

1       **AN ACT** *to amend* 343.32 (1m) (b) (intro.) and 961.50 (1) (intro.) and (2) of the  
 2           statutes; **relating to:** permissive suspension of operating privileges after drug  
 3           offense conviction.

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

**JOINT LEGISLATIVE COUNCIL PREFATORY NOTE:** This draft was prepared for the joint legislative council’s special committee on strengthening Wisconsin families.

Under s. 961.50, stats., if a person is convicted of a violation of ch. 961, stats., relating to drug offenses, the court must suspend the person’s operating privilege for not less than 6 months nor more than 5 years. For the first conviction under ch. 961, stats., the person is eligible for an occupational license at any time. For the second conviction within a 5–year period, the person is eligible for an occupational license after the first 60 days of the suspension period. For subsequent convictions within a 5–year period, the person is eligible for an occupational license after the first 90 days of the suspension period.

Section 961.50, stats., requires similar convictions in other jurisdictions to be counted with regard to occupational license eligibility.

Additionally, s. 343.32 (1m), stats., requires the secretary of transportation to suspend a person’s operating privilege for not less than 6 months nor more than 5 years if the secretary receives notice that the person has been convicted in another state for any offense which, if the person had committed and been convicted of the offense in this state, would have required suspension of the person’s operating privilege under s. 961.50, stats. A person suspended under s. 343.32 (1m), stats., is eligible for an occupational license under the same limitations as a person convicted under s. 961.50, stats.

This bill draft *permits* a court to suspend the operating privilege of a person convicted of a violation of ch. 961, stats., instead of requiring suspension. Similarly, the draft grants the secretary of transportation *permissive* authority to suspend a person’s operating privilege if the secretary receives notice that the person has been convicted of a drug offense in another state.

Currently, federal funding incentives encourage states to enact and enforce suspension of drug offender's operating privileges. Specifically, a state averts withholding of federal-aid highways funds if the state enacts and enforces a law that requires the revocation or suspension for at least 6 months, of the driver's license of any individual who is convicted of any violation of the controlled substance act or any drug offense and that requires a delay, of at least 6 months, in the issuance or reinstatement of a license to a convicted individual who does not have a driver's license. [23 U.S.C. 159 (a) (3) (A).]

However, a state also may avert withholding of federal-aid highways funds through affirmative acts of the state's governor and legislature that express their opposition to a law that requires the suspension, revocation, or delay in issuance or reinstatement of the driver's license of drug offenders. [23 U.S.C. 159 (a) (3) (B).]

Accordingly, the bill draft provides that the draft's provisions take effect upon completion of the actions described under 23 U.S.C. 159 (a) (3) (B).

1           **SECTION 1.** 343.32 (1m) (b) (intro.) of the statutes is amended to read:

2           343.32 **(1m)** (b) (intro.) The secretary ~~shall~~ may suspend a person's operating privilege  
3           for not less than 6 months nor more than 5 years whenever notice has been received of the  
4           conviction of such person under federal law or the law of a federally recognized American  
5           Indian tribe or band in this state or the law of another jurisdiction for any offense therein which,  
6           if the person had committed the offense in this state and been convicted of the offense under  
7           the laws of this state, would have ~~required~~ permitted suspension of such person's operating  
8           privilege under s. 961.50. ~~The~~ If the secretary suspends a person's driving privilege, the  
9           person is eligible for an occupational license under s. 343.10 as follows:

**COMMENT:** Should the draft provide any criteria for suspension to the secretary?

10           **SECTION 2.** 961.50 (1) (intro.) and (2) of the statutes are amended to read:

11           961.50 **(1)** (intro.) If a person is convicted of any violation of this chapter, the court shall  
12           may, in addition to any other penalties that may apply to the crime, suspend the person's

1 operating privilege, as defined in s. 340.01 (40), for not less than 6 months nor more than 5  
2 years. The court shall immediately take possession of any suspended license and forward it  
3 to the department of transportation together with the record of conviction and notice of the  
4 suspension. ~~The~~ If the court suspends a person's operating privilege, the person is eligible for  
5 an occupational license under s. 343.10 as follows:

6 (2) For purposes of counting the number of convictions under sub. (1), convictions  
7 under the law of a federally recognized American Indian tribe or band in this state, federal law  
8 or the law of another jurisdiction, as defined in s. 343.32 (1m) (a), for any offense therein  
9 which, if the person had committed the offense in this state and been convicted of the offense  
10 under the laws of this state, would have ~~required~~ permitted suspension or revocation of such  
11 person's operating privilege under this section, shall be counted and given the effect specified  
12 under sub. (1). The 5-year period under this section shall be measured from the dates of the  
13 violations which resulted in the convictions.

**NOTE:** Under current law, ss. 343.32 (1m) (b) and 961.50 (1), stats., require that a person's operating privilege be suspended if the person is convicted of a drug offense. Current law delays the availability of an occupational license after suspension if the person has received 2 or more drug convictions in 5 years. An occupational license is available at any time for a first conviction, after the first 60 days of the suspension period for a 2nd conviction, and after the first 90 days of the suspension period for a 3rd or subsequent conviction.

The bill draft permits, rather than requires, suspension of a person's operating privilege upon conviction for a drug offense. The bill draft retains conviction-based time limits on availability of an occupational license.

**COMMENT:** The draft does not condition the discretion to suspend a person's operating privilege on whether the person has similar prior convictions. Is this appropriate?

14 **SECTION 3. Effective date.** This act takes effect upon completion of the actions required  
15 under 23 U.S.C. 159 (a) (3) (B).

**NOTE:** Provides that the legislation takes effect upon actions required under federal law in order to maintain eligibility for federal funding.

**COMMENT:** If the committee recommends a draft relating to drug-crime sentencing, should the committee also recommend introduction of a joint resolution that satisfies the legislative action required to maintain eligibility for federal funding?

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(END)