HOUSE OF REPRESENTATIVES TWENTY-SIXTH LEGISLATURE, 2011 STATE OF HAWAII H.B. NO. <sup>1094</sup> H.D. 1 S.D. 2 C.D. 1

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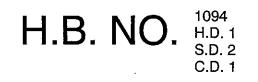
## A BILL FOR AN ACT

RELATING TO COMMERCIAL DRIVER LICENSING.

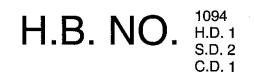
#### BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1	SECT	ION 1. Section 286-231, Hawaii Revised Statutes, is
2	amended b	y adding two new definitions to be appropriately
3	inserted	and to read as follows:
4	" <u>"Co</u>	mmercial driver's license downgrade" means:
5	(1)	Authorization to change a driver's self-certification
6		pursuant to Title 49 Code of Federal Regulations
7		Section 383.71, to interstate, but operating
8		exclusively in transportation or operation excepted
9		from the Federal Motor Carrier Safety Regulations as
10		provided in Title 49 Code of Federal Regulations
11		Sections 390.3(f), 391.2, 391.62, and 398.2(b);
12	(2)	Authorization to change a driver's self-certification
13		pursuant to Title 49 Code of Federal Regulations
14		Section 383.71, to intrastate only if the driver
15		qualifies under the State's physical qualification
16		requirements for intrastate only;
17	<u>(3)</u>	Authorization to change a driver's self-certification
18		pursuant to Title 49 Code of Federal Regulations

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1	Section 383.71, to intrastate, but operating
2	exclusively in transportation or operations excepted
3	from all or part of the state driver qualification
4	requirements; or
5	(4) Removing the commercial driver's license privilege
6	from the driver's license.
7	"Commercial driver's license information system driver
8	record" means the electronic record of an individual commercial
9	driver license driver's status and history stored by the state
10	of record as part of the commercial driver's license information
11	system established under Title 49 United States Code Section
12	<u>31309.</u> "
13	SECTION 2. Section 286-236, Hawaii Revised Statutes, is
14	amended by amending subsection (a) to read as follows:
15	"(a) No person shall be issued a commercial driver's
16	license unless that person meets the qualification standards of
17	Title 49 Code of Federal Regulations, Part 391, Subparts B and
18	E, has passed a knowledge and driving skills test for driving a
19	commercial motor vehicle [which] that complies with minimum
20	federal standards established by federal regulation enumerated
21	in <u>Title</u> 49 Code of Federal Regulations, Part 383, Subparts G
22	and H, is domiciled in this State as defined in <u>Title</u> 49 Code of
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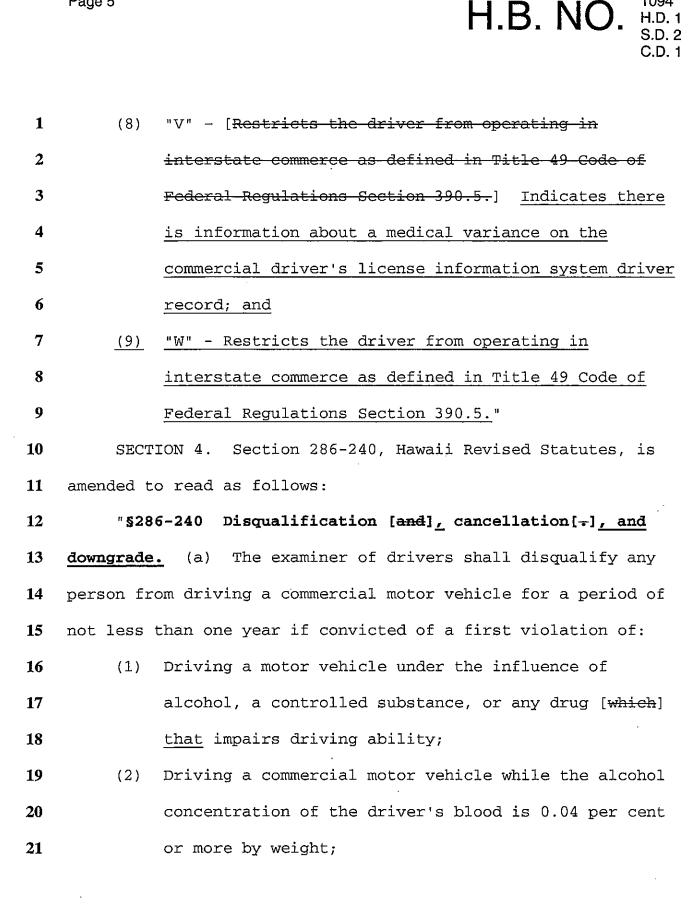
1	Federal Regulations, Part 383.5, and has satisfied all other		
2	requirements of the Commercial Motor Vehicle Safety Act		
3	[ <del>(CMVSA)</del> ] of 1986 [ <del>(Title XII</del> ], Public Law 99-570[ <del>)</del> ] <u>, Title XII,</u>		
4	in addition to other requirements imposed by state law or		
5	federal regulation. The tests shall be prescribed by the		
6	director and administered by the respective county examiner of		
7	drivers. As of January 30, 2012, the examiner of drivers shall		
8	verify that the medical certification status of a driver who		
9	self-certified according to Title 49 Code of Federal Regulations		
10	Section 383.71(a)(1)(ii)(A), non-excepted interstate, is		
11	certified. If a driver submits a current medical examiner's		
12	certificate, the examiner of drivers shall date-stamp the		
13	certificate and post all required information to the commercial		
14	driver's license information system pursuant to Title 49 Code of		
15	Federal Regulations Section 383.73(a)(5) and in accordance with		
16	Title 49 Code of Federal Regulations Section 383.73(j). A		
17	person who is not physically qualified to drive under <u>Title</u> 49		
18	Code of Federal Regulations Section 391.41(b)(1), (2), or (3)		
19	and who is otherwise qualified to drive a motor vehicle may be		
20	granted an intrastate waiver by the director. The process for		
21	granting intrastate waivers shall be the same as that for		
22	interstate waivers in <u>Title</u> 49 Code of Federal Regulations[ $ au$		
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1	Part] Sec	tion 391.49, except that the intrastate waiver requests
2	shall be	submitted to the director; provided that the director
3	shall ado	pt rules under chapter 91 to establish a screening
4	process,	including approval by a licensed physician, for
5	granting	an intrastate waiver to persons who are not physically
6	qualified	under <u>Title</u> 49 Code of Federal Regulations Section
7	391.41(b)(3)."	
8	SECTION 3. Section 286-239, Hawaii Revised Statutes, is	
9	amended b	y amending subsection (c) to read as follows:
10	ц (С)	Commercial drivers' licenses may be issued with any
11	one or mo	re of the following endorsements and restrictions:
12	(1)	"H" - Authorizes the driver to drive a vehicle
13		transporting hazardous materials;
14	(2)	"K" - Restricts the driver to vehicles not equipped
15		with air brakes;
16	(3)	"T" - Authorizes driving double and triple trailers;
17	(4)	"P" - Authorizes driving vehicles carrying passengers;
18	(5)	"N" - Authorizes driving tank vehicles;
19	(6)	"X" - Represents a combination of hazardous materials
20		and tank vehicle endorsements;
21	(7)	"S" - Authorizes driving school buses; [ <del>and</del> ]

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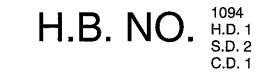
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1 Refusing to submit to a test to determine the driver's (3) 2 alcohol concentration while driving a motor vehicle as 3 required under sections 286-243 and 291E-11; 4 (4)Using a motor vehicle in the commission of any felony; 5 (5)Leaving the scene of an accident involving the motor 6 vehicle driven by the person; 7 (6) Unlawful transportation, possession, or use of a 8 controlled substance while [on duty time;] on duty; 9 (7) Driving a commercial motor vehicle when, as a result 10 of prior violations committed while operating a 11 commercial motor vehicle, the driver's commercial 12 driver's license [had been] is revoked, suspended, or canceled, or the driver [was] is otherwise 13 14 disqualified from operating a commercial motor 15 vehicle; or Causing a fatality through the operation of a 16 (8) commercial motor vehicle, including [but not limited 17 18 to] through the commission of the crimes of 19 manslaughter and negligent homicide in any degree. 20 The examiner of drivers shall disqualify any person (b) 21 for a period of not less than three years for any conviction of a violation of any offense listed in subsection (a) that is 22 HB1094 CD1 HMS 2011-3846

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committed while a hazardous material required to be placarded
 under Title 49 Code of Federal Regulations, Part 172, Subpart F,
 is being transported.

4 (c) The examiner of drivers shall disqualify any person
5 from driving a commercial motor vehicle for life if <u>the person</u>
6 <u>is</u> convicted two or more times for [<del>violations-of</del>] any of the
7 offenses listed in subsection (a).

8 (d) The examiner of drivers shall disqualify any person
9 from driving a commercial motor vehicle for life if the person
10 uses a motor vehicle in the commission of any felony involving
11 the manufacturing, distributing, or dispensing of a controlled
12 substance, or possession with intent to manufacture, distribute,
13 or dispense a controlled substance.

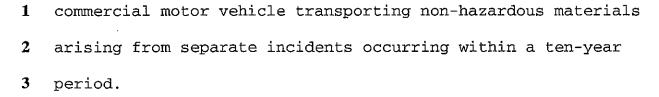
The examiner of drivers shall disqualify any person 14 (e) 15 from driving a commercial motor vehicle for a period of not less 16 than sixty days if the person is convicted of two serious 17 traffic violations, or one hundred twenty days if the person is 18 convicted of three serious traffic violations [-7]; provided that the violations are committed in a commercial motor vehicle 19 20 [arising] and arise from separate incidents occurring within a 21 three-year period. The one hundred twenty-day disqualification period required for a third conviction within three years of a 22 HB1094 CD1 HMS 2011-3846 

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["]serious traffic violation["], as defined in section 286-231, shall be in addition to any other previously imposed period of disqualification. [These] The disqualification periods <u>specified in this subsection</u> shall also apply to offenses committed while operating a noncommercial motor vehicle only if the conviction for the offense results in the revocation, cancellation, or suspension of the driver's license.

8 (f) The examiner of drivers shall disqualify any person 9 from driving a commercial motor vehicle or from resubmitting an 10 application for a period of not less than sixty days  $[\tau]$  if the 11 examiner of drivers finds that a commercial driver's license 12 holder or applicant for a commercial driver's license has 13 falsified information or failed to report or disclose required 14 information either before or after issuance of a commercial 15 driver's license.

(g) The examiner of drivers shall disqualify any person
from driving a commercial motor vehicle for a period of not less
than one hundred eighty days and not more than one year for a
first violation, [<del>or</del>] for at least two years and not more than
five years for a second violation, [<del>or</del>] <u>and</u> at least three years
and not more than five years for a third or subsequent violation
of a driver or vehicle out-of-service order committed in a



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The examiner of drivers shall disgualify any person 4 (h) 5 from driving a commercial motor vehicle for a period of not less 6 than one hundred eighty days and not more than two years for a 7 first violation  $[-\infty]$  and for at least three years and not more 8 than five years for any subsequent violation  $[\tau]$  of a driver or 9 vehicle out-of-service order committed in a commercial motor 10 vehicle transporting hazardous materials required to be 11 placarded under Title 49 Code of Federal Regulations, Part 172, 12 Subpart F, or designed to transport sixteen or more occupants 13 including the driver[, arising]; provided that each violation 14 arises from separate incidents occurring within a ten-year 15 period.

(i) The examiner of drivers shall disqualify any person
from driving a commercial motor vehicle for a period of not less
than sixty days if <u>the person is</u> convicted of a first violation,
not less than one hundred twenty days if <u>the person is</u> convicted
of a second violation during any three-year period, [or] <u>and</u> not
less than one year if <u>the person is</u> convicted of a third or
subsequent violation during any three-year period [for a

1 violation] of a federal, state, or local law or regulation 2 pertaining to one of the following six offenses at a railroad-3 highway grade crossing: 4 For all drivers who are not required to always stop, (1) 5 failing to slow down and check that the tracks are 6 clear of an approaching train; 7 (2) For all drivers who are not required to always stop, 8 failing to stop before reaching the crossing, if the 9 tracks are not clear; For all drivers who are always required to stop, 10 (3) 11 failing to stop before driving onto the crossing; For all drivers, failing to have sufficient space to 12 (4)13 drive completely through the crossing without 14 stopping; 15 (5) For all drivers, failing to obey a traffic control 16 device or the directions of an enforcement official at 17 the crossing; or 18 (6) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance. 19 20 (j) The examiner of drivers shall disqualify any person 21 from driving a commercial motor vehicle [when] if the driver's 22 driving is determined to constitute an imminent hazard, as HB1094 CD1 HMS 2011-3846 10 

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#### 1 defined in section 286-231[-7] and [the discualification is 2 imposed] in accordance with the provisions of Title 49 Code of 3 Federal Regulations Section 383.52. 4 (k) Beginning January 30, 2014, if a driver fails to 5 provide the examiner of drivers with the certification required 6 under Title 49 Code of Federal Regulations Section 7 383.71(a)(1)(ii) or a current medical examiner's certificate if 8 the driver self-certifies according to Title 49 Code of Federal 9 Regulations Section 383.71(a)(1)(ii)(A) that the driver is 10 operating in non-excepted interstate commerce as required by 11 Title 49 Code of Federal Regulations Section 383.71(h), the 12 examiner of drivers shall mark the commercial driver's license 13 information system driver record as "not-certified" and initiate 14 a commercial driver's license downgrade." SECTION 5. Section 286-241, Hawaii Revised Statutes, is 15 16 amended to read as follows: 17 "§286-241 Notification of disqualification, suspension, revocation, [or] cancellation, marking medical certification 18 19 status as "not-certified", or downgrading of commercial driver's 20 licenses or permits. (a) After disqualifying a person, or suspending, revoking, [or] canceling, or marking a medical 21 22 certification status as not-certified for a commercial driver's HB1094 CD1 HMS 2011-3846

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license or permit, [the records of] the examiner of drivers		
shall [ <del>be updated</del> ] <u>update all records</u> to reflect that action		
within ten days. Any disqualification imposed in accordance		
with section 286-240(j) and transmitted by the Federal Motor		
Carrier Safety Administration shall become a part of the driving		
record. After suspending, revoking, or canceling a nonresident		
commercial driver's license or permit, the examiner of drivers		
shall notify the licensing authority of the state [ <del>which</del> ] <u>that</u>		
issued the commercial driver's license within ten days. The		
notification shall include information regarding any		
disqualification and the violation or violations that resulted		
in the disqualification, revocation, suspension, or		
cancellation.		

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14 (b) Beginning January 30, 2012, the examiner of drivers, 15 within ten calendar days of the expiration of a commercial 16 driver's license driver's medical certification status or the expiration or rescission of a medical variance, shall change the 17 18 medical certification status of that driver to not-certified. (c) Beginning January 30, 2012, within ten calendar days 19 20 of receiving information from the Federal Motor Carrier Safety 21 Administration regarding issuance or renewal of a medical variance for a driver, the examiner of drivers shall update the 22 HB1094 CD1 HMS 2011-3846 

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1	commercia	1 driver's license information system driver record to
2	<u>include</u> t	he medical variance information provided by the Federal
3	Motor Car	rier Safety Administration.
4	<u>(d)</u>	Beginning January 30, 2012, if a driver's medical
5	certifica	tion or medical variance expires or if the Federal
6	<u>Motor Car</u>	rier Safety Administration notifies the examiner of
7	<u>drivers t</u>	hat a driver's medical variance was removed or
8	rescinded	, the examiner of drivers shall:
9	(1)	Notify the commercial driver's license holder of the
10		holder's not-certified medical certification status
11		and that the commercial driver's license privilege
12		will be removed from the driver's license unless the
13		driver submits a current medical certificate or
14	·	medical variance; and
15	(2)	Initiate procedures for downgrading the license;
16		provided that the commercial driver's license
17		downgrade shall be completed and recorded within sixty
18		days of the driver's medical certification status
19		becoming not-certified to operate a commercial motor
20		vehicle.
21	<u>(e)</u>	Beginning January 30, 2014, if a driver fails to
22	provide t	he examiner of drivers with the certification required
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1	by Title 49 Code of Federal Regulations Section 383.71(a)(1)(ii)
2	or a current medical examiner's certificate if the driver
3	self-certifies according to Title 49 Code of Federal Regulations
4	Section 383.71(a)(1)(ii)(A) that the driver is operating in
5	non-excepted interstate commerce as required by Title 49 Code of
6	Federal Regulations Section 383.71(h) the examiner of drivers
7	shall mark the commercial driver's license information system
8	driver record as not-certified and initiate a commercial
9	driver's license downgrade."
10	SECTION 6. Section 286-241.4, Hawaii Revised Statutes, is
11	amended by amending its title and subsection (a) to read as
12	follows:
13	"§286-241.4 Authority of examiner of drivers to suspend,
14	revoke, [ <del>or</del> ] cancel, mark the medical certification status as
15	"not-certified", or downgrade commercial driver's license or
16	<b>permit.</b> (a) The examiner of drivers may suspend, revoke, [ <del>or</del> ]
17	cancel, mark the medical certification status as not-certified,
18	or downgrade any commercial driver's license or permit without a
19	hearing when the examiner of drivers has probable cause to
20	believe that the licensee is disqualified under section
21	286-240."

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SECTION 7. Section 286-245, Hawaii Revised Statutes, is
 amended to read as follows:

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3 "§286-245 Driving record information to be recorded and 4 (a) Whenever a person is convicted of a moving furnished. 5 traffic violation based on a statute, ordinance, or rule, fails 6 to appear for a hearing, trial, or other court or administrative 7 proceeding on the moving traffic violation, or fails to pay a 8 fine or court cost ordered for a moving violation, the state 9 judiciary shall forward to the examiner of drivers the record of 10 the conviction. The record of conviction shall include whether 11 the offender was operating a commercial motor vehicle at the 12 time of the offense, whether the offender was transporting 13 hazardous materials requiring placarding under Title 49 Code of 14 Federal Regulations [Section] Part 172, Subpart F, the citation 15 date, the conviction date, the citation number, the court in which the conviction occurred, and the [offense(s)] offenses for 16 which the person has been convicted [of]. No record of 17 18 conviction [so] transmitted and maintained in the statewide 19 traffic records system shall be used for purposes other than the 20 licensing of drivers[-,], including any record of:

1	(1)	Driving a motor vehicle under the influence of
2		alcohol, a controlled substance, or any drug that
3		impairs driving ability;
4	(2)	Driving a commercial motor vehicle while the alcohol
5		concentration of the driver's blood is 0.04 per cent
6		or more by weight;
7	(3)	Refusing to submit to a test to determine the driver's
8		alcohol concentration while driving a motor vehicle as
9		required under sections 286-243 and 291E-11;
10	(4)	Using a motor vehicle in the commission of any felony;
11	<u>(5)</u>	Leaving the scene of an accident involving the motor
12		vehicle driven by the person;
13	(6)	Unlawful transportation, possession, or use of a
14		controlled substance while on duty;
15	(7)	Driving a commercial motor vehicle if, as a result of
16		prior violations committed while operating a
17		commercial motor vehicle, the driver's commercial
18		driver's license has been revoked, suspended, or
19		canceled, or the driver has been otherwise
20		disqualified from operating a commercial motor
21		vehicle; or

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1	(8)	Causing a fatality through the operation of a
2		commercial motor vehicle, including in the commission
3		of the crimes of manslaughter and negligent homicide
4		in any degree.
5	(b)	Within ten days of an in-state conviction[ $-$ ] and
6	within te	n days of the receipt of notice of an out-of-state
7	convictio	n, the examiner of drivers shall record and maintain as
8	part of t	he driver's record:
9	(1)	All convictions, disqualifications, and other
10		licensing actions for violations [ <del>both</del> ] in this State
11		and out-of-state, of any law relating to motor vehicle
12		traffic control, other than a parking violation,
13		committed in any type of vehicle, by a holder of a
14		commercial driver's license; and
15	(2)	All convictions, disqualifications, and other
16		licensing actions for violations [ <del>both</del> ] in this State
17		and out-of-state, of any law relating to motor vehicle
18		traffic control, other than a parking violation,
19		committed while the driver was operating a commercial
20		motor vehicle[ $ au$ ] and was required to have a commercial
21		driver's license.

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1 (c) No commercial driver's license driver's conviction for 2 any violation  $[\tau]$  in any type of motor vehicle  $[\tau]$  of a state or 3 local traffic control law, except a parking violation, shall be 4 expunded or subject to deferred imposition of  $judgment[_7]$  nor 5 shall an individual be allowed to enter into a diversion program 6 that would prevent the conviction from appearing on the driver's 7 driving record, whether the driver was convicted for an offense committed in this State or another state. 8

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9 (d) The state judiciary and the examiner of drivers shall
10 make available to the greatest extent possible information from
11 any driver's record required [by] for enforcement of this
12 section [to the greatest extent possible,] to the users
13 designated in subsection (f)[7] or their authorized agent,
14 within ten days of:

15 (1) Receiving the conviction or disqualification
16 information from another state; or

17 (2) Receiving the conviction <u>information</u> for a violation
18 occurring in this State.

19 (e) All convictions, disqualifications, and other
20 licensing actions for violations shall be retained on each
21 driver's record for at least three years or longer [as] if

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required under Title 49 Code of Federal Regulations Section
384.231(d).
(f) Only the following users or their authorized agents
may obtain a driver's record:
(1) States may receive all information regarding any
driver's record;
(2) The Secretary of Transportation may receive all
information regarding any driver's record;
(3) A driver may receive only information related to that
driver's record; and
(4) A motor carrier <u>employer</u> or prospective motor carrier
<u>employer</u> may receive all information regarding $[a]$ an
employee driver's driving record, or the [ <del>driver's</del> ]
driving record of a prospective <u>employee</u> driver;
provided that the request is made by the driver.
(g) The traffic violations bureaus of the district courts,
upon request, shall furnish users designated in subsection
(f) $[\tau]$ with a certified driver record listing all convictions,
disqualifications, and [all] licensing actions in this State and

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21 recorded and maintained by the examiner of drivers. The traffic
22 violations bureaus shall collect a fee for [those] requests by

notification of any action received from other states that are

1	users des	signated in subsection (f)(3) and (4), not to exceed \$9,
2	of which	\$5 shall be deposited into the general fund, \$2 shall
3	be deposi	ted into the judiciary computer system special fund,
4	and \$2 sh	all be deposited into the highway fund.
5	<u>(h)</u>	Beginning January 30, 2012, the examiner of drivers
6	shall:	
7	(1)	Post on the commercial driver's license information
8		system and maintain as part of the driver's record the
9		driver's self-certification of type of driving under
10		Title 49 Code of Federal Regulations Section
11		383.71(a)(1)(ii);
12	(2)	Retain for at least three years after the date of
13		issuance the original or a copy of the medical
14		certificate of any driver required to provide
15		documentation of physical qualification;
16	<u>(3)</u>	Post within ten calendar days the information from the
17		medical examiner's certificate to the commercial
18		driver's license information system driver record,
19		including:
20		(A) The medical examiner's name;
21		(B) The medical examiner's telephone number;

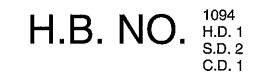
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1	<u>(C)</u>	The date of issuance of the medical examiner's
2		certificate;
3	<u>(D)</u>	The medical examiner's license number and the
4		state that issued it;
5	<u>(E)</u>	The medical examiner's number issued by the
6		national registry of medical examiners as
7		required under Title 49 United States Code
8		Section 31149(d);
9	<u>(F)</u>	The driver's medical certification status as
10		certified or not-certified;
11	<u>(G)</u>	The expiration date of the medical examiner's
12		certificate;
13	<u>(H)</u>	The existence of any medical variance on the
14		medical certificate, such as an exemption or
15		skill performance evaluation;
16	<u>(I)</u>	Any restrictions including corrective lenses,
17		hearing aids, or a requirement to have possession
18		of an exemption letter or skill performance
19		evaluation certificate while on duty; and
20	<u>(J)</u>	The date the medical examiner's certificate
21	· ·	information was posted to the commercial driver's
22		license information system driver record; and
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1	(4) Record the commercial driver's license downgrade
2	within sixty days of the driver's medical
3	certification status becoming not-certified to operate
4	a commercial driver's license."
5	SECTION 8. Statutory material to be repealed is bracketed
6	and stricken. New statutory material is underscored.
7	SECTION 9. This Act shall take effect on July 1, 2011.





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Report Title: Commercial Driver Licensing

#### Description:

Amends the licensing process and medical requirements for commercial driver's licensing to comply with the Federal Motor Carrier Safety Regulations. Effective July 1, 2011. (HB1094 CD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

