

2013 DRAFTING REQUEST

Bill

Received: **12/20/2013** Received By: **agary**
 Wanted: **As time permits** Same as LRB:
 For: **Dale Schultz (608) 266-0703** By/Representing: **Sheryl Albers**
 May Contact: Drafter: **agary**
 Subject: **Transportation - driver licenses** Addl. Drafters:
 Extra Copies: **EVM**

Submit via email: **YES**
 Requester's email: **Sen.Schultz@legis.wisconsin.gov**
 Carbon copy (CC) to: **aaron.gary@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Commercial driver licenses and diabetes: rule change

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 1/13/2014			_____			
/P1	agary 1/31/2014	scalvin 2/7/2014	jfrantze 1/14/2014	_____	sbasford 1/14/2014		State
/P2	agary 2/10/2014		rschluet 2/7/2014	_____	lparisi 2/7/2014		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1		scalvin 2/10/2014	rschluet 2/10/2014	_____	srose 2/10/2014	srose 2/10/2014	State

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02/10/2014

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02/10/2014

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2/10/14

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 Thx. AVG

FE Sent For:

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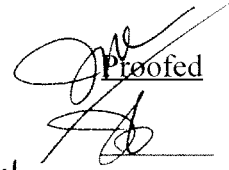
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/?	agary	/PI sac 01/13/2014	/PI sac 01/13/2014		1/14		

FE Sent For:

<END>

Gary, Aaron

From: Albers, Sheryl
Sent: Friday, December 20, 2013 7:56 AM
To: Gary, Aaron
Subject: Request for bill draft re DOT adm code
Attachments: DOT rule change CDL Diabetes.pdf

See attached materials.

Sheryl Albers, Legislative Assistant
Office of State Senator Dale W. Schultz
Room 122 South State Capitol
PO Box 7882
Madison WI 53707-7882
608-266-0703

12/20

He of Sheryl - wants rule change; "we have
our reasons why"; doesn't want change via statute

To: Aaron Gary, LRB

From: Sheryl Albers, Senator Schultz's office 608-266-0703

Date: Request for bill draft

Re: Modify language found in Wis. Administrative Code 327.03 (2)2.(b)

Delete the words "any moving violations or" and after the word "accidents" insert the words "due to diabetes"

The objective is to uncouple a moving violation from diabetes. According to Paul Onsager of the Fiscal Bureau, the proposed language change is not expected to result in any loss of federal funds. Currently, individual assessment determines whether an individual may obtain a CDL. This change would not affect medical certification.

Intra-state CDL Rationale

Current Law

- Must be certified by two physicians that Diabetes not likely to interfere with control or operation of vehicle
- Not eligible if any moving violation (speeding, seat belt, etc.) during prior 3 year period

Improvements

- Eliminate undue regulation – uncouple moving violation linkage
- Retain jobs (no unemployment, public assistance)
- Consistent with Federal Law e.g. individual assessment)
- Medical certification not affected



WISCONSIN ADMINISTRATIVE CODE

* THIS DOCUMENT IS CURRENT THROUGH WIS. ADMN. REGISTER NO. 649, 01/31/10 *

DEPARTMENT OF TRANSPORTATION
CHAPTER TRANS 327. MOTOR CARRIER SAFETY

Wis. Adm. Code Trans 327.03 (2010)

Trans 327.03 Federal regulations adopted.

The following federal motor carrier safety regulations adopted by the United States department of transportation are adopted by the department and shall be enforced in relation to those carriers, drivers or vehicles which operate in intrastate commerce in the same manner as though the regulations were set out in full in this chapter:

(1) Title 49, Code of Federal Regulations, part 390, federal motor carrier safety regulations -- general, except 390.23(a)(3);

(2) (a) Title 49, Code of Federal Regulations, part 391, qualifications of drivers, except:

1. 391.11(b)(1), and 391.41(b)(3) if, in the alternative a driver with diabetes controlled by insulin obtains statements from 2 licensed physicians indicating, on a form provided by the department of transportation, that the diabetes is not likely to cause loss of ability to control or operate a motor vehicle.

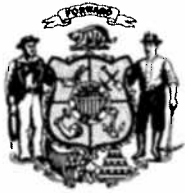
2. 391.41(b)(10), if a driver who does not meet the vision standards provides documentation from a licensed vision specialist that he or she does not have progressive eye disease; that his or her vision in the best eye, corrected or uncorrected, is at least 20/40 (Snellen); and that he or she has a minimum of 70-degree visual field from the center of at least one eye. The documentation shall be accompanied by a statement from the specialist indicating that the driver's vision is not likely to cause a loss of ability to control or operate a commercial motor vehicle. A driver may apply for an exception or waiver to drive in intrastate commerce by submitting this information with his or her application.

(b) A driver is not eligible for an exception or waiver under par. (a) if he or she has had ~~any reportable at-fault accidents due to diabetes~~ while driving any motor vehicle within the 3-year period prior to the date of the application. After a driver receives an exception or waiver, his or her noncompliance with any applicable reporting requirements may result in cancellation of the exception or waiver.

Note: Refer to ch. Trans 112 for criteria requiring cancellation/voluntary temporary surrender of the CDL for medical purposes.

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-Note

- 1 **AN ACT** *gen act*; **relating to:** rule-making procedures and modifying a rule of the
- 2 Department of Transportation relating to physical qualifications for a
- 3 commercial driver license.

Analysis by the Legislative Reference Bureau

insert
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Under current statutes, an applicant for a commercial driver license (CDL) must provide to the Department of Transportation (DOT) a certification that he or she either: 1) meets all of the driver qualifications contained in federal regulations or in an alternative federally-approved driver qualification program established by DOT by rule; or 2) meets all of the driver qualifications for drivers in intrastate commerce as established by DOT by rule and he or she is applying for a CDL valid only in this state for intrastate operation. DOT may not issue a CDL valid for use in interstate commerce to an applicant who does not meet federal physical qualification requirements for drivers, including those under an alternative federally-approved driver qualification program, but may issue to such an applicant a CDL restricted to authorizing the operation of commercial motor vehicles only in intrastate commerce.

DOT's current rules adopt specified provisions of federal motor carrier safety regulations and, subject to various exceptions, make them applicable to drivers and vehicles operating in intrastate commerce in the same manner the federal

regulations apply to interstate operation. These adopted regulations include regulations relating to physical qualifications of drivers, but there are certain exceptions and a driver may apply to DOT to be granted an exception relating to vision or diabetes if the driver is operating only intrastate. Although the federal regulation requires that a driver have no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control, an exception in DOT's rules is available to a driver with diabetes controlled by insulin who obtains statements from two licensed physicians indicating that the diabetes is not likely to cause loss of ability to control or operate a motor vehicle. However, a driver is not eligible for this diabetes exception in DOT's rules if he or she has had any moving violations or any reportable at-fault accidents while driving any motor vehicle within the three-year period prior to the date of the application for the exception.

This bill modifies DOT's rules so that having a moving violation, or having a reportable at-fault accident that was not due to diabetes, within the prior three-year period are not bases for ineligibility of a driver under the diabetes exception.

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.** Trans 327.03 (2) (b) of the administrative code is renumbered Trans
2 327.03 (2) (b) 2. and amended to read:

3 Trans 327.03 (2) (b) 2. A driver is not eligible for an exception or waiver under
4 par. (a) 2. if he or she has had any moving violations or any reportable at-fault
5 accidents while driving any motor vehicle within the 3-year period prior to the date
6 of the application. After a driver receives an exception or waiver, his or her
7 noncompliance with any applicable reporting requirements may result in
8 cancellation of the exception or waiver.

9 **SECTION 2.** Trans 327.03 (2) (b) 1. of the administrative code is created to read:

10 Trans 327.03 (2) (b) 1. A driver is not eligible for an exception or waiver under
11 par. (a) 1. if he or she has had any reportable at-fault accidents due to diabetes while
12 driving any motor vehicle within the 3-year period prior to the date of the
13 application. After a driver receives an exception or waiver, his or her noncompliance

1 with any applicable reporting requirements may result in cancellation of the
2 exception or waiver.

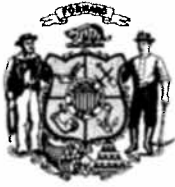
3 **SECTION 3. Initial applicability.**

4 (1) This act first applies to applications for a commercial driver license received
5 by the department of transportation on the effective date of this subsection.

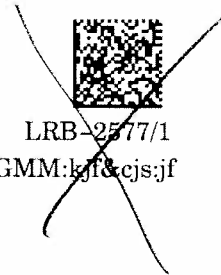
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D-Note



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2577/1
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2013 ASSEMBLY BILL 277

INSERTS

August 7, 2013 - Introduced by Representatives CRAIG, HINTZ, BALLWEG, HUTTON, KAHL, LEMAHIEU, OHNSTAD, SANFELIPPO, SARGENT, STROEBEL, MARKLEIN, ZEPNICK and HONADEL, cosponsored by Senator GUDEX. Referred to Committee on Financial Institutions.

1 AN ACT *to amend* 13.92 (4) (c), 13.92 (4) (d), 13.92 (4) (e), 13.92 (4) (f), 35.93 (2)
2 (b) 4., 35.93 (2) (c) 1., 35.93 (3), 35.93 (3) (e) (intro.), 35.93 (3) (e) 1., 227.01 (13)
3 (intro.), 227.11 (2) (intro.) and 227.27 (2); and *to create* 13.92 (4) (bm) and
4 227.265 of the statutes; **relating to:** rule-making procedures and modifying
5 and repealing various rules promulgated by the Department of Financial
6 Institutions.

Analysis by the Legislative Reference Bureau

STATUTORY TREATMENTS

Rule-making procedures

Current law sets forth a procedure for the promulgation of administrative rules (rules). Generally, that procedure consists of the following steps:

1. The agency planning to promulgate the rule prepares a statement of the scope of the proposed rule, which the governor and the agency head must approve before any state employee or official may perform any activity in connection with the drafting of the proposed rule.
2. The agency drafts the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, and submits those materials to the Legislative Council Staff for review.
3. Subject to certain exceptions, a public hearing is held on the proposed rule.

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ASSEMBLY BILL 277

4. The final draft of the proposed rule is submitted to the governor for approval.

5. The final draft of the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, are submitted to the legislature for review by one standing committee in each house and by the Joint Committee for Review of Administrative Rules.

6. The proposed rule is filed with the Legislative Reference Bureau (LRB) for publication in the Wisconsin Administrative Code (code) and the Wisconsin Administrative Register (register), and, subject to certain exceptions, the rule becomes effective on the first day of the first month beginning after publication.

Under this bill, if a bill that repeals or modifies a rule is enacted, the ordinary rule-making procedures under current law do not apply. Instead, the LRB must publish the repeal or modification, in the code and the register, and the repeal or modification, subject to certain exceptions, takes effect on the first day of the first month beginning after publication.

TREATMENTS OF ADMINISTRATIVE RULES

~~This bill modifies and repeals various rules promulgated by the Department of Financial Institutions (DFI), as described below.~~

Remote terminals accessing financial institution accounts

~~Under current statutes, a bank, savings and loan association, savings bank, or credit union (collectively, financial institution) may acquire, place, and operate, or participate in the acquisition, placement, and operation of, at locations away from the financial institution, what is variously referred to as customer bank communications terminals, remote terminals, or remote service units (collectively remote terminals), in accordance with rules established by the Division of Banking (division) in DFI or the Office of Credit Unions (OCU) in DFI. A remote terminal is a terminal or other facility that is not located at a financial institution and through which customers and financial institutions may engage in electronic transactions that are incidental to the conduct of the business of financial institutions.~~

~~Under current rules of the division and OCU, when any sale of goods or services is paid directly through a remote terminal and involves an aggregate transfer of funds of \$50 or more from an account of a financial institution customer to the account of another person, the financial institution must reverse the transaction and recredit the customer's account upon receipt of notice by the customer within three business days after the date of the sale. This process is referred to as a chargeback. This bill repeals this chargeback provision from the rules of the division and OCU.~~

~~Under current rules of the division and OCU, the liability of a customer of a financial institution for the unauthorized use of a plastic card or other means providing the customer access to a remote terminal (access card) may not exceed the lesser of the following: 1) \$50; or 2) the amount of any money, property, or services obtained by its unauthorized use prior to the time the financial institution is notified, or becomes aware, of circumstances that lead to the belief that unauthorized access to the customer's account may be obtained.~~

~~This bill modifies this rule relating to limits on customer liability for the unauthorized use of a remote terminal access card. Under the bill, if the customer notifies the financial institution within two business days after learning of the~~

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motor vehicle dealers that sell motor vehicles under installment contracts or that acquire retail installment contracts. A "retail installment contract" means a contract to sell a motor vehicle at retail in which the price of the motor vehicle is payable in at least one installment over a period of time and in which the seller has retained title to, or taken a security interest in, the vehicle. A "retail seller" is a person that sells motor vehicles under a retail installment contract to a buyer for the buyer's personal use or consumption. Sales finance companies are licensed by the division. A retail installment sale made after October 31, 1984, is not subject to any maximum finance charge limit. Other credit transactions are also generally not subject to maximum finance charge limits or interest rate limits.

Under current rules of the division, upon refinancing a retail installment contract or consolidating retail installment contracts, the customer is entitled to a rebate of unearned finance charges. The division's rules also specify that the rate of finance charge upon refinancing or consolidation may not exceed the maximum rate applicable by statute if the creditor is a licensed motor vehicle dealer or, if not, the maximum rate at which the creditor could make a loan to the customer.

This bill modifies these rules to eliminate the provisions referencing a maximum rate when a retail installment contract is refinanced or consolidated.

Review procedure

Under the division's current rules, any interested person aggrieved by any act, order, or determination of the division related to banking may file with the division an original and eight copies of a notice of appeal seeking review by the Banking Review Board. This bill eliminates the requirement that eight copies of the notice of appeal be filed.

Technical corrections

The bill makes other minor, clarifying, technical, or nonsubstantive changes to the division's rules, including changes that conform the division's rules to current statutory provisions.

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
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SECTION 1. 13.92 (4) (bm) of the statutes is created to read:

13.92 (4) (bm) If 2 or more rules filed under s. 227.20 or modified under s. 227.265 affect the same unit of the Wisconsin administrative code without taking cognizance of the effect thereon of the other rules and if the legislative reference bureau finds that there is no mutual inconsistency in the changes made by each such

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ASSEMBLY BILL 277

SECTION 1

1 rule, the legislative reference bureau shall incorporate the changes made by each
 2 rule into the text of the unit and document the incorporation in a note to the unit.
 3 For each such incorporation, the legislative reference bureau shall include in a
 4 correction bill a provision formally validating the incorporation. Section 227.27 (2)
 5 is not affected by printing decisions made by the legislative reference bureau under
 6 this paragraph.

7 **SECTION 2.** 13.92 (4) (c) of the statutes is amended to read:

8 13.92 (4) (c) The legislative reference bureau may insert in the Wisconsin
 9 administrative code a note explaining any change made under par. (b) or (bm).

10 **SECTION 3.** 13.92 (4) (d) of the statutes is amended to read:

11 13.92 (4) (d) Sections 227.114, 227.116, 227.135, and 227.14 to 227.24 do not
 12 apply to any change made by the legislative reference bureau under par. (b) or (bm).

13 **SECTION 4.** 13.92 (4) (e) of the statutes is amended to read:

14 13.92 (4) (e) The legislative reference bureau shall prepare and keep on file a
 15 record of each change made under par. (b) or (bm).

16 **SECTION 5.** 13.92 (4) (f) of the statutes is amended to read:

17 13.92 (4) (f) The legislative reference bureau shall notify the agency involved
 18 of each change made under par. (b) or (bm).

19 **SECTION 6.** 35.93 (2) (b) 4. of the statutes, as affected by 2013 Wisconsin Act 20,
 20 is amended to read:

21 35.93 (2) (b) 4. Copies of all rules filed with the legislative reference bureau
 22 under s. 227.20 (1) or modified under s. 227.265 since the compilation of the
 23 preceding register, including emergency rules filed under s. 227.24 (3).

24 **SECTION 7.** 35.93 (2) (c) 1. of the statutes, as affected by 2013 Wisconsin Act 20,
 25 is amended to read:

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ASSEMBLY BILL 277

1 35.93 (2) (c) 1. Each chapter of the Wisconsin administrative code that has been
2 affected by rules filed with legislative reference bureau under s. 227.20 (1) or
3 modified under s. 227.265, in accordance with sub. (3) (e) 1.

4 **SECTION 8.** 35.93 (3) of the statutes is amended to read:

5 35.93 (3) The legislative reference bureau shall compile and deliver to the
6 department for printing copy for a register which shall contain all the rules filed
7 under s. 227.20 or modified under s. 227.265 since the compilation of rules for the
8 preceding issue of the register was made and those executive orders which are to be
9 in effect for more than 90 days or an informative summary thereof. The complete
10 register shall be compiled and published before the first day of each month and a
11 notice section of the register shall be compiled and published before the 15th day of
12 each month. Each issue of the register shall contain a title page with the name
13 "Wisconsin administrative register", the number and date of the register, and a table
14 of contents. Each page of the register shall also contain the date and number of the
15 register of which it is a part in addition to the other necessary code titles and page
16 numbers. The legislative reference bureau may include in the register such
17 instructions or information as in the bureau's judgment will help the user to correctly
18 make insertions and deletions in the code and to keep the code current.

19 **SECTION 9.** 35.93 (3) (e) (intro.) of the statutes, as affected by 2013 Wisconsin
20 Act 20, is amended to read:

21 35.93 (3) (e) (intro.) The legislative reference bureau shall incorporate into the
22 appropriate chapters of the Wisconsin administrative code each permanent rule filed
23 with the legislative reference bureau under s. 227.20 (1) or modified under s. 227.265
24 and, for each chapter of the administrative code affected by a rule, do all of the
25 following:

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ASSEMBLY BILL 277

SECTION 10

1 **SECTION 10.** 35.93 (3) (e) 1. of the statutes, as affected by 2013 Wisconsin Act
2 20, is amended to read:

3 35.93 (3) (e) 1. Publish the chapter in the appropriate end-of-month register
4 in accordance with the filing deadline for publication established in the rules
5 procedures manual published under s. 227.15 (7) ~~or~~, in an end-of-month register
6 agreed to by the submitting agency and the legislative reference bureau, or, in the
7 case of a rule modified under s. 227.265, in the end-of-month register for the month
8 in which the bill modifying the rule is enacted.

9 **SECTION 11.** 227.01 (13) (intro.) of the statutes is amended to read:

10 227.01 (13) (intro.) "Rule" means a regulation, standard, statement of policy,
11 or general order of general application which has the effect of law and which is issued
12 by an agency to implement, interpret, or make specific legislation enforced or
13 administered by the agency or to govern the organization or procedure of the agency.
14 "Rule" includes a modification of a rule under s. 227.265. "Rule" does not include, and
15 s. 227.10 does not apply to, any action or inaction of an agency, whether it would
16 otherwise meet the definition under this subsection, which:

17 **SECTION 12.** 227.11 (2) (intro.) of the statutes is amended to read:

18 227.11 (2) (intro.) Rule-making authority is expressly conferred on an agency
19 as follows:

20 **SECTION 13.** 227.265 of the statutes is created to read:

21 **227.265 Repeal or modification of rules.** If a bill to repeal or modify a rule
22 is enacted, the procedures under ss. 227.114 to 227.21 and 227.26 do not apply.
23 Instead, the legislative reference bureau shall publish the repeal or modification in
24 the Wisconsin administrative code and register as required under s. 35.93, and the
25 repeal or modification shall take effect as provided in s. 227.22.

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SECTION 14. 227.27 (2) of the statutes is amended to read:

227.27 (2) The code shall be prima facie evidence in all courts and proceedings as provided by s. 889.01, but this does not preclude reference to or, in case of a discrepancy, control over a rule filed with the legislative reference bureau or the secretary of state under s. 227.20 or modified under s. 227.265, and the certified copy of a rule shall also and in the same degree be prima facie evidence in all courts and proceedings.

SECTION 15. DFI-Bkg 10.03 of the administrative code is amended to read:

~~DFI-Bkg 10.03 **Notice of appeal.** Any interested person aggrieved by any act, order, or determination of the administrator of the division of banking under chs. 220, 221, and 223, Stats., may file with the administrator of the division of banking within 10 days after the act, order, or determination to be reviewed an original and 8 copies of a Notice of Appeal in the manner prescribed by s. DFI-Bkg 10.05 in the following form:~~

~~To the Wisconsin Banking Review Board:~~

~~The undersigned hereby appeals from the order of the administrator of the division of banking dated _____, 20__, whereby it was ordered that (here set forth the substance of the order).~~

~~The nature of petitioner's interest is: (Here set forth the nature of petitioner's interest).~~

~~The grounds of appeal are the following: (Here set forth the exceptions or objections relied on, and if no answer has been filed, then also an answer to the findings of fact in the order, in the manner prescribed by s. DFI-Bkg 11.11, rules of Procedure for proceedings and hearings had before the administrator of the division of banking).~~

ASSEMBLY BILL 277

1 **SECTION 62.** DFI-SL 12.07 (2) (b) of the administrative code is amended to read:

2 DFI-SL 12.07 (2) (b) A customer furnishing another person with the plastic
3 card or other means providing access device to the customer's account through a
4 remote service unit shall be deemed to authorize all transactions that may be
5 accomplished by that means until the customer has given actual notice to the
6 association that further transactions are unauthorized.

7 **SECTION 63.** DFI-SL 12.08 (2) (intro.) of the administrative code is amended
8 to read:

9 DFI-SL 12.08 (2) TRANSACTION DOCUMENTATION. (intro.) Every Except as
10 provided in sub. (4), every transfer of funds made through a remote service unit by
11 a customer of an association shall be evidenced by a written document made
12 available to the customer at the time of the transaction. The document shall indicate
13 with reasonable specificity the identity of any third party to whom funds are
14 electronically transferred, the identity of the customer's account, the amount of
15 funds transferred, the type of transaction and the date of the transaction. A
16 customer may be required to reenter an access device, such as a card, at a terminal
17 in order to receive transaction documentation if all the following conditions are met:

18 **SECTION 64.** DFI-SL 12.08 (4) of the administrative code is created to read:

19 DFI-SL 12.08 (4) EXCEPTION FOR WRITTEN DOCUMENT IN SMALL-VALUE TRANSFERS.
20 An association is not subject to the requirement to make available a written
21 document under sub. (2) if the amount of the transfer is \$15 or less.

22 ~~**SECTION 65.** DFI-SL 12.09 of the administrative code is repealed.~~

23 **SECTION 66. Effective dates.** This act takes effect on the day after publication,
24 except as follows:

insert
3-5

ASSEMBLY BILL 277

SECTION 66

insert
3-5
cont'd
1
2
3

(1) The treatment of section 35.93 (2) (b) 4. and (c) 1. and (3) (e) (intro.) and 1.
of the statutes takes effect on January 1, 2015.

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3880/P1dn

ARG:./:....

Sac

- date -

ATTN: Sheryl Albers

Please review the attached draft carefully to ensure that it is consistent with your intent. You advised that you want this bill to amend DOT's rule rather than address the issue with a statutory treatment. Until 2013 AB-277 or another bill is enacted containing the same treatments, certain statutory changes must be included in any bill amending agency rules. Rather than amending Trans 327.03 (2) (b) in the attached draft, I recommend amending s. 343.065, stats.

The suggested change in the drafting instructions you provided would have affected both the exception relating to diabetes and the exception relating to vision. Given the nature of the change, I have assumed that you want the change to apply only with respect to diabetes, and I have prepared the draft accordingly. Please advise if my assumption is incorrect.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "1" draft.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3880/P1dn
ARG:sac:jf

January 13, 2014

ATTN: Sheryl Albers

Please review the attached draft carefully to ensure that it is consistent with your intent. You advised that you want this bill to amend DOT's rule rather than address the issue with a statutory treatment. Until 2013 AB-277 or another bill is enacted containing the same treatments, certain statutory changes must be included in any bill amending agency rules. Rather than amending Trans 327.03 (2) (b) in the attached draft, I recommend amending s. 343.065, stats.

The suggested change in the drafting instructions you provided would have affected both the exception relating to diabetes and the exception relating to vision. Given the nature of the change, I have assumed that you want the change to apply only with respect to diabetes, and I have prepared the draft accordingly. Please advise if my assumption is incorrect.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "1" draft.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

Gary, Aaron

From: Albers, Sheryl
Sent: Wednesday, January 22, 2014 10:50 AM
To: Gary, Aaron
Subject: LRB-3880/P1dn

Aaron:

Met with Nate Yahn, Legislative Liaison for WI DOT (266-6479). DOT has no problem with a bill that changes statute to achieve the intent, with language focused only on diabetes and CDL. Please work with Nate and or DOT legal counsel to redraft LRB-3880/P1dn.

Thank you.

Sheryl Albers, Legislative Assistant
Office of State Senator Dale W. Schultz
Room 122 South State Capitol
PO Box 7882
Madison WI 53707-7882
608-266-0703

6-0703 1/22

H/c from Sheryl - var

• Note - DOT

• wants stat only

• Note has idea of how
to do it

• only diabetes, not vision
by stat, not rule

Gary, Aaron

From: Albers, Sheryl
Sent: Wednesday, January 22, 2014 10:50 AM
To: Gary, Aaron
Subject: LRB-3880/P1dn

Aaron:

Met with Nate Yahn, Legislative Liaison for WI DOT (266-6479). DOT has no problem with a bill that changes statute to achieve the intent, with language focused only on diabetes and CDL. Please work with Nate and or DOT legal counsel to redraft LRB-3880/P1dn.

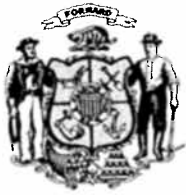
Thank you.

Sheryl Albers, Legislative Assistant
Office of State Senator Dale W. Schultz
Room 122 South State Capitol
PO Box 7882
Madison WI 53707-7882
608-266-0703

1/24 tlc w / Nate

• DOT has nothing specific
in mind; just want to
see it in stat, not rule;

I can prepare / place
provision as I see fit



State of Wisconsin
2013 - 2014 LEGISLATURE

Soon
in
1/31



LRB-3880/112
ARG:sac: [signature]

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

- gen act

1 AN ACT to amend 13.92 (4) (c), 13.92 (4) (d), 13.92 (4) (e), 13.92 (4) (f), 35.93 (2)
 2 (b) 4., 35.93 (2) (c) 1., 35.93 (3), 35.93 (3) (e) (intro.), 35.93 (3) (e) 1., 227.01 (13)
 3 (intro.), 227.11 (2) (intro.) and 227.27 (2); and to create 13.92 (4) (bm) and
 4 227.265 of the statutes; relating to: rule-making procedures and modifying a
 5 rule of the Department of Transportation relating to physical qualifications for
 6 a commercial driver license. restricted

Analysis by the Legislative Reference Bureau

STATUTORY TREATMENTS

Current law sets forth a procedure for the promulgation of administrative rules (rules). Generally, that procedure consists of the following steps:

1. The agency planning to promulgate the rule prepares a statement of the scope of the proposed rule, which the governor and the agency head must approve before any state employee or official may perform any activity in connection with the drafting of the proposed rule.
2. The agency drafts the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, and submits those materials to the Legislative Council Staff for review.
3. Subject to certain exceptions, a public hearing is held on the proposed rule.
4. The final draft of the proposed rule is submitted to the governor for approval.
5. The final draft of the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, are

submitted to the legislature for review by one standing committee in each house and by the Joint Committee for Review of Administrative Rules.

6. The proposed rule is filed with the Legislative Reference Bureau (LRB) for publication in the Wisconsin Administrative Code (code) and the Wisconsin Administrative Register (register), and, subject to certain exceptions, the rule becomes effective on the first day of the first month beginning after publication.

Under this bill, if a bill that repeals or modifies a rule is enacted, the ordinary rule-making procedures under current law do not apply. Instead, the LRB must publish the repeal or modification, in the code and the register, and the repeal or modification, subject to certain exceptions, takes effect on the first day of the first month beginning after publication.

TREATMENTS OF ADMINISTRATIVE RULES

Under current statutes, an applicant for a commercial driver license (CDL) must provide to the Department of Transportation (DOT) a certification that he or she either: 1) meets all of the driver qualifications contained in federal regulations or in an alternative federally-approved driver qualification program established by DOT by rule; or 2) meets all of the driver qualifications for drivers in intrastate commerce as established by DOT by rule and he or she is applying for a CDL valid only in this state for intrastate operation. DOT may not issue a CDL valid for use in interstate commerce to an applicant who does not meet federal physical qualification requirements for drivers, including those under an alternative federally-approved driver qualification program, but may issue to such an applicant a CDL restricted to authorizing the operation of commercial motor vehicles only in intrastate commerce. *(restricted CDL) ← CDL*

DOT's current rules adopt specified provisions of federal motor carrier safety regulations and, subject to various exceptions, make them applicable to drivers and vehicles operating in intrastate commerce in the same manner the federal regulations apply to interstate operation. These adopted regulations include regulations relating to physical qualifications of drivers, but there are certain exceptions and a driver may apply to DOT to be granted an exception relating to vision or diabetes if the driver is operating only intrastate. Although the federal regulation requires that a driver have no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control, an exception in DOT's rules is available to a driver with diabetes controlled by insulin who obtains statements from two licensed physicians indicating that the diabetes is not likely to cause loss of ability to control or operate a motor vehicle. However, a driver is not eligible for this diabetes exception in DOT's rules if he or she has had any moving violations or any reportable at-fault accidents while driving any motor vehicle within the three-year period prior to the date of the application for the exception.

insert ANAL → This bill modifies DOT's rules so that having a moving violation, or having a reportable at-fault accident that was not due to diabetes, within the prior three-year period are not bases for ineligibility of a driver under the diabetes exception.

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.** 13.92 (4) (bm) of the statutes is created to read:

2 13.92 (4) (bm) If 2 or more rules filed under s. 227.20 or modified under s.
3 227.265 affect the same unit of the Wisconsin administrative code without taking
4 cognizance of the effect thereon of the other rules and if the legislative reference
5 bureau finds that there is no mutual inconsistency in the changes made by each such
6 rule, the legislative reference bureau shall incorporate the changes made by each
7 rule into the text of the unit and document the incorporation in a note to the unit.
8 For each such incorporation, the legislative reference bureau shall include in a
9 correction bill a provision formally validating the incorporation. Section 227.27 (2)
10 is not affected by printing decisions made by the legislative reference bureau under
11 this paragraph.

12 **SECTION 2.** 13.92 (4) (c) of the statutes is amended to read:

13 13.92 (4) (c) The legislative reference bureau may insert in the Wisconsin
14 administrative code a note explaining any change made under par. (b) or (bm).

15 **SECTION 3.** 13.92 (4) (d) of the statutes is amended to read:

16 13.92 (4) (d) Sections 227.114, 227.116, 227.135, and 227.14 to 227.24 do not
17 apply to any change made by the legislative reference bureau under par. (b) or (bm).

18 **SECTION 4.** 13.92 (4) (e) of the statutes is amended to read:

19 13.92 (4) (e) The legislative reference bureau shall prepare and keep on file a
20 record of each change made under par. (b) or (bm).

21 **SECTION 5.** 13.92 (4) (f) of the statutes is amended to read:

SECTION 5

1 13.92 (4) (f) The legislative reference bureau shall notify the agency involved
2 of each change made under par. (b) or (bm).

3 **SECTION 6.** 35.93 (2) (b) 4. of the statutes, as affected by 2013 Wisconsin Act 20,
4 is amended to read:

5 35.93 (2) (b) 4. Copies of all rules filed with the legislative reference bureau
6 under s. 227.20 (1) or modified under s. 227.265 since the compilation of the
7 preceding register, including emergency rules filed under s. 227.24 (3).

8 **SECTION 7.** 35.93 (2) (c) 1. of the statutes, as affected by 2013 Wisconsin Act 20,
9 is amended to read:

10 35.93 (2) (c) 1. Each chapter of the Wisconsin administrative code that has been
11 affected by rules filed with legislative reference bureau under s. 227.20 (1) or
12 modified under s. 227.265, in accordance with sub. (3) (e) 1.

13 **SECTION 8.** 35.93 (3) of the statutes is amended to read:

14 35.93 (3) The legislative reference bureau shall compile and deliver to the
15 department for printing copy for a register which shall contain all the rules filed
16 under s. 227.20 or modified under s. 227.265 since the compilation of rules for the
17 preceding issue of the register was made and those executive orders which are to be
18 in effect for more than 90 days or an informative summary thereof. The complete
19 register shall be compiled and published before the first day of each month and a
20 notice section of the register shall be compiled and published before the 15th day of
21 each month. Each issue of the register shall contain a title page with the name
22 "Wisconsin administrative register", the number and date of the register, and a table
23 of contents. Each page of the register shall also contain the date and number of the
24 register of which it is a part in addition to the other necessary code titles and page
25 numbers. The legislative reference bureau may include in the register such

1 instructions or information as in the bureau's judgment will help the user to correctly
2 make insertions and deletions in the code and to keep the code current.

3 **SECTION 9.** 35.93 (3) (e) (intro.) of the statutes, as affected by 2013 Wisconsin
4 Act 20, is amended to read:

5 35.93 (3) (e) (intro.) The legislative reference bureau shall incorporate into the
6 appropriate chapters of the Wisconsin administrative code each permanent rule filed
7 with the legislative reference bureau under s. 227.20 (1) or modified under s. 227.265
8 and, for each chapter of the administrative code affected by a rule, do all of the
9 following:

10 **SECTION 10.** 35.93 (3) (e) 1. of the statutes, as affected by 2013 Wisconsin Act
11 20, is amended to read:

12 35.93 (3) (e) 1. Publish the chapter in the appropriate end-of-month register
13 in accordance with the filing deadline for publication established in the rules
14 procedures manual published under s. 227.15 (7) ~~or~~, in an end-of-month register
15 agreed to by the submitting agency and the legislative reference bureau, or, in the
16 case of a rule modified under s. 227.265, in the end-of-month register for the month
17 in which the bill modifying the rule is enacted.

18 **SECTION 11.** 227.01 (13) (intro.) of the statutes is amended to read:

19 227.01 (13) (intro.) "Rule" means a regulation, standard, statement of policy,
20 or general order of general application which has the effect of law and which is issued
21 by an agency to implement, interpret, or make specific legislation enforced or
22 administered by the agency or to govern the organization or procedure of the agency.
23 "Rule" includes a modification of a rule under s. 227.265. "Rule" does not include, and
24 s. 227.10 does not apply to, any action or inaction of an agency, whether it would
25 otherwise meet the definition under this subsection, which:

1 ~~SECTION 12. 227.11 (2) (intro.) of the statutes is amended to read:~~

2 ~~227.11 (2) (intro.) Rule-making authority is expressly conferred on an agency~~
3 ~~as follows:~~

4 ~~SECTION 13. 227.265 of the statutes is created to read:~~

5 ~~**227.265 Repeal or modification of rules.** If a bill to repeal or modify a rule~~
6 ~~is enacted, the procedures under ss. 227.114 to 227.21 and 227.26 do not apply.~~
7 ~~Instead, the legislative reference bureau shall publish the repeal or modification in~~
8 ~~the Wisconsin administrative code and register as required under s. 35.93, and the~~
9 ~~repeal or modification shall take effect as provided in s. 227.22.~~

10 ~~SECTION 14. 227.27 (2) of the statutes is amended to read:~~

11 ~~227.27 (2) The code shall be prima facie evidence in all courts and proceedings~~
12 ~~as provided by s. 889.01, but this does not preclude reference to or, in case of a~~
13 ~~discrepancy, control over a rule filed with the legislative reference bureau or the~~
14 ~~secretary of state under s. 227.20 or modified under s. 227.265, and the certified copy~~
15 ~~of a rule shall also and in the same degree be prima facie evidence in all courts and~~
16 ~~proceedings.~~

17 ~~SECTION 15. Trans 327.03 (2) (b) of the administrative code is renumbered~~
18 ~~Trans 327.03 (2) (b) 2. and amended to read:~~

19 ~~Trans 327.03 (2) (b) 2. A driver is not eligible for an exception or waiver under~~
20 ~~par. (a) 2. if he or she has had any moving violations or any reportable at-fault~~
21 ~~accidents while driving any motor vehicle within the 3-year period prior to the date~~
22 ~~of the application. After a driver receives an exception or waiver, his or her~~
23 ~~noncompliance with any applicable reporting requirements may result in~~
24 ~~cancellation of the exception or waiver.~~

25 ~~SECTION 16. Trans 327.03 (2) (b) 1. of the administrative code is created to read:~~

1 ~~Trans 327.03 (2) (b) 1. A driver is not eligible for an exception or waiver under~~
2 ~~par. (a) 1. if he or she has had any reportable at-fault accidents due to diabetes while~~
3 ~~driving any motor vehicle within the 3-year period prior to the date of the~~
4 ~~application. After a driver receives an exception or waiver, his or her noncompliance~~
5 ~~with any applicable reporting requirements may result in cancellation of the~~
6 ~~exception or waiver.~~

7 **SECTION 17. Initial applicability.**

8 (1) This act first applies to applications for a commercial driver license received
9 by the department of transportation on the effective date of this subsection.

10 **SECTION 18. Effective dates.** This act takes effect on the day after publication,
11 except as follows:

12 (1) The treatment of section 35.93 (2) (b) 4. and (c) 1. and (3) (e) (intro.) and 1.
13 of the statutes takes effect on January 1, 2015.

14 (END)

1

INSERT ANAL:

Under this bill, an applicant for a restricted CDL who has diabetes controlled by insulin is not eligible for a restricted CDL if the applicant had, in the three-year period prior to the date of the application, any moving violation, or any reportable at-fault accident, due to diabetes while operating any motor vehicle. DOT may not establish by rule a more restrictive eligibility standard relating to moving violations and at-fault accidents for these applicants.

2

3

INSERT 3-1:

4

SECTION 1. 343.065 (1) of the statutes is renumbered 343.065 (1) (a) and amended to read:

5

6

343.065 (1) (a) If an applicant for a commercial driver license is less than 21 years of age or does not meet the physical qualifications for drivers contained in 49 CFR 391 or an alternative federally approved driver qualification program established by the department by rule but is at least 18 years of age and otherwise qualified under this chapter and, subject to par. (b), the rules of the department, the department may issue the applicant a commercial driver license restricted to authorizing the operation of commercial motor vehicles not in interstate commerce.

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History: 1989 a. 105; 1995 a. 113; 2011 a. 32.

13

SECTION 2. 343.065 (1) (b) of the statutes is created to read:

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18

343.065 (1) (b) An applicant with diabetes controlled by insulin is not eligible for a restricted commercial driver license under this section if the applicant had, in the 3-year period prior to the date of the application, any moving violation, or any reportable at-fault accident, due to diabetes while operating any motor vehicle. The department may not establish by rule a more restrictive eligibility standard relating

1 to moving violations and at-fault accidents for applicants under this section who
2 have diabetes controlled by insulin.

3 **SECTION 3.** 343.14 (2) (i) 2. of the statutes is amended to read:

4 343.14 (2) (i) 2. Meets Subject to s. 343.065 (1) (b), meets all of the driver
5 qualifications for drivers in intrastate commerce as established by the department
6 by rule and is applying for a commercial driver license valid only in this state for
7 noninterstate operation.

History: 1977 c. 29 s. 1654 (7) (a), (e); 1977 c. 124, 360, 447; 1979 c. 306; 1981 c. 20 s. 1848r; 1985 a. 227; 1987 a. 27; 1987 a. 403 s. 256; 1989 a. 105, 294, 298, 359;
1991 a. 269; 1993 a. 363; 1995 a. 113; 1997 a. 27, 119, 191; 1999 a. 9, 80, 88; 2001 a. 93; 2003 a. 33; 2005 a. 25, 59, 126; 2007 a. 20 ss. 3242 to 3254, 9121 (6) (a); 2009 a.
180; 2011 a. 23, 32; 2013 a. 17, 20, 36.

8

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11

INSERT 7-11:

12

SECTION 4. Effective date.

13

(1) This act takes effect on the first day of the 4th month beginning after

14

publication.

15

Gary, Aaron

From: Parisi, Lori
Sent: Monday, February 10, 2014 9:51 AM
To: Gary, Aaron
Subject: FW: Request for jacketed version
Attachments: Lrb 3880 2.pdf

Hello Aaron, Looks like they would like this draft converted to /1 and jacketed.
Could you take care of this please?

Thanks so much...

Lori

From: Albers, Sheryl
Sent: Monday, February 10, 2014 9:40 AM
To: LRB.Legal
Subject: Request for jacketed version

To: LRB Legal

Please send over the jacketed version of LRB 3880/2.

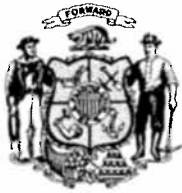
Sheryl Albers, Legislative Assistant
Office of State Senator Dale W. Schultz
Room 122 South State Capitol
PO Box 7882
Madison WI 53707-7882
608-266-0703

From: Albers, Sheryl
Sent: Monday, February 10, 2014 9:36 AM
To: Jeff Perzan (jeffperzan@prodigy.net)
Subject:

Good Morning Jeff:

The new clean copy of the proposed change is attached, just having arrived. I need to know who you have lined up to be lead author in the Assembly, as I should try and get a co-sponsorship memo out today with a short time frame for legislators to sign on.

Sheryl Albers, Legislative Assistant
Office of State Senator Dale W. Schultz
Room 122 South State Capitol
PO Box 7882
Madison WI 53707-7882
608-266-0703



State of Wisconsin
2013 - 2014 LEGISLATURE

in
2/10



LRB-3880/1
ARG:sac:s
stay RMR

TODAY

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

No changes

gen cat

- 1 AN ACT *to renumber and amend* 343.065 (1); *to amend* 343.14 (2) (i) 2.; and
- 2 *to create* 343.065 (1) (b) of the statutes; **relating to:** physical qualifications for
- 3 a restricted commercial driver license.

Analysis by the Legislative Reference Bureau

Under current statutes, an applicant for a commercial driver license (CDL) must provide to the Department of Transportation (DOT) a certification that he or she either: 1) meets all of the driver qualifications contained in federal regulations or in an alternative federally-approved driver qualification program established by DOT by rule; or 2) meets all of the driver qualifications for drivers in intrastate commerce as established by DOT by rule and he or she is applying for a CDL valid only in this state for intrastate operation. DOT may not issue a CDL valid for use in interstate commerce to an applicant who does not meet federal physical qualification requirements for drivers, including those under an alternative federally-approved driver qualification program, but may issue to such an applicant a CDL restricted to authorizing the operation of commercial motor vehicles only in intrastate commerce (restricted CDL).

DOT's current rules adopt specified provisions of federal motor carrier safety regulations and, subject to various exceptions, make them applicable to drivers and vehicles operating in intrastate commerce in the same manner the federal regulations apply to interstate operation. These adopted regulations include regulations relating to physical qualifications of drivers, but there are certain exceptions and a driver may apply to DOT to be granted an exception relating to diabetes if the driver is operating only intrastate. Although the federal regulation

requires that a driver have no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control, an exception in DOT's rules is available to a driver with diabetes controlled by insulin who obtains statements from two licensed physicians indicating that the diabetes is not likely to cause loss of ability to control or operate a motor vehicle. However, a driver is not eligible for this diabetes exception in DOT's rules if he or she has had any moving violations or any reportable at-fault accidents while driving any motor vehicle within the three-year period prior to the date of the application for the exception.

Under this bill, an applicant for a restricted CDL who has diabetes controlled by insulin is not eligible for a restricted CDL if the applicant had, in the three-year period prior to the date of the application, any moving violation, or any reportable at-fault accident, due to diabetes while operating any motor vehicle. DOT may not establish by rule a more restrictive eligibility standard relating to moving violations and at-fault accidents for these applicants.

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.** 343.065 (1) of the statutes is renumbered 343.065 (1) (a) and
2 amended to read:

3 343.065 (1) (a) If an applicant for a commercial driver license is less than 21
4 years of age or does not meet the physical qualifications for drivers contained in 49
5 CFR 391 or an alternative federally approved driver qualification program
6 established by the department by rule but is at least 18 years of age and otherwise
7 qualified under this chapter and, subject to par. (b), the rules of the department, the
8 department may issue the applicant a commercial driver license restricted to
9 authorizing the operation of commercial motor vehicles not in interstate commerce.

10 **SECTION 2.** 343.065 (1) (b) of the statutes is created to read:

11 343.065 (1) (b) An applicant with diabetes controlled by insulin is not eligible
12 for a restricted commercial driver license under this section if the applicant had, in
13 the 3-year period prior to the date of the application, any moving violation, or any

1 reportable at-fault accident, due to diabetes while operating any motor vehicle. The
2 department may not establish by rule a more restrictive eligibility standard relating
3 to moving violations and at-fault accidents for applicants under this section who
4 have diabetes controlled by insulin.

5 **SECTION 3.** 343.14 (2) (i) 2. of the statutes is amended to read:

6 343.14 (2) (i) 2. ~~Meets~~ Subject to s. 343.065 (1) (b), meets all of the driver
7 qualifications for drivers in intrastate commerce as established by the department
8 by rule and is applying for a commercial driver license valid only in this state for
9 noninterstate operation.

10 **SECTION 4. Initial applicability.**

11 (1) This act first applies to applications for a commercial driver license received
12 by the department of transportation on the effective date of this subsection.

13 **SECTION 5. Effective date.**

14 (1) This act takes effect on the first day of the 4th month beginning after
15 publication.

16 (END)