



2009 ASSEMBLY BILL 230

April 23, 2009 – Introduced by Representatives HRAYCHUCK, RHOADES, SHILLING, MONTGOMERY, BROOKS, BERCEAU, VAN AKKEREN, DANOU, GOTTLIEB, LEMAHIEU, TOWNSEND, HUEBSCH, PRIDEMORE, LOTHIAN, GUNDRUM, A. OTT, JORGENSEN, SPANBAUER, STEINBRINK, DEXTER, KAUFERT, MURTHA, RIPP and BIES, cosponsored by Senators LEHMAN, OLSEN, HARSDFORF, LEIBHAM, SCHULTZ, DARLING and A. LASEE. Referred to Committee on Transportation.

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

Analysis by the Legislative Reference Bureau

With limited exceptions, current law requires the Department of Transportation (DOT) to take a photograph of all applicants for an operator's license or identification card. DOT may keep copies of the photographs for its own use but generally must keep the photographs confidential. However, DOT may release a photograph to the individual whose photograph was taken. In addition, DOT may release a copy of a photograph taken on or after September 1, 1997, to a Wisconsin law enforcement agency, a federal law enforcement agency, or a law enforcement agency of another state upon written request of the agency if certain conditions are satisfied. These conditions generally require that the photograph be requested for specified law enforcement purposes and that certain measures be taken to guard against further disclosure of the photograph.

Also under current law, the Department of Justice (DOJ) administers a transaction information for the management of enforcement (TIME) system that provides law enforcement agencies with access to certain information.

This bill requires DOT to make available to DOJ, in a digital format, any photograph taken of an operator's license or identification card applicant that is maintained by DOT. The bill requires DOJ to provide for electronic access by

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Wisconsin law enforcement agencies, federal law enforcement agencies, and law enforcement agencies of other states operator's license and identification card photographs for the administration of criminal justice and for traffic enforcement. Access to these photographs must be available electronically through the TIME system if the law enforcement agency submits an electronic request satisfying certain conditions. Provisions of current law establishing measures that must be taken to guard against further disclosure of photographs provided to law enforcement agencies also apply to photographs obtained electronically through the TIME system. DOJ and DOT must ensure that, upon submission by law enforcement agencies of electronic requests meeting the requirements under the bill, electronic access to photographs is promptly available to these requesting agencies.

For further information see the *state and local* 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.** 165.8287 of the statutes is created to read:

2 **165.8287 Transaction information for management of enforcement**
3 **system; department of transportation photographs. (1)** In this section:

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

5 (b).

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

7 (ag).

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

9 343.237 (1) (ar).

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

11 (f).

12 **(2)** Upon electronic request, the department of transportation shall make
13 available to the department of justice, in a digital format, any photograph taken of
14 an applicant under s. 343.14 (3) or 343.50 (4) that is maintained by the department

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1 of transportation. Updated photographs shall be available to the department of
2 justice within 30 days of photograph capture.

3 (3) (a) The department of justice shall, through the transaction information for
4 the management of enforcement system or another similar system operated by the
5 department of justice, provide Wisconsin law enforcement agencies, federal law
6 enforcement agencies, and law enforcement agencies of other states with electronic
7 access to any photograph specified in sub. (2) for the administration of criminal
8 justice and for traffic enforcement. Access to these photographs shall be available
9 electronically if the law enforcement agency submits an electronic request bearing
10 an electronic certification or other indicator of authenticity. For an electronic request
11 made by a law enforcement agency of another state, the electronic certification or
12 other indicator of authenticity shall include an electronic signature or verification
13 of the agency making the request and a certification that the request is made for the
14 purpose of administration of criminal justice or traffic enforcement.

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

22 (c) The provisions of s. 343.237 (5), (8), (9), and (10) shall apply to any
23 photograph obtained electronically by a law enforcement agency under this
24 subsection. Any photograph obtained electronically by a law enforcement agency
25 under this subsection may not be used for a photo lineup or photo array. For purposes

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1 of this paragraph, any photograph obtained electronically by a law enforcement
2 agency under this subsection shall be considered a copy of a photograph obtained
3 under s. 343.237 (3) or (4) with respect to s. 343.237 (5), (8), (9), and (10).

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

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

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

18 343.237 (2) Any photograph taken of an applicant under s. 343.14 (3) or 343.50
19 (4), and any fingerprint taken of an applicant under s. 343.12 (6) (b), may be
20 maintained by the department and, except as provided in this section and s.
21 165.8287, shall be kept confidential. Except as provided in this section and s.
22 165.8287, the department may release a photograph or fingerprint only to the person
23 whose photograph or fingerprint was taken.

24 **SECTION 3.** 343.237 (2) of the statutes, as affected by 2007 Wisconsin Act 20 and
25 2009 Wisconsin Act (this act), is repealed and recreated to read:

