



2007 ASSEMBLY BILL 639

December 21, 2007 - Introduced by Representatives RHOADES, BALLWEG, HAHN, HRAYCHUCK, LEMAHIEU, MONTGOMERY, MUSSER, PETROWSKI, SEIDEL, SHERIDAN, VOS and A. OTT, cosponsored by Senators LASSA, DARLING, HARSDFORF, OLSEN, ROESSLER and SCHULTZ. Referred to Committee on Transportation.

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

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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)** The department of transportation shall make available to the department
13 of justice, in a digital format, any photograph taken of an applicant under s. 343.14

14 (3) or 343.50 (4) that is maintained by the department of transportation. The

15 department of transportation shall make a photographic record available to the

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1 department of justice upon electronic request. Updated photographs shall be
2 available to the department of 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 and, for an electronic
11 request made by a law enforcement agency of another state, the purpose of
12 administration of criminal justice or traffic enforcement is satisfied and the
13 electronic request includes an electronic signature or verification of the person
14 making the request.

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 digital photograph obtained electronically by a law
2 enforcement agency under this subsection shall be considered a copy of a photograph
3 obtained 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 par. (c) and s. 343.237 (9),
7 the department of justice may not disclose any record or other information
8 concerning or relating to the request to any person other than a court, district
9 attorney, county corporation counsel, city, village, or town attorney, law enforcement
10 agency, the applicant under s. 343.14 (3) or 343.50 (4), or, if the applicant is under
11 18 years of age, his or her parent or guardian.

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

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

17 343.237 (2) Any photograph taken of an applicant under s. 343.14 (3) or 343.50
18 (4), and any fingerprint taken of an applicant under s. 343.12 (6) (b), may be
19 maintained by the department and, except as provided in this section and s.
20 165.8287, shall be kept confidential. Except as provided in this section and s.
21 165.8287, the department may release a photograph or fingerprint only to the person
22 whose photograph or fingerprint was taken.

23 **SECTION 3. Effective date.**

