

Publication Date: June 1, 2010
Effective Dates: June 1, 2010 through October 28, 2010

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

The Wisconsin Department of Transportation adopts an emergency order to create TRANS 100.25, relating to mandatory insurance exemptions.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: ss. 344.37, and 344.61 to 344.67, Stats.

Statutory authority: ss. 85.16(1), 227.11, 343.02 and 344.66, Stats.

Explanation of agency authority: The Department is charged with administering the safety responsibility, damage judgment and mandatory insurance laws contained in Chapter 344, Stats. This rule making deals with exceptions to the mandatory insurance provisions of Subchapter VI to Chapter 344, Stats.

Related statute or rule: s. 344.01(2)(d), Stats.

Plain language analysis: The purpose of this emergency rule making is to set interim standards for filings made in lieu of insurance with the Department pursuant to s. 344.63, Stats., as created by 2009 Wis. Act 28.

One deposit accepted in lieu of insurance under s. 344.63, Stats., is \$60,000 cash. The \$60,000 amount is set in the statutes and is far less than the minimum insurance required under the law. U.S. currency, cashiers and certified checks, money orders, bank checks, and attorney trust fund checks may be accepted as a cash deposit by the Department. In addition to depositing cash, the depositor must prove no judgments are outstanding against the depositor in the depositor's county of residence. s. 344.37(1), Stats.

A second deposit accepted by the Department is a bond. There are two types of bonds. First, a bond issued by a surety company for the minimum liability coverage amounts required by law (currently \$15,000 property, \$50,000 personal injury to one person, \$100,000 personal injury of multiple persons). The bond will need to be in a form approved by the Department. The other form of bond permitted under the statutes is a judicial bond. If requested, judges will have to approve or disapprove of applications to create a bond secured by \$330,000 in real estate (twice the amount of the bond).

The third mechanism available under the statute is posting securities. Securities are the most problematic from an administrative and enforcement standpoint. The value of securities can vary greatly over time. The Department cannot and will not know the value of securities after deposit. The burden will be on the depositor to be able to prove the value of any securities deposited with the Department to police when asked. Deposits of securities must be accompanied by an opinion of counsel verifying that the securities meet the statutory requirements for use in lieu of insurance. The depositor will need to provide an affidavit as to the value of the securities at the time of deposit and will need to pledge the securities in a manner that permits the Department to sell them in order to use the proceeds to satisfy damages resulting from accidents. The share or bond certificates will need to be physically deposited with the Department.

Summary of, and preliminary comparison with, existing or proposed federal regulation: There are no existing or proposed federal regulations on this issue.

Comparison with Rules in the Following States:

Michigan: All motorists must carry liability coverage also referred to as "Michigan no fault insurance." Insurance certificate must be kept in vehicle at all times when operating vehicle.

Minnesota: Drivers must provide proof of insurance upon request by a peace officer.

Illinois: All motor vehicles operated in Illinois must be covered by liability insurance. Vehicle owners are required to provide insurance information at the time of registration renewal.

Iowa: Motorists must prove financial responsibility if involved in an accident or stopped by law enforcement.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: Section 344.63, Stats., as created by 2009 Wis. Act 28, provides exceptions to the requirement of having a motor vehicle liability insurance policy to operate a motor vehicle on Wisconsin highways. The exceptions defined in the statutes are nearly identical to those provided for under Wisconsin's Safety Responsibility Law. The administration of the exceptions, as defined in this emergency rule, are purposely drafted to closely mirror the procedures currently in place under the Safety Responsibility Law.

Analysis and supporting documentation used to determine effect on small businesses: This regulatory change has no impact on small business. The Department does not anticipate any fiscal effect upon small businesses from this codification.

Effect on small business: This regulatory change has no impact on small business. The Department does not anticipate any fiscal effect upon small businesses from this codification. The Department's Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal effect: The Department does not anticipate any fiscal effect from this codification. The statutes already impose the requirement that the Department accept these filings. This rule making merely creates an efficient framework for performing that required work.

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

Copies of Emergency Rule and Contact Person: Copies of this emergency rule are available, without cost, upon request by writing to Reginald Paradowski, Section Chief, Division of Motor Vehicles, Driver Information Section, Room 301, P. O. Box 7983, Madison, WI 53707-7983, or by calling (608) 264-7002. You may also contact Mr. Paradowski via e-mail at: reginald.paradowski@wisconsin.gov.

To view the emergency rule, you may visit the following website:
<http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

TEXT OF EMERGENCY RULE

SECTION 1. Trans 100.25 is created to read:

Trans 100.25 Mandatory insurance. (1) EXCEPTIONS. The purpose of this section is to implement and administer the provisions of Subch. VI of Chapter 344, Stats., relating to mandatory insurance requirements and exceptions to the requirement of having automobile insurance in Wisconsin.

(2) DEPOSITS IN LIEU OF MANDATORY INSURANCE. A person making a deposit with the department under s. 344.63, Stats., shall file a complete application with the department containing all required information. In addition, the person shall provide the additional materials or information and deposit in the form required in subs. (3) to (5).

(3) CASH DEPOSITS. (a) For purposes of s. 344.63(1)(d), Stats., any of the following shall be considered a deposit of cash with the department:

1. United States currency.
2. A cashier's check or draft.
3. A money order.
4. A financial institution check or draft.

5. A certified personal or business check or draft.

6. An attorney trust account check or draft.

(b) Any person attempting to file cash in lieu of maintaining automobile liability insurance with the department pursuant to s. 344.63(1)(d), Stats., shall file, with the deposit, a certification from the clerk of courts in the county where the depositor resides dated no later than 15 calendar days prior to the date the deposit is received by the department, that indicates the clerk has searched the official records of the county and that no records of unsatisfied judgments of any character against the depositor exist in that county.

Note: ss. 344.63(1)(d) and 344.37(1), Stats.

(4) BOND. (a) *Surety bonds.* Any person attempting to file a surety company bond in lieu of maintaining automobile liability insurance with the department pursuant to s. 344.63(1)(a), shall file a bond of a surety company duly authorized to transact business within this state that is conditioned for the payment of the amounts specified in s. 344.01(2)(d), Stats. The bond may not be cancelable except after 10 days written notice to the secretary. The bond shall be in the form specified by the department.

(b) *Judicial bonds.* Any person attempting to file a judicially authorized bond in lieu of maintaining automobile liability insurance with the department pursuant to s. 344.63(1)(a), Stats., shall file a bond with at least 2 individual sureties each owning real estate within this state and together having equities equal in value to at least twice the amount of the bond, which real estate shall be scheduled in the bond approved by a judge of a Wisconsin circuit or appellate court. The bond must be conditioned for the payment of the amounts specified in s. 344.01(2)(d), Stats., and may not be cancelable except after 10 days written notice to the secretary.

Note: ss. 344.63(1)(a) and 344.36(1), Stats.

(5) SECURITIES. Any person attempting to file securities with the department pursuant to s. 344.63(1)(d), Stats., shall file all of the following:

1. A certification from the clerk of courts in the county where the depositor resides dated no later than 15 calendar days prior to the date the deposit is received by the department, that indicates the clerk has searched the official records of the county and that no records of unsatisfied judgments of any character against the depositor exist in that county.

2. An opinion of counsel, for the benefit of the department and persons intended to be protected by the filing described in s. 344.37(2), Stats., that the securities to be filed by the depositor are securities that may legally be purchased by savings banks or for trust funds of in this state. The opinion shall identify the state or federal statute or regulation permitting the purchase of each deposited security.

3. An affidavit that the securities have a fair market value in excess of \$60,000.

4. A pledge of the securities to the department in the form required by the department pledging the securities for the payment of damages resulting from the ownership, maintenance, use or operation of a motor vehicle after such deposit was made, including damages for care and for loss of services because of bodily injury to or death of any person and damages because of injury to or destruction of property and the consequent loss of use thereof. The pledge shall assign all rights to sell or redeem the securities or any coupons associated with the securities to the department in trust for the purposes set forth in this subdivision. The pledge shall exempt the department from any liability for selling or not selling the securities at any time, and shall specify that the depositor relinquishes all rights to sell the securities or to demand their sale by the department. The pledge shall remain effective until the earlier of the return of the deposit pursuant to s. 344.63(3), Stats., or of the sale of the securities, whether made so that the proceeds of sale can be applied to the payment of judgments and assignments relating to motor vehicle accidents, following the procedure described in s. 344.20 (2), Stats., or made for any other reason.

5. The share certificates, bonds, including all bond coupons, if any, or other certificate.

Note: ss. 344.63(1)(d) and 344.37(1), Stats.

(END OF RULE TEXT)

FINDING OF EMERGENCY

The Department of Transportation finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public health and welfare. A statement of the facts constituting the emergency is the requirements of the mandatory insurance laws in Chapter 344, Stats., as created by 2009 Wis. Act 28, contain exceptions to furnishing proof of a motor vehicle liability insurance policy. This emergency rule defines the administration of those exceptions. These mandatory insurance requirements, and the exceptions, are effective June 1, 2010, thereby necessitating an emergency rule being put into place until the effective date of the permanent rule. Clarification of the mechanism to be used to qualify for an exception under the new statute will be useful to persons wishing to file for an exception. Persons whose religious beliefs preclude them from buying insurance will benefit from this rule making.

Effective Date. This rule shall take effect upon publication in the official state newspaper as provided in s. 227.24(1)(c), Stats.

Signed at Madison, Wisconsin, this 20th day of **May**, 2010.

/s/
FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation