

State of Wisconsin



2009 Assembly Bill 230

Date of enactment: **March 15, 2010**

Date of publication*: **March 29, 2010**

2009 WISCONSIN ACT 167

AN ACT to amend 343.237 (2); to repeal and recreate 343.237 (2); and to create 165.8287 of the statutes; relating to: electronic access by law enforcement agencies to photographs on motor vehicle operators licenses and identification cards.

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

SECTION 1. 165.8287 of the statutes is created to read:

165.8287 Transaction information for management of enforcement system; department of transportation photographs. (1) In this section:

(a) "Administration of criminal justice" has the meaning given in 28 CFR 20.3 (b).

(b) "Federal law enforcement agency" has the meaning given in s. 343.237 (1) (ag).

(c) "Law enforcement agency of another state" has the meaning given in s. 343.237 (1) (ar).

(d) "Wisconsin law enforcement agency" has the meaning given in s. 175.46 (1) (f).

(2) Upon electronic request, the department of transportation shall make available to the department of justice, in a digital format, any photograph taken of an applicant under s. 343.14 (3) or 343.50 (4) that is maintained by the department of transportation. Updated photographs shall be available to the department of justice within 30 days of photograph capture.

(3) (a) The department of justice shall, through the transaction information for the management of enforcement system or another similar system operated by the department of justice, provide Wisconsin law enforcement agencies, federal law enforcement agencies, and

law enforcement agencies of other states with electronic access to any photograph specified in sub. (2) for the administration of criminal justice and for traffic enforcement. Access to these photographs shall be available electronically if the law enforcement agency submits an electronic request bearing an electronic certification or other indicator of authenticity. For an electronic request made by a law enforcement agency of another state, the electronic certification or other indicator of authenticity shall include an electronic signature or verification of the agency making the request and a certification that the request is made for the purpose of administration of criminal justice or traffic enforcement.

(b) Any photograph electronically available under this subsection shall contain the notation: "This photograph is subject to the requirements and restrictions of section 165.8287 of the Wisconsin Statutes. The photograph shall not be used for any purpose other than the administration of criminal justice or traffic enforcement. Secondary dissemination is prohibited and the photograph shall be destroyed when no longer necessary for the purpose requested. The photograph shall not be used as part of a photo lineup or photo array."

(c) The provisions of s. 343.237 (5), (8), (9), and (10) shall apply to any photograph obtained electronically by a law enforcement agency under this subsection. Any photograph obtained electronically by a law enforcement

* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

agency under this subsection may not be used for a photo lineup or photo array. For purposes of this paragraph, any photograph obtained electronically by a law enforcement agency under this subsection shall be considered a copy of a photograph obtained under s. 343.237 (3) or (4) with respect to s. 343.237 (5), (8), (9), and (10).

(d) The department of justice shall maintain a record, which may be electronic, of each request by a law enforcement agency for a photograph under this subsection and of the response to the request. Except as provided in s. 343.237 (9), the department of justice may not disclose any record or other information concerning or relating to the request to any person other than a court, district attorney, county corporation counsel, city, village, or town attorney, law enforcement agency, the applicant under s. 343.14 (3) or 343.50 (4), or, if the applicant is under 18 years of age, his or her parent or guardian. Records maintained under this paragraph shall be maintained for at least 12 months.

(e) The department of justice and the department of transportation shall ensure that, upon submission by law enforcement agencies of electronic requests meeting the requirements under this subsection, access to photographs under this subsection is promptly available to these requesting agencies.

SECTION 2. 343.237 (2) of the statutes is amended to read:

343.237 (2) Any photograph taken of an applicant under s. 343.14 (3) or 343.50 (4), and any fingerprint taken of an applicant under s. 343.12 (6) (b), may be maintained by the department and, except as provided in this section and s. 165.8287, shall be kept confidential. Except as provided in this section and s. 165.8287, the department may release a photograph or fingerprint only to the person whose photograph or fingerprint was taken.

SECTION 3. 343.237 (2) of the statutes, as affected by 2007 Wisconsin Act 20 and 2009 Wisconsin Act (this act), is repealed and recreated to read:

343.237 (2) Any photograph taken of an applicant under s. 343.14 (3) or 343.50 (4), and any fingerprint taken of an applicant under s. 343.12 (6) (b), may be maintained by the department and, except as provided in this section and s. 165.8287, shall be kept confidential. Except as provided in this section and s. 165.8287, the department may release a photograph or fingerprint only to the person whose photograph or fingerprint was taken or to the driver licensing agency of another jurisdiction.

SECTION 4. Effective dates. This act takes effect on the first day of the 12th month beginning after publication, except as follows:

(1) The repeal and recreation of section 343.237 (2) of the statutes takes effect on the first day of the 12th month beginning after publication, or on the date on which the creation of section 343.165 of the statutes by 2007 Wisconsin Act 20 takes effect, whichever is later.