notice by the department, the person satisfies one of the requirements of sub. (1) (a) to (e) or, files a letter of clearance from the driver licensing authority in the other jurisdiction.

**Note:** s. 344.25 (5), Stats.

(b) *Tribal judgments.* Upon receipt of a certified damage judgment naming a Wisconsin resident or licensed driver as judgment debtor from an Indian tribal court in Wisconsin, the department shall provide notice of the receipt of the certification to the judgment debtor. The department shall suspend the operating privilege and motor vehicle registrations of the judgment debtor unless, within 30 days of the issuance of the notice by the department, the person satisfies one of the requirements of sub. (1) (a) to (e).

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

**(3) INSTALLMENT AGREEMENTS.** (a) If a judgment creditor consents to allow a judgment debtor to retain or reinstate the debtor's operating privilege or motor vehicle registration under s. 344.25 (2), Stats., the parties shall file a copy of the written installment agreement between the parties. The agreement shall meet the requirements of s. Trans 100.13. In applying the requirements of s. Trans 100.13, the term "injured party" shall mean the judgment creditor, and the term "uninsured person" shall mean the judgment debtor. The installment agreement shall provide that upon payment of the sums specified in the agreement, the judgment will be satisfied.

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

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

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

3. Applies for operating privilege and motor vehicle registration reinstatement more than 20 years after the entry date of the judgment.

**Note:** See s. 893.40, Stats.

**(4) PERSONS UNDER DAMAGE JUDGMENT LAW.** (a) A person whose operating privilege or motor vehicle registration is suspended or revoked under s. 344.25, Stats., who files a petition in bankruptcy, and from whom collection of a pre-bankruptcy damage judgment debt is stayed under 11 USC 362, or whose personal

liability for the damage judgment debt is discharged under U. S. bankruptcy laws, may reinstate his or her operating privilege or motor vehicle registrations. The person shall be subject to all the same vehicle reinstatement, filing and fee requirements as any other person seeking operators license or registration reinstatement who has obtained a satisfaction of judgment following a damage judgment suspension.

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

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

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

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

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

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

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

**History:** Cr. Register, April, 1994, No. 460, eff. 5-1-94; CR 01-156: r. and recr. Register October 2005 No. 598, eff. 11-1-05.

**Trans 100.19 File purge criteria.** (1) The department may purge references to accidents from the department's online database of driver records twice per year or with such increased frequency as the secretary deems appropriate.

(2) An accident may be removed from a driver record if more than 4 years from the date of the accident have elapsed when the purge is conducted.

(3) A safety responsibility suspension or revocation case entry may be removed from a driver record if 5 years from the effective date of the suspension or revocation, or 3 years from the operator's reinstatement eligibility date, whichever is longer, have elapsed at the time the purge is conducted.

(4) After a damage judgment is satisfied or discharged, the damage judgment suspension or revocation case entry may be removed from a driver record at the time a purge is conducted if 3 years from the date the person meets one of the criteria in s. Trans 100.18 (1) (a) or (e), or 5 years from the date of the suspension or revocation, whichever is longer, have elapsed.

(5) After a damage judgment debt is discharged in a bankruptcy proceeding, the damage judgment suspension or revocation case entry may be removed from the debtor's driver record at

the time a purge is conducted if 3 years from the date the debtor is discharged from liability for the accident in a bankruptcy proceeding, or 5 years from the date of the suspension or revocation, whichever is longer, have elapsed.

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

**History:** Cr. Register, October, 1985, No. 358, eff. 11-1-85; r. (3), (1) and (2) renum. from Trans. 100.18 (1) and (2), Register, April, 1994, eff. 5-1-94; **CR 01-156: renum. (1) to be (2), (2) to be (3), and am., cr. (1), (4) and (5) Register October 2005 No. 598, eff. 11-1-05.**