

2009 DRAFTING REQUEST

Bill

Received: **09/19/2008**

Received By: **agary**

Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Byrnes**

This file may be shown to any legislator: **NO**

Drafter: **agary**

May Contact:

Adtl. Drafters:

Subject: **Transportation - driver licenses**

Extra Copies: **EVM**

Submit via email: **NO**

Pre Topic:

DOA:.....Byrnes, BB0014 -

Topic:

CDL compliance issues

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 09/22/2008	wjackson 09/22/2008		_____			
/1			rschluet 09/23/2008	_____	lparisi 09/23/2008		State

FE Sent For:

<END>

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/?	agary	1 Wlj 9/22					

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2007-09 Budget Bill Statutory Language Drafting Request

- Topic: CDL Compliance Issues
- Tracking Code: BB0014
- SBO team: Tax, Transportation and Budget Development Team
- SBO analyst: Tyler Byrnes
 - Phone: 266-1039
 - Email: tyler.byrnes@wisconsin.gov
- Agency acronym: DOT
- Agency number: 395
- Priority (Low, Medium, High): High

Intent: Please prepare a draft to bring Wisconsin statutes into compliance with standards and regulations established in U.S. Code for the national Commercial Drivers License program. To ensure compliance, Chapter 343, Wis. Stats. must comply with regulations described in U.S. Code, 49 CFR 384. Modifications relate to: notifying other jurisdictions of traffic violations, enforcement of all major offenses and out-of-service orders including those which occur in other states, administrative suspensions for various violations, and record keeping requirements. Effective date of changes is January 1, 2011.

9/22 Per Tyler, 1st day of 7th month instead

**Department of Transportation
2009-11 Biennial Budget Request
STATUTORY MODIFICATIONS**

DIN NUMBER:

TOPIC: CDL Compliance Issues

DESCRIPTION OF CHANGE:

The "2007 CDL Summary Findings, Program Improvements and Noteworthy Practices for the State of Wisconsin" report released in October 2007 by the Federal Motor Carrier Safety Administration (FMCSA) documents areas where Wisconsin's commercial driver's license (CDL) program does not conform to the standards and regulations established in U.S. Code for the national Commercial Driver's License program. The 2007 report detailed deficiencies or areas of noncompliance that were cited as findings in the 2001, 2004 and 2007 Wisconsin CDL program reviews.

To ensure Wisconsin laws comply with federal regulations described in U.S. Code, 49 CFR 384 requires modifications to Chapter 343, Wis. Stats. The modifications relate to: notifying other jurisdictions of traffic violations, enforcement of all major offenses and out-of-service orders including those which occur in other states, administrative suspensions for various violations, and record keeping requirements.

Notification of Traffic Violations

Require Wisconsin to notify other licensing jurisdictions when their non-CDL holders are convicted in Wisconsin of any type of violation while operating a commercial motor vehicle (CMV) in violation of Federal Motor Carrier Safety Regulations.

Enforce All Major Offenses and Out-of-state Actions

Require Wisconsin to take appropriate action, including disqualification, for the following incidents:

- Add second-degree reckless homicide as a disqualifying major offense.
- Add negligent homicide by vehicle as a disqualifying major offense.
- Add administrative suspension imposed for operating a CMV with an unlawful alcohol concentration as a disqualifying offense.

Require Wisconsin to impose a sanction for railroad-highway grade crossing violations that occur in another state. Current statutes lack express authority to take action for this out-of-state conviction.

Require Wisconsin to take disqualification or withdrawal action on administrative per se notices received from another state, regardless of the form of notification.

Require Wisconsin to take disqualification action against a Wisconsin driver on an administrative per se action for .04 Blood Alcohol Concentration (BAC), .08 BAC, or .10 BAC convictions received from another state, regarding of the form of notification.

Require Wisconsin to take sanctioning action on failure-to-comply convictions received from other jurisdictions. Sanctions would be handled in the same manner as in-state failure-to-pay notices. The reciprocal actions are covered by the Non Resident Violators Compact, of which Wisconsin is not a member.

Violations of Out-of-service Orders

Require Wisconsin to impose a civil penalty of \$2,750 to \$25,000 for convictions of any employer who allows, requires, permits, or authorizes a CMV driver to violate an out-of-service order. Current statutes only impose a fine of a lesser amount.

Amend operator license penalties to adopt the penalties published on July 5, 2007 in the Federal Register 49 CFR Part 383, Vol. 72, No. 128 for drivers convicted of violating out-of-service orders. Impose a civil penalty as follows for the driver and repeal the current maximum penalty:

- Increase the minimum civil penalty for a driver who is convicted of violating an out-of-service order to \$2,500 from \$1,100 for a first conviction.
- Create a civil penalty of an additional \$5,000 for a second or subsequent conviction.

Require Wisconsin to take disqualification action of a violation of an out-of-service order conviction received from another state. Current statutes lack express authority to disqualify for this violation.

Require Wisconsin to take disqualification action for a conviction for driving while an out-of-service order is in effect is received from another state, regardless of the form of notification.

Record Keeping

Require Wisconsin to record all administrative per se actions received from another state onto the driver's record, allowing the conviction or withdrawal action to become part of the certified driver abstract.

Prohibit Wisconsin from deleting an administrative per se conviction and withdrawal if the driver is successful in obtaining a not guilty or dismissed court finding for the OWI conviction from the same arrest or incident. The practice of removing an administrative per se action after court dismissal or reduction of an alcohol or drug citation is considered "masking" under federal regulations.

Amend the requirement to purge all records pertaining to an administrative suspension upon court notice that the action was dismissed or the individual was found innocent. Allow the Department to purge the record of the administrative suspension of a CDL holder only upon receipt of a court order and clarify statutory authority in this issue. Federal regulations require states to define 'conviction' to include the decision of an authorized administrative tribunal, meaning the current state authority to purge certain convictions results in masking.

Require Wisconsin to record or post previously taken disqualifications in other licensing jurisdictions onto the driver record to ensure that the record contains all out-of-state convictions and corresponding completed sanctions, particularly for individuals who are moving their state of record to Wisconsin.

The effective date of these changes is January 1, 2011.

JUSTIFICATION:

Every three years FMCSA conducts an audit of Wisconsin's commercial driver's licensing program and reviews state statutes, administrative rules, and department policies and procedures to ensure compliance with the national CDL program. Each review documents areas of noncompliance, highlights practices or procedures that are noteworthy in the state's CDL issuance process, and acknowledges improvements from previous program reviews. Deficiencies or areas of noncompliance were presented at the conclusion of Wisconsin's 2001, 2004 and 2007 CDL program reviews.

On July 5, 2007, FMCSA published regulations (Federal Register 49 CFR Part 383, Vol. 72, No. 128) imposing new civil penalties against drivers convicted of violating out-of-service orders while transporting non-hazardous materials. These changes will become effective no later than September 4, 2010. This new requirement was not included in the 2007 CDL program review but will certainly become a new finding of non-compliance in the upcoming review in 2010 if Wisconsin statutes are not amended to adopt the changed driver penalty.

Following the 2007 CDL program review, Wisconsin prepared an action plan to resolve the areas of noncompliance. Published in November 2007, the plan describes the actions required to regain CDL program compliance -- the submission of requests for legislative changes to adopt federal laws, implementing various internal process changes, and making computer programming changes to the driver licensing system. In August 2008, FMCSA staff conducted a follow-up review of the state's

progress on the action plan. Shortcomings were again noted and must be resolved or significantly improved prior to the next full CDL compliance review in 2010.

Wisconsin must enact the various statutory changes requested above and implement those modifications into the driver license system. If the Department does not adopt the federal commercial driver's license regulations and modify computer systems and processes before the next full program review in 2010, Wisconsin will likely be found to be in "substantial noncompliance" since the state will then have been in noncompliance in some areas for six years. The sanctions for noncompliance will have a significant impact on highway safety, CMV drivers in Wisconsin, and on delivery of the highway improvement program.

Specifically, sanctions include: 1) prohibition from issuing, renewing, upgrading or transferring CDLs which allows commercial motor vehicle operating privileges; 2) loss of federal Motor Carrier Safety Assistance Program funds of approximately \$4.5 million annually for Wisconsin; and 3) loss of federal-aid highway funds up to 5% in the first year of noncompliance and 10% in the second and subsequent year of noncompliance, estimated at \$25.3 million in FY 11 and \$50.6 million per year thereafter in Wisconsin.

in 9/22

-0320/1

stays

RMNR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

DOA Budget

LPS: Please check autorefs.

the budget

DO NOT GEN

1

AN ACT ...; relating to; commercial motor vehicle operators and commercial

2

driver licenses and providing a penalty

Analysis by the Legislative Reference Bureau

TRANSPORTATION

DRIVERS AND MOTOR VEHICLES

Under current law, an "out-of-service violation" is defined to mean a violation for operating a commercial motor vehicle while the operator or vehicle is ordered out-of-service under state or federal law. A person who commits an out-of-service violation is subject to a criminal penalty, a fine of not less than \$1,100 nor more than \$2,750 or imprisonment for not more than one year in the county jail or both.

Under this bill, a person who commits an out-of-service violation is subject to a civil penalty rather than a criminal penalty. The person must forfeit \$2,500 for the first offense and \$5,000 for each subsequent offense within ten years. The bill provides that an out-of-service violation also occurs if a person operates a commercial motor vehicle in this state while the person or the vehicle is ordered out-of-service under the law of another jurisdiction (usually another state) and that an out-of-service violation occurring in another jurisdiction may be counted as a prior violation in determining the applicable penalty for an offense committed in this state. The bill also clarifies that an out-of-service violation may occur when either the operator or the vehicle is ordered out-of-service and that the out-of-service violation can occur when the operator of the commercial motor vehicle either holds a commercial driver license (CDL) or is required to hold a CDL to operate the commercial motor vehicle. The bill also modifies the disqualification periods for some out-of-service violations.

Under current law, no employer may knowingly allow or authorize an employee to operate a commercial motor vehicle during any period when the employee has had his or her CDL suspended, revoked, or canceled, is disqualified, is ordered out-of-service, or does not possess a valid CDL. The penalty for violating this prohibition is a fine of not less than \$2,500 nor more than \$10,000 or imprisonment for not more than 90 days or both.

This bill changes the amount of the fine imposed upon an employer that violates this prohibition to an amount consistent with federal law: a minimum of \$2,750 and a maximum of \$25,000.

Under current law, with limited exceptions, no person may operate a vehicle transporting hazardous materials requiring placarding or any quantity of a material listed as a select agent or toxin under federal law unless the person possesses an endorsement to his or her CDL authorizing the operation of such vehicles ("H" endorsement). DOT may not issue or renew a CDL "H" endorsement unless certain requirements are met, including that the applicant has passed a security screening by the federal Transportation Security Administration (TSA) in the Department of Homeland Security. An "H" endorsement is generally valid for four years. DOT is usually required to mail a notice of license renewal at least 30 days prior to the license expiration date, but for an "H" endorsement DOT is required to mail a notice at least 180 days prior to the "H" endorsement expiration date; the notice advises that the licensee must pass a security threat assessment screening by TSA as part of the renewal process and that the licensee must commence the threat assessment screening no later than 90 days before expiration of the "H" endorsement.

This bill requires DOT to mail the notice to licensees holding an "H" endorsement at least 60 days prior to expiration of the "H" endorsement, and the notice must advise them that they must commence the TSA threat assessment screening no later than 30 days before expiration of the "H" endorsement. These new time periods are consistent with changes in federal law.

Under current law, a person must be disqualified from operating a commercial motor vehicle for a one-year period upon a first conviction of certain specified offenses while operating a commercial motor vehicle and must be disqualified for life from operating a commercial motor vehicle if the person uses a commercial motor vehicle in the commission of a drug-related felony. A person is also disqualified for a conviction of these specified offenses committed on or after September 30, 2005, while operating any motor vehicle or for using any motor vehicle on or after September 30, 2005, in the commission of a drug-related felony.

This bill provides that a person is disqualified under these circumstances while operating or using a noncommercial motor vehicle on or after September 30, 2005, only if the person holds or has held a CDL, has ever operated a commercial motor vehicle on a highway, or has ever been convicted of a violation related to, or been disqualified from, operating a commercial motor vehicle.

Under current law, among the offenses for which a first conviction must result in a person's disqualification from operating a commercial motor vehicle is a conviction, on or after September 30, 2005, for causing a fatality through negligent or criminal operation of a commercial motor vehicle.

This bill provides for a one-year disqualification for a person's first conviction on or after September 30, 2005, for causing a fatality through negligent or criminal operation of any motor vehicle, not just a commercial motor vehicle, and provides for the same disqualification for such offenses committed prior to September 30, 2005.

Under current law, another offense for which a person's first conviction must result in a one-year disqualification is a refusal to take a chemical test to determine whether the person has a prohibited alcohol concentration or a restricted controlled substance in the person's blood if the refusal is subject to the law of this state or of a federally recognized American Indian tribe or of another jurisdiction.

This bill provides that a person is also disqualified for one year if the person takes such a chemical test and tests positive. However, the bill further provides that the one-year period of disqualification must be reduced by any period of suspension, revocation, or disqualification previously served for an alcohol or drug-related operating offense arising out of the same incident or occurrence giving rise to the disqualification.

Under current law, a person must be disqualified from operating a commercial motor vehicle for a period of 60 days upon the person's conviction of using a false name or knowingly making a false statement or concealing material information in an application for a CDL. Also under current law, DOT must cancel a license if DOT determines that the license was issued upon an application that contains a materially false statement or that the person has obtained the license by having another person appear to take an examination for obtaining the license.

This bill requires a person to be disqualified for 60 days if DOT cancels a person's CDL for either of these reasons.

Under current law, DOT must maintain a record of suspension, revocation, cancellation, and disqualification of an operator's license or operating privilege by DOT and must maintain an index of every person whose license or operating privilege has been suspended, revoked, or canceled, or who is disqualified, by DOT and note the reason for the action. Unless a licensee transfers residency to another state, the record of convictions for most disqualifying offenses, including offenses related to chemical testing refusals, must be maintained permanently. However, DOT must purge any record of an administrative suspension upon receipt of a report from the court hearing the action arising out of the same incident or occurrence that the action has been dismissed or the person has been found innocent.

This bill provides that DOT may purge a record of an administrative suspension for a person holding a CDL only upon receipt of a court order, and clarifies DOT's authority to purge records of administrative suspensions under these circumstances.

Under current law, if a person who holds a CDL issued by another jurisdiction is convicted of certain motor vehicle traffic violations, or if a person who holds a non-CDL operator's license issued by another jurisdiction is convicted of operating a commercial motor vehicle without a CDL, DOT must notify the driver licensing agency of the jurisdiction that issued the license of the conviction within 30 days of the conviction.

This bill expands this notification requirement to require notice if a non-CDL holder is convicted of any of these motor vehicle traffic violations while operating a commercial motor vehicle.

Under current law, a person is disqualified from operating a commercial motor vehicle for specified periods if the person is convicted of various types of railroad crossing violations while operating a commercial motor vehicle.

This bill specifies that such railroad crossing violations include violations occurring under the law of another jurisdiction.

Under the bill, DOT may not disqualify a person from operating a commercial motor vehicle as a result of a conviction if: 1) the conviction occurs in another jurisdiction; 2) the person was not licensed in or a resident of this state at the time of the conviction; 3) the jurisdiction in which the conviction occurred disqualified the person from operating a commercial motor vehicle as a result of the conviction; and 4) the period of disqualification in that other jurisdiction has expired.

Under the bill, if DOT receives notice from another jurisdiction of a failure-to-comply violation by a person issued a CDL by DOT arising from the person's failure to appear to contest a citation issued in that jurisdiction or failure to pay a judgment entered against the person in that jurisdiction, the person is disqualified from operating a commercial motor vehicle until DOT receives notice from the other jurisdiction terminating the failure-to-comply violation, except that the disqualification may not be less than 30 days nor more than 2 years.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 343.03 (7) (c) of the statutes is amended to read:

2 343.03 **(7)** (c) Within 10 days after a conviction of the holder of a commercial
3 driver license issued by another jurisdiction for violating any state law or local
4 ordinance of this state or any law of a federally recognized American Indian tribe or
5 band in this state in conformity with any state law relating to motor vehicle traffic
6 control, other than parking violations, or after a conviction of the holder of an
7 operator's license issued by another jurisdiction, other than a commercial driver
8 license, for any such violation while operating a commercial motor vehicle ~~without~~
9 ~~a commercial driver license~~, the department shall notify the driver licensing agency
10 of the jurisdiction that issued the license of the conviction.

1 **SECTION 2.** 343.16 (1) (b) 2. of the statutes is amended to read:

2 343.16 **(1)** (b) 2. The department, the applicable federal highway
3 administration agency, or its a representative of the applicable federal agency may
4 conduct random examinations, inspections, and audits of the 3rd-party tester
5 without any prior notice.

6 **SECTION 3.** 343.20 (2) (b) of the statutes is amended to read:

7 343.20 **(2)** (b) Notwithstanding par. (a), at least ~~180~~ 60 days prior to the
8 expiration of an “H” endorsement specified in s. 343.17 (3) (d) 1m., the department
9 of transportation shall mail a notice to the last-known address of the licensee that
10 the licensee is required to pass a security threat assessment screening by the federal
11 transportation security administration of the federal department of homeland
12 security as part of the application to renew the endorsement. The notice shall inform
13 the licensee that the licensee may commence the federal security threat assessment
14 screening at any time, but no later than ~~90~~ 30 days before expiration of the
15 endorsement.

16 **SECTION 4.** 343.23 (2) (b) of the statutes is amended to read:

17 343.23 **(2)** (b) The information specified in pars. (a) and (am) must be filed by
18 the department so that the complete operator’s record is available for the use of the
19 secretary in determining whether operating privileges of such person shall be
20 suspended, revoked, canceled, or withheld, or the person disqualified, in the interest
21 of public safety. The record of suspensions, revocations, and convictions that would
22 be counted under s. 343.307 (2) shall be maintained permanently, except that the
23 department shall purge the record of a first violation of s. 23.33 (4c) (a) 2., 30.681 (1)
24 (b) 1., 346.63 (1) (b), or 350.101 (1) (b) after 10 years, if the person who committed the
25 violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the

1 time of the violation, if the person does not have a commercial driver license, if the
2 violation was not committed by a person operating a commercial motor vehicle, and
3 if the person has no other suspension, revocation, or conviction that would be counted
4 under s. 343.307 during that 10-year period. The record of convictions for
5 disqualifying offenses under s. 343.315 (2) (h) shall be maintained for at least 10
6 years. The record of convictions for disqualifying offenses under s. 343.315 (2) (f) and
7 (j), and (L), and all records specified in par. (am), shall be maintained for at least 3
8 years. The record of convictions for disqualifying offenses under s. 343.315 (2) (a) to
9 (e) shall be maintained permanently, except that 5 years after a licensee transfers
10 residency to another state such record may be transferred to another state of
11 licensure of the licensee if that state accepts responsibility for maintaining a
12 permanent record of convictions for disqualifying offenses. Such reports and records
13 may be cumulative beyond the period for which a license is granted, but the secretary,
14 in exercising the power of suspension granted under s. 343.32 (2) may consider only
15 those reports and records entered during the 4-year period immediately preceding
16 the exercise of such power of suspension.

17 **SECTION 5.** 343.23 (2) (b) of the statutes, as affected by 2007 Wisconsin Act 20
18 and 2009 Wisconsin Act (this act), is repealed and recreated to read:

19 343.23 (2) (b) The information specified in pars. (a) and (am) must be filed by
20 the department so that the complete operator's record is available for the use of the
21 secretary in determining whether operating privileges of such person shall be
22 suspended, revoked, canceled, or withheld, or the person disqualified, in the interest
23 of public safety. The record of suspensions, revocations, and convictions that would
24 be counted under s. 343.307 (2) shall be maintained permanently, except that the
25 department shall purge the record of a first violation of s. 23.33 (4c) (a) 2., 30.681 (1)

1 (b) 1., 346.63 (1) (b), or 350.101 (1) (b) after 10 years, if the person who committed the
2 violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the
3 time of the violation, if the person does not have a commercial driver license, if the
4 violation was not committed by a person operating a commercial motor vehicle, and
5 if the person has no other suspension, revocation, or conviction that would be counted
6 under s. 343.307 during that 10-year period. The record of convictions for
7 disqualifying offenses under s. 343.315 (2) (h) shall be maintained for at least 10
8 years. The record of convictions for disqualifying offenses under s. 343.315 (2) (f), (j),
9 and (L), and all records specified in par. (am), shall be maintained for at least 3 years.
10 The record of convictions for disqualifying offenses under s. 343.315 (2) (a) to (e) shall
11 be maintained permanently, except that 5 years after a licensee transfers residency
12 to another state such record may be transferred to another state of licensure of the
13 licensee if that state accepts responsibility for maintaining a permanent record of
14 convictions for disqualifying offenses. Such reports and records may be cumulative
15 beyond the period for which a license is granted, but the secretary, in exercising the
16 power of suspension granted under s. 343.32 (2) may consider only those reports and
17 records entered during the 4-year period immediately preceding the exercise of such
18 power of suspension. The department shall maintain the digital images of
19 documents specified in s. 343.165 (2) (a) for at least 10 years.

20 **SECTION 6.** 343.23 (4) (a) of the statutes is amended to read:

21 343.23 (4) (a) Any Notwithstanding subs. (1) and (2) (b), any record of an
22 administrative suspension upon receipt of a report from the court hearing the action
23 arising out of the same incident or occurrence that the action has been dismissed or
24 the person has been found innocent of the charge arising out of that incident or

1 occurrence, except that the record of an administrative suspension for a person
2 holding a commercial driver license may be purged only upon receipt of a court order.

3 **SECTION 7.** 343.245 (4) (b) of the statutes is amended to read:

4 343.245 (4) (b) Any person who violates sub. (3) (b) shall be fined not less than
5 \$2,500 \$2,750 nor more than \$10,000 \$25,000 or imprisoned for not more than 90
6 days or both.

7 **SECTION 8.** 343.315 (1) of the statutes is renumbered 343.315 (1m).

8 **SECTION 9.** 343.315 (1g) of the statutes is created to read:

9 343.315 (1g) DEFINITION. In this section, “engaged in commercial motor
10 vehicle-related activities” means all of the following:

11 (a) Operating or using a commercial motor vehicle.

12 (b) Operating or using any motor vehicle on or after September 30, 2005, if the
13 person operating or using the vehicle has ever held a commercial driver license, has
14 ever operated a commercial motor vehicle on a highway, or has ever been convicted
15 of a violation related to, or been disqualified from, operating a commercial motor
16 vehicle.

17 **SECTION 10.** 343.315 (2) (a) (intro.) of the statutes is amended to read:

18 343.315 (2) (a) (intro.) Except as provided in ~~par.~~ pars. (b) and (bm), a person
19 shall be disqualified from operating a commercial motor vehicle for a one-year period
20 upon a first conviction of any of the following offenses, ~~committed on or after July 1,~~
21 ~~1987, while driving or operating a commercial motor vehicle or committed on or after~~
22 ~~September 30, 2005, while driving or operating any motor vehicle~~ engaged in
23 commercial motor-vehicle related activities:

24 **SECTION 11.** 343.315 (2) (a) 5. of the statutes is amended to read:

1 343.315 (2) (a) 5. Section 343.305 (7) or (9) or a local ordinance in conformity
2 therewith or a law of a federally recognized American Indian tribe or band in this
3 state in conformity with s. 343.305 (7) or (9) or the law of another jurisdiction
4 prohibiting refusal of a person driving or operating a motor vehicle to submit to
5 chemical testing to determine the person's alcohol concentration or intoxication or
6 the amount of a restricted controlled substance in the person's blood, or prohibiting
7 positive results from such chemical testing, as those or substantially similar terms
8 are used in that jurisdiction's laws.

9 **SECTION 12.** 343.315 (2) (a) 8. of the statutes is amended to read:

10 343.315 (2) (a) 8. Causing a fatality through negligent or criminal operation
11 of a commercial motor vehicle.

12 **SECTION 13.** 343.315 (2) (am) of the statutes is created to read:

13 343.315 (2) (am) Except as provided in par. (b), a person shall be disqualified
14 from operating a commercial motor vehicle for a one-year period upon a first
15 conviction of causing a fatality through negligent or criminal operation of a motor
16 vehicle, committed on or after July 1, 1987, and before September 30, 2005, while
17 driving or operating any motor vehicle.

18 **SECTION 14.** 343.315 (2) (b) of the statutes is amended to read:

19 343.315 (2) (b) If any of the violations listed in par. (a) or (am) occurred in the
20 course of transporting hazardous materials requiring placarding or any quantity of
21 a material listed as a select agent or toxin under 42 CFR 73 on or after July 1, 1987,
22 the person shall be disqualified from operating a commercial motor vehicle for a
23 3-year period.

24 **SECTION 15.** 343.315 (2) (bm) of the statutes is created to read:

1 343.315 (2) (bm) The period of disqualification under par. (a) for a
2 disqualification imposed under par. (a) 5. shall be reduced by any period of
3 suspension, revocation, or disqualification under this chapter previously served for
4 an offense if all of the following apply:

5 1. The offense arises out of the same incident or occurrence giving rise to the
6 disqualification.

7 2. The offense relates to a vehicle operator's alcohol concentration or
8 intoxication or the amount of a restricted controlled substance in the operator's
9 blood.

10 **SECTION 16.** 343.315 (2) (c) of the statutes is amended to read:

11 343.315 (2) (c) A person shall be disqualified for life from operating a
12 commercial motor vehicle if convicted of 2 or more violations of any of the offenses
13 listed in par. (a) or (am), or any combination of those offenses, arising from 2 or more
14 separate incidents. The department shall consider only offenses committed on or
15 after July 1, 1987, in applying this paragraph.

16 **SECTION 17.** 343.315 (2) (e) of the statutes is amended to read:

17 343.315 (2) (e) A person is disqualified for life from operating a commercial
18 motor vehicle if ~~the person uses a commercial motor vehicle on or after July 1, 1987,~~
19 ~~or uses any motor vehicle on or after September 30, 2005,~~ in the commission of a
20 felony involving the manufacture, distribution, delivery, or dispensing of a controlled
21 substance or controlled substance analog, or possession with intent to manufacture,
22 distribute, deliver, or dispense a controlled substance or controlled substance analog,
23 the person is engaged in commercial motor vehicle-related activities. No person who
24 is disqualified under this paragraph is eligible for reinstatement under par. (d).

25 **SECTION 18.** 343.315 (2) (f) (intro.) of the statutes is amended to read:

1 343.315 (2) (f) (intro.) A person is disqualified for a period of 60 days from
2 operating a commercial motor vehicle if convicted of 2 serious traffic violations, and
3 120 days if convicted of 3 serious traffic violations, arising from separate occurrences
4 committed within a 3-year period while driving or operating a commercial motor
5 vehicle or while driving or operating any motor vehicle if the person holds a
6 commercial driver license. The 120-day period of disqualification under this
7 paragraph shall be in addition to any other period of disqualification imposed under
8 this paragraph. In this paragraph, "serious traffic violations" means any of the
9 following offenses committed while operating a commercial motor vehicle, or any of
10 the following offenses committed while operating any motor vehicle if the offense
11 results in the revocation, cancellation, or suspension of the person's operator's
12 license or operating privilege engaged in commercial motor vehicle-related
13 activities:

14 **SECTION 19.** 343.315 (2) (f) 2. of the statutes is amended to read:

15 343.315 (2) (f) 2. Violating any state or local law of this state or any law of a
16 federally recognized American Indian tribe or band in this state in conformity with
17 any state law or any law of another jurisdiction relating to motor vehicle traffic
18 control, arising in connection with a fatal accident, other than parking, vehicle
19 weight or vehicle defect violations, or violations described in par. (a) 8. or (am).

20 **SECTION 20.** 343.315 (2) (fm) of the statutes is amended to read:

21 343.315 (2) (fm) A person is disqualified for a period of 60 days from operating
22 a commercial motor vehicle if the person is convicted of violating s. 343.14 (5) or
23 345.17, if and the violation of s. 343.14 (5) or 345.17 relates to an application for a
24 commercial driver license or if the person's commercial driver license is cancelled by
25 the secretary under s. 343.25 (1) or (5).

1 **SECTION 21.** 343.315 (2) (h) of the statutes is amended to read:

2 343.315 (2) (h) Except as provided in par. (i), a person is shall be disqualified
3 for a period of 90 days from operating a commercial motor vehicle if convicted of an
4 out-of-service violation, or ~~one-year~~ 2 years if convicted of 2 out-of-service
5 violations, or 3 years if convicted of 3 or more out-of-service violations, arising from
6 separate occurrences committed within a 10-year period while ~~driving or~~ operating
7 a commercial motor vehicle. A disqualification under this paragraph shall be in
8 addition to any penalty imposed under s. 343.44. In this paragraph, "out-of-service
9 violation" means violating s. 343.44 (1) (c) or a law of another jurisdiction for an
10 offense therein which, if committed in this state, would have been a violation of s.
11 343.44 (1) (c), by operating a commercial motor vehicle while the operator or vehicle
12 is ordered out-of-service under the law of this state or another jurisdiction or under
13 federal law, if the operator holds a commercial driver license or is required to hold
14 a commercial driver license to operate the commercial motor vehicle.

15 **SECTION 22.** 343.315 (2) (i) of the statutes is amended to read:

16 343.315 (2) (i) If the violation listed in par. (h) occurred in the course of
17 transporting hazardous materials requiring placarding or any quantity of a material
18 listed as a select agent or toxin under 42 CFR 73, or while operating a vehicle
19 designed to carry, or actually carrying, 16 or more passengers, including the driver,
20 the person shall be disqualified from operating a commercial motor vehicle for 180
21 days upon a first conviction, or for ~~a 3-year period~~ 3 years for a 2nd or subsequent
22 conviction, arising from separate occurrences committed within a 10-year period
23 while ~~driving or~~ operating a commercial motor vehicle. A disqualification under this
24 paragraph shall be in addition to any penalty imposed under s. 343.44.

25 **SECTION 23.** 343.315 (2) (j) (intro.) of the statutes is amended to read:

1 343.315 (2) (j) (intro.) A person is disqualified for a period of 60 days from
2 operating a commercial motor vehicle if convicted of a railroad crossing violation, or
3 120 days if convicted of 2 railroad crossing violations or one year if convicted of 3 or
4 more railroad crossing violations, arising from separate occurrences committed
5 within a 3-year period while driving or operating a commercial motor vehicle. In this
6 paragraph, "railroad crossing violation" means a violation of a federal, state, or local
7 law, rule, or regulation, or the law of another jurisdiction, relating to any of the
8 following offenses at a railroad crossing:

9 **SECTION 24.** 343.315 (2) (L) of the statutes is created to read:

10 343.315 (2) (L) If the department receives notice from another jurisdiction of
11 a failure to comply violation by a person issued a commercial driver license by the
12 the department arising from the person's failure to appear to contest a citation issued
13 in that jurisdiction or failure to pay a judgment entered against the person in that
14 jurisdiction, the person is disqualified from operating a commercial motor vehicle
15 until the department receives notice from the other jurisdiction terminating the
16 failure to comply violation except that the disqualification may not be less than 30
17 days nor more than 2 years.

18 **SECTION 25.** 343.315 (3) (b) of the statutes is amended to read:

19 343.315 (3) (b) If a person's license or operating privilege is not otherwise
20 revoked or suspended as the result of an offense committed after March 31, 1992,
21 which results in disqualification under sub. (2) (a) to (f), (h), ~~(i)~~, ~~or to (j)~~, or (L), the
22 department shall immediately disqualify the person from operating a commercial
23 motor vehicle for the period required under sub. (2) (a) to (f), (h), ~~(i)~~, ~~or to (j)~~, or (L).
24 Upon proper application by the person and payment of the fees specified in s. 343.21
25 (1) (L) and (n), the department may issue a separate license authorizing only the

1 operation of vehicles other than commercial motor vehicles. Upon expiration of the
2 period of disqualification, the person may apply for authorization to operate
3 commercial motor vehicles under s. 343.26.

4 **SECTION 26.** 343.315 (3) (bm) of the statutes is created to read:

5 343.315 (3) (bm) Notwithstanding pars. (a) and (b) and the time periods for
6 disqualification specified in sub. (2), if a person is convicted in another jurisdiction
7 of a disqualifying offense specified in sub. (2) while the person is not licensed in or
8 a resident of this state, that other jurisdiction disqualified the person from operating
9 a commercial motor vehicle as a result of the conviction, and the period of
10 disqualification in that other jurisdiction has expired, the department may not
11 disqualify the person from operating a commercial motor vehicle as a result of the
12 conviction.

13 **SECTION 27.** 343.44 (1) (c) of the statutes is amended to read:

14 343.44 (1) (c) *Operating while ordered out-of-service.* No person may operate
15 a commercial motor vehicle while the person or the commercial motor vehicle is
16 ordered out-of-service under the law of this state or another jurisdiction or under
17 federal law.

18 **SECTION 28.** 343.44 (2) (bm) of the statutes is amended to read:

19 343.44 (2) (bm) Any person who violates sub. (1) (c) shall be fined ~~not less than~~
20 ~~\$1,100 nor more than \$2,750 or imprisoned for not more than one year in the county~~
21 ~~jail or both. In imposing a sentence under this paragraph, the court shall review the~~
22 ~~record and consider the factors specified in par. (b) 1. to 5.~~ forfeit \$2,500 for the first
23 offense and \$5,000 for the 2nd or subsequent offense within 10 years.

24 **SECTION 29.** 343.44 (4r) of the statutes is amended to read:

1 343.44 (4r) VIOLATION OF OUT-OF-SERVICE ORDER. In addition to other penalties
2 for violation of this section, if a person has violated this section after ~~he or she~~ the
3 person or the commercial motor vehicle operated by the person was ordered
4 out-of-service under the law of this state or another jurisdiction or under federal
5 law, the violation shall result in disqualification under s. 343.315 (2) (h) or (i).

6 **SECTION 9350. Initial applicability; Transportation.**

7 (1) COMMERCIAL DRIVER LICENSES AND COMMERCIAL MOTOR VEHICLES.

8 (a) The treatment of section 343.315 (2) (a) 8. of the statutes first applies to
9 violations committed on September 30, 2005.

10 (b) The treatment of sections 343.315 (2) (h) and (i) and 343.44 (1) (c), (2) (bm),
11 and (4r) of the statutes first applies to violations committed on the effective date of
12 this paragraph, but does not preclude the counting of other violations as prior
13 violations for purposes of administrative action by the department of transportation
14 or sentencing by a court.

15 **SECTION 9450. Effective dates; Transportation.**

16 (1) COMMERCIAL DRIVER LICENSES AND COMMERCIAL MOTOR VEHICLES.

17 (a) The treatment of sections 343.03 (7) (c), 343.16 (1) (b) 2., 343.20 (2) (b),
18 343.23 (4) (a), 343.245 (4) (b), 343.315 (1), (1g), (2) (a) (intro.), 5., and 8., (am), (b),
19 (bm), (c), (e), (f) (intro.) and 2., (fm), (h), (i), (j) (intro.), and (L), (3) (b) and (bm), and
20 343.44 (1) (c), (2) (bm), and (4r) of the statutes, the amendment of section 343.23 (2)
21 (b) of the statutes, and SECTION 9350 (1) of this act take effect on the first day of the
22 7th month beginning after publication.

23 (b) The repeal and recreation of section 343.23 (2) (b) of the statutes takes effect
24 on the first day of the 7th month beginning after publication, or on the date on which

1 the creation of section 343.165 of the statutes by 2007 Wisconsin Act 20 takes effect,
2 whichever is later.

3 (END)



DOA:.....Byrnes, BB0014 - CDL compliance issues

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** the budget.

Analysis by the Legislative Reference Bureau

TRANSPORTATION

DRIVERS AND MOTOR VEHICLES

Under current law, an “out-of-service violation” is defined to mean a violation for operating a commercial motor vehicle while the operator or vehicle is ordered out-of-service under state or federal law. A person who commits an out-of-service violation is subject to a criminal penalty, a fine of not less than \$1,100 nor more than \$2,750 or imprisonment for not more than one year in the county jail or both.

Under this bill, a person who commits an out-of-service violation is subject to a civil penalty rather than a criminal penalty. The person must forfeit \$2,500 for the first offense and \$5,000 for each subsequent offense within ten years. The bill provides that an out-of-service violation also occurs if a person operates a commercial motor vehicle in this state while the person or the vehicle is ordered out-of-service under the law of another jurisdiction (usually another state) and that an out-of-service violation occurring in another jurisdiction may be counted as a prior violation in determining the applicable penalty for an offense committed in this state. The bill also clarifies that an out-of-service violation may occur when either the operator or the vehicle is ordered out-of-service and that the out-of-service violation can occur when the operator of the commercial motor vehicle either holds a commercial driver license (CDL) or is required to hold a CDL to operate the commercial motor vehicle. The bill also modifies the disqualification periods for some out-of-service violations.

Under current law, no employer may knowingly allow or authorize an employee to operate a commercial motor vehicle during any period when the employee has had his or her CDL suspended, revoked, or canceled, is disqualified, is ordered out-of-service, or does not possess a valid CDL. The penalty for violating this prohibition is a fine of not less than \$2,500 nor more than \$10,000 or imprisonment for not more than 90 days or both.

This bill changes the amount of the fine imposed upon an employer that violates this prohibition to an amount consistent with federal law: a minimum of \$2,750 and a maximum of \$25,000.

Under current law, with limited exceptions, no person may operate a vehicle transporting hazardous materials requiring placarding or any quantity of a material listed as a select agent or toxin under federal law unless the person possesses an endorsement to his or her CDL authorizing the operation of such vehicles ("H" endorsement). DOT may not issue or renew a CDL "H" endorsement unless certain requirements are met, including that the applicant has passed a security screening by the federal Transportation Security Administration (TSA) in the Department of Homeland Security. An "H" endorsement is generally valid for four years. DOT is usually required to mail a notice of license renewal at least 30 days prior to the license expiration date, but for an "H" endorsement DOT is required to mail a notice at least 180 days prior to the "H" endorsement expiration date; the notice advises that the licensee must pass a security threat assessment screening by TSA as part of the renewal process and that the licensee must commence the threat assessment screening no later than 90 days before expiration of the "H" endorsement.

This bill requires DOT to mail the notice to licensees holding an "H" endorsement at least 60 days prior to expiration of the "H" endorsement, and the notice must advise them that they must commence the TSA threat assessment screening no later than 30 days before expiration of the "H" endorsement. These new time periods are consistent with changes in federal law.

Under current law, a person must be disqualified from operating a commercial motor vehicle for a one-year period upon a first conviction of certain specified offenses while operating a commercial motor vehicle and must be disqualified for life from operating a commercial motor vehicle if the person uses a commercial motor vehicle in the commission of a drug-related felony. A person is also disqualified for a conviction of these specified offenses committed on or after September 30, 2005, while operating any motor vehicle or for using any motor vehicle on or after September 30, 2005, in the commission of a drug-related felony.

This bill provides that a person is disqualified under these circumstances while operating or using a noncommercial motor vehicle on or after September 30, 2005, only if the person holds or has held a CDL, has ever operated a commercial motor vehicle on a highway, or has ever been convicted of a violation related to, or been disqualified from, operating a commercial motor vehicle.

Under current law, among the offenses for which a first conviction must result in a person's disqualification from operating a commercial motor vehicle is a conviction, on or after September 30, 2005, for causing a fatality through negligent or criminal operation of a commercial motor vehicle.

This bill provides for a one-year disqualification for a person's first conviction on or after September 30, 2005, for causing a fatality through negligent or criminal operation of any motor vehicle, not just a commercial motor vehicle, and provides for the same disqualification for such offenses committed prior to September 30, 2005.

Under current law, another offense for which a person's first conviction must result in a one-year disqualification is a refusal to take a chemical test to determine whether the person has a prohibited alcohol concentration or a restricted controlled substance in the person's blood if the refusal is subject to the law of this state or of a federally recognized American Indian tribe or of another jurisdiction.

This bill provides that a person is also disqualified for one year if the person takes such a chemical test and tests positive. However, the bill further provides that the one-year period of disqualification must be reduced by any period of suspension, revocation, or disqualification previously served for an alcohol or drug-related operating offense arising out of the same incident or occurrence giving rise to the disqualification.

Under current law, a person must be disqualified from operating a commercial motor vehicle for a period of 60 days upon the person's conviction of using a false name or knowingly making a false statement or concealing material information in an application for a CDL. Also under current law, DOT must cancel a license if DOT determines that the license was issued upon an application that contains a materially false statement or that the person has obtained the license by having another person appear to take an examination for obtaining the license.

This bill requires a person to be disqualified for 60 days if DOT cancels a person's CDL for either of these reasons.

Under current law, DOT must maintain a record of suspension, revocation, cancellation, and disqualification of an operator's license or operating privilege by DOT and must maintain an index of every person whose license or operating privilege has been suspended, revoked, or canceled, or who is disqualified, by DOT and note the reason for the action. Unless a licensee transfers residency to another state, the record of convictions for most disqualifying offenses, including offenses related to chemical testing refusals, must be maintained permanently. However, DOT must purge any record of an administrative suspension upon receipt of a report from the court hearing the action arising out of the same incident or occurrence that the action has been dismissed or the person has been found innocent.

This bill provides that DOT may purge a record of an administrative suspension for a person holding a CDL only upon receipt of a court order, and clarifies DOT's authority to purge records of administrative suspensions under these circumstances.

Under current law, if a person who holds a CDL issued by another jurisdiction is convicted of certain motor vehicle traffic violations, or if a person who holds a non-CDL operator's license issued by another jurisdiction is convicted of operating a commercial motor vehicle without a CDL, DOT must notify the driver licensing agency of the jurisdiction that issued the license of the conviction within 30 days of the conviction.

This bill expands this notification requirement to require notice if a non-CDL holder is convicted of any of these motor vehicle traffic violations while operating a commercial motor vehicle.

Under current law, a person is disqualified from operating a commercial motor vehicle for specified periods if the person is convicted of various types of railroad crossing violations while operating a commercial motor vehicle.

This bill specifies that such railroad crossing violations include violations occurring under the law of another jurisdiction.

Under the bill, DOT may not disqualify a person from operating a commercial motor vehicle as a result of a conviction if: 1) the conviction occurs in another jurisdiction; 2) the person was not licensed in or a resident of this state at the time of the conviction; 3) the jurisdiction in which the conviction occurred disqualified the person from operating a commercial motor vehicle as a result of the conviction; and 4) the period of disqualification in that other jurisdiction has expired.

Under the bill, if DOT receives notice from another jurisdiction of a failure-to-comply violation by a person issued a CDL by DOT arising from the person's failure to appear to contest a citation issued in that jurisdiction or failure to pay a judgment entered against the person in that jurisdiction, the person is disqualified from operating a commercial motor vehicle until DOT receives notice from the other jurisdiction terminating the failure-to-comply violation, except that the disqualification may not be less than 30 days nor more than 2 years.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 343.03 (7) (c) of the statutes is amended to read:
2 343.03 (7) (c) Within 10 days after a conviction of the holder of a commercial
3 driver license issued by another jurisdiction for violating any state law or local
4 ordinance of this state or any law of a federally recognized American Indian tribe or
5 band in this state in conformity with any state law relating to motor vehicle traffic
6 control, other than parking violations, or after a conviction of the holder of an
7 operator's license issued by another jurisdiction, other than a commercial driver
8 license, for any such violation while operating a commercial motor vehicle ~~without~~
9 ~~a commercial driver license~~, the department shall notify the driver licensing agency
10 of the jurisdiction that issued the license of the conviction.

1 **SECTION 2.** 343.16 (1) (b) 2. of the statutes is amended to read:

2 343.16 (1) (b) 2. The department, the applicable federal highway
3 administration agency, or its a representative of the applicable federal agency may
4 conduct random examinations, inspections, and audits of the 3rd-party tester
5 without any prior notice.

6 **SECTION 3.** 343.20 (2) (b) of the statutes is amended to read:

7 343.20 (2) (b) Notwithstanding par. (a), at least ~~180~~ 60 days prior to the
8 expiration of an "H" endorsement specified in s. 343.17 (3) (d) 1m., the department
9 of transportation shall mail a notice to the last-known address of the licensee that
10 the licensee is required to pass a security threat assessment screening by the federal
11 transportation security administration of the federal department of homeland
12 security as part of the application to renew the endorsement. The notice shall inform
13 the licensee that the licensee may commence the federal security threat assessment
14 screening at any time, but no later than ~~90~~ 30 days before expiration of the
15 endorsement.

16 **SECTION 4.** 343.23 (2) (b) of the statutes is amended to read:

17 343.23 (2) (b) The information specified in pars. (a) and (am) must be filed by
18 the department so that the complete operator's record is available for the use of the
19 secretary in determining whether operating privileges of such person shall be
20 suspended, revoked, canceled, or withheld, or the person disqualified, in the interest
21 of public safety. The record of suspensions, revocations, and convictions that would
22 be counted under s. 343.307 (2) shall be maintained permanently, except that the
23 department shall purge the record of a first violation of s. 23.33 (4c) (a) 2., 30.681 (1)
24 (b) 1., 346.63 (1) (b), or 350.101 (1) (b) after 10 years, if the person who committed the
25 violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the

1 time of the violation, if the person does not have a commercial driver license, if the
2 violation was not committed by a person operating a commercial motor vehicle, and
3 if the person has no other suspension, revocation, or conviction that would be counted
4 under s. 343.307 during that 10-year period. The record of convictions for
5 disqualifying offenses under s. 343.315 (2) (h) shall be maintained for at least 10
6 years. The record of convictions for disqualifying offenses under s. 343.315 (2) (f) and,
7 (j), and (L), and all records specified in par. (am), shall be maintained for at least 3
8 years. The record of convictions for disqualifying offenses under s. 343.315 (2) (a) to
9 (e) shall be maintained permanently, except that 5 years after a licensee transfers
10 residency to another state such record may be transferred to another state of
11 licensure of the licensee if that state accepts responsibility for maintaining a
12 permanent record of convictions for disqualifying offenses. Such reports and records
13 may be cumulative beyond the period for which a license is granted, but the secretary,
14 in exercising the power of suspension granted under s. 343.32 (2) may consider only
15 those reports and records entered during the 4-year period immediately preceding
16 the exercise of such power of suspension.

17 **SECTION 5.** 343.23 (2) (b) of the statutes, as affected by 2007 Wisconsin Act 20
18 and 2009 Wisconsin Act ... (this act), is repealed and recreated to read:

19 343.23 (2) (b) The information specified in pars. (a) and (am) must be filed by
20 the department so that the complete operator's record is available for the use of the
21 secretary in determining whether operating privileges of such person shall be
22 suspended, revoked, canceled, or withheld, or the person disqualified, in the interest
23 of public safety. The record of suspensions, revocations, and convictions that would
24 be counted under s. 343.307 (2) shall be maintained permanently, except that the
25 department shall purge the record of a first violation of s. 23.33 (4c) (a) 2., 30.681 (1)

1 (b) 1., 346.63 (1) (b), or 350.101 (1) (b) after 10 years, if the person who committed the
2 violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the
3 time of the violation, if the person does not have a commercial driver license, if the
4 violation was not committed by a person operating a commercial motor vehicle, and
5 if the person has no other suspension, revocation, or conviction that would be counted
6 under s. 343.307 during that 10-year period. The record of convictions for
7 disqualifying offenses under s. 343.315 (2) (h) shall be maintained for at least 10
8 years. The record of convictions for disqualifying offenses under s. 343.315 (2) (f), (j),
9 and (L), and all records specified in par. (am), shall be maintained for at least 3 years.
10 The record of convictions for disqualifying offenses under s. 343.315 (2) (a) to (e) shall
11 be maintained permanently, except that 5 years after a licensee transfers residency
12 to another state such record may be transferred to another state of licensure of the
13 licensee if that state accepts responsibility for maintaining a permanent record of
14 convictions for disqualifying offenses. Such reports and records may be cumulative
15 beyond the period for which a license is granted, but the secretary, in exercising the
16 power of suspension granted under s. 343.32 (2) may consider only those reports and
17 records entered during the 4-year period immediately preceding the exercise of such
18 power of suspension. The department shall maintain the digital images of
19 documents specified in s. 343.165 (2) (a) for at least 10 years.

20 **SECTION 6.** 343.23 (4) (a) of the statutes is amended to read:

21 343.23 (4) (a) Any Notwithstanding subs. (1) and (2) (b), any record of an
22 administrative suspension upon receipt of a report from the court hearing the action
23 arising out of the same incident or occurrence that the action has been dismissed or
24 the person has been found innocent of the charge arising out of that incident or

1 occurrence, except that the record of an administrative suspension for a person
2 holding a commercial driver license may be purged only upon receipt of a court order.

3 **SECTION 7.** 343.245 (4) (b) of the statutes is amended to read:

4 343.245 (4) (b) Any person who violates sub. (3) (b) shall be fined not less than
5 ~~\$2,500~~ \$2,750 nor more than ~~\$10,000~~ \$25,000 or imprisoned for not more than 90
6 days or both.

7 **SECTION 8.** 343.315 (1) of the statutes is renumbered 343.315 (1m).

8 **SECTION 9.** 343.315 (1g) of the statutes is created to read:

9 343.315 (1g) DEFINITION. In this section, “engaged in commercial motor
10 vehicle-related activities” means all of the following:

11 (a) Operating or using a commercial motor vehicle.

12 (b) Operating or using any motor vehicle on or after September 30, 2005, if the
13 person operating or using the vehicle has ever held a commercial driver license, has
14 ever operated a commercial motor vehicle on a highway, or has ever been convicted
15 of a violation related to, or been disqualified from, operating a commercial motor
16 vehicle.

17 **SECTION 10.** 343.315 (2) (a) (intro.) of the statutes is amended to read:

18 343.315 (2) (a) (intro.) Except as provided in ~~par. (b)~~ par. (b) and (bm), a person
19 shall be disqualified from operating a commercial motor vehicle for a one-year period
20 upon a first conviction of any of the following offenses, ~~committed on or after July 1,~~
21 ~~1987, while driving or operating a commercial motor vehicle or committed on or after~~
22 ~~September 30, 2005, while driving or operating any motor vehicle~~ engaged in
23 commercial motor-vehicle related activities:

24 **SECTION 11.** 343.315 (2) (a) 5. of the statutes is amended to read:

1 343.315 (2) (a) 5. Section 343.305 (7) or (9) or a local ordinance in conformity
2 therewith or a law of a federally recognized American Indian tribe or band in this
3 state in conformity with s. 343.305 (7) or (9) or the law of another jurisdiction
4 prohibiting refusal of a person driving or operating a motor vehicle to submit to
5 chemical testing to determine the person's alcohol concentration or intoxication or
6 the amount of a restricted controlled substance in the person's blood, or prohibiting
7 positive results from such chemical testing, as those or substantially similar terms
8 are used in that jurisdiction's laws.

9 **SECTION 12.** 343.315 (2) (a) 8. of the statutes is amended to read:

10 343.315 (2) (a) 8. Causing a fatality through negligent or criminal operation
11 of a ~~commercial~~ motor vehicle.

12 **SECTION 13.** 343.315 (2) (am) of the statutes is created to read:

13 343.315 (2) (am) Except as provided in par. (b), a person shall be disqualified
14 from operating a commercial motor vehicle for a one-year period upon a first
15 conviction of causing a fatality through negligent or criminal operation of a motor
16 vehicle, committed on or after July 1, 1987, and before September 30, 2005, while
17 driving or operating any motor vehicle.

18 **SECTION 14.** 343.315 (2) (b) of the statutes is amended to read:

19 343.315 (2) (b) If any of the violations listed in par. (a) or (am) occurred in the
20 course of transporting hazardous materials requiring placarding or any quantity of
21 a material listed as a select agent or toxin under 42 CFR 73 on or after July 1, 1987,
22 the person shall be disqualified from operating a commercial motor vehicle for a
23 3-year period.

24 **SECTION 15.** 343.315 (2) (bm) of the statutes is created to read:

1 343.315 (2) (bm) The period of disqualification under par. (a) for a
2 disqualification imposed under par. (a) 5. shall be reduced by any period of
3 suspension, revocation, or disqualification under this chapter previously served for
4 an offense if all of the following apply:

5 1. The offense arises out of the same incident or occurrence giving rise to the
6 disqualification.

7 2. The offense relates to a vehicle operator's alcohol concentration or
8 intoxication or the amount of a restricted controlled substance in the operator's
9 blood.

10 **SECTION 16.** 343.315 (2) (c) of the statutes is amended to read:

11 343.315 (2) (c) A person shall be disqualified for life from operating a
12 commercial motor vehicle if convicted of 2 or more violations of any of the offenses
13 listed in par. (a) or (am), or any combination of those offenses, arising from 2 or more
14 separate incidents. The department shall consider only offenses committed on or
15 after July 1, 1987, in applying this paragraph.

16 **SECTION 17.** 343.315 (2) (e) of the statutes is amended to read:

17 343.315 (2) (e) A person is disqualified for life from operating a commercial
18 motor vehicle if ~~the person uses a commercial motor vehicle on or after July 1, 1987,~~
19 ~~or uses any motor vehicle on or after September 30, 2005,~~ in the commission of a
20 felony involving the manufacture, distribution, delivery, or dispensing of a controlled
21 substance or controlled substance analog, or possession with intent to manufacture,
22 distribute, deliver, or dispense a controlled substance or controlled substance analog,
23 the person is engaged in commercial motor vehicle-related activities. No person who
24 is disqualified under this paragraph is eligible for reinstatement under par. (d).

25 **SECTION 18.** 343.315 (2) (f) (intro.) of the statutes is amended to read:

1 343.315 (2) (f) (intro.) A person is disqualified for a period of 60 days from
2 operating a commercial motor vehicle if convicted of 2 serious traffic violations, and
3 120 days if convicted of 3 serious traffic violations, arising from separate occurrences
4 committed within a 3-year period while driving or operating a commercial motor
5 vehicle or while driving or operating any motor vehicle if the person holds a
6 commercial driver license. The 120-day period of disqualification under this
7 paragraph shall be in addition to any other period of disqualification imposed under
8 this paragraph. In this paragraph, "serious traffic violations" means any of the
9 following offenses committed while operating a commercial motor vehicle, or any of
10 the following offenses committed while operating any motor vehicle if the offense
11 results in the revocation, cancellation, or suspension of the person's operator's
12 license or operating privilege engaged in commercial motor vehicle-related
13 activities:

14 **SECTION 19.** 343.315 (2) (f) 2. of the statutes is amended to read:

15 343.315 (2) (f) 2. Violating any state or local law of this state or any law of a
16 federally recognized American Indian tribe or band in this state in conformity with
17 any state law or any law of another jurisdiction relating to motor vehicle traffic
18 control, arising in connection with a fatal accident, other than parking, vehicle
19 weight or vehicle defect violations, or violations described in par. (a) 8. or (am).

20 **SECTION 20.** 343.315 (2) (fm) of the statutes is amended to read:

21 343.315 (2) (fm) A person is disqualified for a period of 60 days from operating
22 a commercial motor vehicle if the person is convicted of violating s. 343.14 (5) or
23 345.17, if and the violation of s. 343.14 (5) or 345.17 relates to an application for a
24 commercial driver license or if the person's commercial driver license is cancelled by
25 the secretary under s. 343.25 (1) or (5).

1 **SECTION 21.** 343.315 (2) (h) of the statutes is amended to read:

2 343.315 (2) (h) Except as provided in par. (i), a person is shall be disqualified
3 for a period of 90 days from operating a commercial motor vehicle if convicted of an
4 out-of-service violation, or ~~one year~~ 2 years if convicted of 2 out-of-service
5 violations, or 3 years if convicted of 3 or more out-of-service violations, arising from
6 separate occurrences committed within a 10-year period while ~~driving or~~ operating
7 a commercial motor vehicle. A disqualification under this paragraph shall be in
8 addition to any penalty imposed under s. 343.44. In this paragraph, "out-of-service
9 violation" means violating s. 343.44 (1) (c) or a law of another jurisdiction for an
10 offense therein which, if committed in this state, would have been a violation of s.
11 343.44 (1) (c), by operating a commercial motor vehicle while the operator or vehicle
12 is ordered out-of-service under the law of this state or another jurisdiction or under
13 federal law, if the operator holds a commercial driver license or is required to hold
14 a commercial driver license to operate the commercial motor vehicle.

15 **SECTION 22.** 343.315 (2) (i) of the statutes is amended to read:

16 343.315 (2) (i) If the violation listed in par. (h) occurred in the course of
17 transporting hazardous materials requiring placarding or any quantity of a material
18 listed as a select agent or toxin under 42 CFR 73, or while operating a vehicle
19 designed to carry, or actually carrying, 16 or more passengers, including the driver,
20 the person shall be disqualified from operating a commercial motor vehicle for 180
21 days upon a first conviction, or for ~~a 3-year period~~ 3 years for a 2nd or subsequent
22 conviction, arising from separate occurrences committed within a 10-year period
23 while ~~driving or~~ operating a commercial motor vehicle. A disqualification under this
24 paragraph shall be in addition to any penalty imposed under s. 343.44.

25 **SECTION 23.** 343.315 (2) (j) (intro.) of the statutes is amended to read:

1 343.315 (2) (j) (intro.) A person is disqualified for a period of 60 days from
2 operating a commercial motor vehicle if convicted of a railroad crossing violation, or
3 120 days if convicted of 2 railroad crossing violations or one year if convicted of 3 or
4 more railroad crossing violations, arising from separate occurrences committed
5 within a 3-year period while driving or operating a commercial motor vehicle. In this
6 paragraph, "railroad crossing violation" means a violation of a federal, state, or local
7 law, rule, or regulation, or the law of another jurisdiction, relating to any of the
8 following offenses at a railroad crossing:

9 **SECTION 24.** 343.315 (2) (L) of the statutes is created to read:

10 343.315 (2) (L) If the department receives notice from another jurisdiction of
11 a failure to comply violation by a person issued a commercial driver license by the
12 the department arising from the person's failure to appear to contest a citation issued
13 in that jurisdiction or failure to pay a judgment entered against the person in that
14 jurisdiction, the person is disqualified from operating a commercial motor vehicle
15 until the department receives notice from the other jurisdiction terminating the
16 failure to comply violation except that the disqualification may not be less than 30
17 days nor more than 2 years.

18 **SECTION 25.** 343.315 (3) (b) of the statutes is amended to read:

19 343.315 (3) (b) If a person's license or operating privilege is not otherwise
20 revoked or suspended as the result of an offense committed after March 31, 1992,
21 which results in disqualification under sub. (2) (a) to (f), (h), ~~(i)~~, ~~or~~ (j), or (L), the
22 department shall immediately disqualify the person from operating a commercial
23 motor vehicle for the period required under sub. (2) (a) to (f), (h), ~~(i)~~, ~~or~~ (j), or (L).
24 Upon proper application by the person and payment of the fees specified in s. 343.21
25 (1) (L) and (n), the department may issue a separate license authorizing only the

1 operation of vehicles other than commercial motor vehicles. Upon expiration of the
2 period of disqualification, the person may apply for authorization to operate
3 commercial motor vehicles under s. 343.26.

4 **SECTION 26.** 343.315 (3) (bm) of the statutes is created to read:

5 343.315 (3) (bm) Notwithstanding pars. (a) and (b) and the time periods for
6 disqualification specified in sub. (2), if a person is convicted in another jurisdiction
7 of a disqualifying offense specified in sub. (2) while the person is not licensed in or
8 a resident of this state, that other jurisdiction disqualified the person from operating
9 a commercial motor vehicle as a result of the conviction, and the period of
10 disqualification in that other jurisdiction has expired, the department may not
11 disqualify the person from operating a commercial motor vehicle as a result of the
12 conviction.

13 **SECTION 27.** 343.44 (1) (c) of the statutes is amended to read:

14 343.44 (1) (c) *Operating while ordered out-of-service.* No person may operate
15 a commercial motor vehicle while the person or the commercial motor vehicle is
16 ordered out-of-service under the law of this state or another jurisdiction or under
17 federal law.

18 **SECTION 28.** 343.44 (2) (bm) of the statutes is amended to read:

19 343.44 (2) (bm) Any person who violates sub. (1) (c) shall ~~be fined not less than~~
20 ~~\$1,100 nor more than \$2,750 or imprisoned for not more than one year in the county~~
21 ~~jail or both. In imposing a sentence under this paragraph, the court shall review the~~
22 ~~record and consider the factors specified in par. (b) 1. to 5. forfeit \$2,500 for the first~~
23 ~~offense and \$5,000 for the 2nd or subsequent offense within 10 years.~~

24 **SECTION 29.** 343.44 (4r) of the statutes is amended to read:

1 343.44 (4r) VIOLATION OF OUT-OF-SERVICE ORDER. In addition to other penalties
2 for violation of this section, if a person has violated this section after ~~he or she~~ the
3 person or the commercial motor vehicle operated by the person was ordered
4 out-of-service under the law of this state or another jurisdiction or under federal
5 law, the violation shall result in disqualification under s. 343.315 (2) (h) or (i).

6 **SECTION 9350. Initial applicability; Transportation.**

7 (1) COMMERCIAL DRIVER LICENSES AND COMMERCIAL MOTOR VEHICLES.

8 (a) The treatment of section 343.315 (2) (a) 8. of the statutes first applies to
9 violations committed on September 30, 2005.

10 (b) The treatment of sections 343.315 (2) (h) and (i) and 343.44 (1) (c), (2) (bm),
11 and (4r) of the statutes first applies to violations committed on the effective date of
12 this paragraph, but does not preclude the counting of other violations as prior
13 violations for purposes of administrative action by the department of transportation
14 or sentencing by a court.

15 **SECTION 9450. Effective dates; Transportation.**

16 (1) COMMERCIAL DRIVER LICENSES AND COMMERCIAL MOTOR VEHICLES.

17 (a) The treatment of sections 343.03 (7) (c), 343.16 (1) (b) 2., 343.20 (2) (b),
18 343.23 (4) (a), 343.245 (4) (b), 343.315 (1), (1g), (2) (a) (intro.), 5., and 8., (am), (b),
19 (bm), (c), (e), (f) (intro.) and 2., (fm), (h), (i), (j) (intro.), and (L), (3) (b) and (bm), and
20 343.44 (1) (c), (2) (bm), and (4r) of the statutes, the amendment of section 343.23 (2)
21 (b) of the statutes, and SECTION 9350 (1) of this act take effect on the first day of the
22 7th month beginning after publication.

23 (b) The repeal and recreation of section 343.23 (2) (b) of the statutes takes effect
24 on the first day of the 7th month beginning after publication, or on the date on which

1 the creation of section 343.165 of the statutes by 2007 Wisconsin Act 20 takes effect,
2 whichever is later.

3 (END)