



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-0321/4
ARG:jld&nwn:md

DOA:.....Byrnes, BB0123 - Allow DOT to issue non REAL ID compliant products

FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

Under current federal law, the REAL ID Act of 2005 (REAL ID Act) prohibits a federal agency from accepting for any “official purpose,” including boarding commercial aircraft and entering federal buildings, an operator’s license or identification card issued by a state unless the state satisfies requirements contained in the REAL ID Act. The REAL ID Act allows states to issue operator’s licenses and identification cards that are not compliant with REAL ID standards if they clearly state on their face that they cannot be accepted by any federal agency for federal identification or any other official purpose and if they use a unique design or color indicator to alert federal agency and other law enforcement personnel that they are not REAL ID compliant. Under [2007 Wisconsin Act 20](#) (the biennial budget act), certain provisions specified in the federal REAL ID Act are incorporated into state law when DOT provides notice that it is ready to implement the federal REAL ID Act. Among these provisions is the requirement that DOT follow certain procedures in processing applications for driver’s licenses and identification cards and that each driver’s license and identification card include a photograph.

This bill allows DOT, upon the implementation of the REAL ID Act in Wisconsin, to process applications for driver’s licenses and identification cards in a manner other than that required by REAL ID if the driver’s licenses and identification cards are marked to indicate that they are not REAL ID compliant and

DOT processes the applications in compliance with DOT practices and procedures applicable immediately prior to implementation of REAL ID. An applicant for a REAL ID noncompliant driver's license or identification card will still be required to provide to DOT: 1) an identification document that includes either the applicant's photograph or both the applicant's full legal name and date of birth; 2) documentation showing the applicant's date of birth, which may be the same as item 1); 3) proof of the applicant's social security number or verification that the applicant is not eligible for a social security number; 4) documentation showing the applicant's name and address of principal residence; and 5) documentary proof that the applicant is a U.S. citizen or is otherwise lawfully present in the United States. However, in processing an application for a REAL ID noncompliant driver's license or identification card, DOT is not required to meet the standards for document retention and verification that are imposed for REAL ID compliant products.

Current law provides for limited exceptions allowing DOT to issue a driver's license that does not contain a photograph of the license holder, including, by DOT rule, a religious belief exception. There are no similar photograph exceptions under current law for identification cards. Under current law, after the implementation of REAL ID, all REAL ID compliant driver's licenses and identification cards must contain a photograph.

Under this bill, until the implementation of the REAL ID Act, the photograph exception for driver's licenses continues and a new religious belief photograph exception is created for identification cards. After the implementation of REAL ID, this bill creates a religious belief photograph exception for REAL ID noncompliant driver's licenses and identification cards.

For further information see the *state* 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:

SECTION 1. 343.03 (3r) of the statutes is created to read:

343.03 (3r) REAL ID NONCOMPLIANT LICENSE. If any license described under sub. (3) is issued based upon the exception specified in s. 343.165 (7), the license shall, in addition to any legend or label described in sub. (3), be marked in a manner consistent with requirements under applicable federal law and regulations to indicate that the license is issued in accordance with P.L. 109-13, section 202 (d) (11), and is not intended to be accepted by any federal agency for federal identification or any other official purpose.

SECTION 2. 343.06 (1) (L) of the statutes, as affected by 2007 Wisconsin Act 20, is amended to read:

343.06 (1) (L) To any person who does not satisfy the requirements under s. 343.165 (1).

SECTION 3. 343.10 (7) (d) of the statutes, as affected by 2007 Wisconsin Act 20, is amended to read:

343.10 (7) (d) An occupational license issued by the department under this subsection shall be in the form of a license that includes a photograph described in s. 343.14 (3), unless the exception under s. 343.14 (3m) applies, and any special restrictions cards under s. 343.17 (4). The license shall clearly indicate that restrictions on a special restrictions card apply and that the special restrictions card is part of the person's license.

SECTION 4. 343.11 (1) of the statutes is amended to read:

343.11 (1) The department shall not issue a license to a person previously licensed in another jurisdiction unless such person surrenders to the department all valid operator's licenses possessed by the person issued by any other jurisdiction, which surrender operates as a cancellation of the surrendered licenses insofar as the person's privilege to operate a motor vehicle in this state is concerned. When such applicant surrenders the license to the department, the department shall issue a receipt therefor, which receipt shall constitute a temporary license to operate a motor vehicle for a period not to exceed 60 days if the applicant meets the standard required for eyesight and, in the opinion of the examiner, is not a dangerous hazard to the applicant and other users of the highways. ~~Except as provided in s. 343.055, the temporary license shall not be valid authorization for the operation of commercial motor vehicles.~~ The temporary license shall be surrendered to the examiner for

cancellation by the department if the 3rd attempt at the driving test is failed and the applicant shall be required to secure a temporary instruction permit for further practice driving.

SECTION 5. 343.11 (3) of the statutes is amended to read:

343.11 (3) Except as provided in sub. (1), the department may issue a receipt to any applicant for a license, which receipt shall constitute a temporary license to operate a motor vehicle while the application for license is being processed. Such temporary license shall be valid for a period not to exceed ~~30~~ 60 days.

SECTION 6. 343.11 (3) of the statutes, as affected by 2011 Wisconsin Act ... (this act), is amended to read:

343.11 (3) Except as provided in sub. (1), the department may issue a receipt to any applicant for a license, which receipt shall constitute a temporary license to operate a motor vehicle while the application for license is being processed. Such temporary license shall be valid for a period not to exceed 60 days. If the application for a license is processed under the exception specified in s. 343.165 (7), the receipt shall include the marking specified in s. 343.03 (3r).

SECTION 7. 343.14 (3) of the statutes, as affected by 2007 Wisconsin Act 20, is amended to read:

343.14 (3) The Except as provided in sub. (3m), the department shall, as part of the application process, take a digital photograph including facial image capture of the applicant to comply with s. 343.17 (3) (a) 2. ~~No Except as provided in sub. (3m),~~ no application may be processed without the photograph being taken. Except as provided in sub. (3m) and s. 343.165 (4) (d), in the case of renewal licenses, the photograph shall be taken once every 8 years, and shall coincide with the appearance for examination which is required under s. 343.16 (3).

SECTION 8. 343.14 (3m) of the statutes is created to read:

343.14 (3m) If the application for a license is processed under the exception specified in s. 343.165 (7), the application may be processed and the license issued or renewed without a photograph being taken of the applicant if the applicant provides to the department an affidavit stating that the applicant has a sincerely held religious belief against being photographed; identifying the religion to which he or she belongs or the tenets of which he or she adheres to; and stating that the tenets of the religion prohibit him or her from being photographed.

SECTION 9. 343.165 (1) (intro.) of the statutes, as created by [2007 Wisconsin Act 20](#), is amended to read:

343.165 (1) (intro.) The Subject to ss. 343.14 (3m) and 343.50 (4g), the department may not complete the processing of an application for initial issuance or renewal of an operator's license or identification card received by the department after ~~May 10, 2008~~ the effective date of this subsection [LRB inserts date], and no such license or identification card may be issued or renewed, unless the applicant presents or provides, and, subject to sub. (7), the department verifies under sub. (3), all of the following information:

SECTION 10. 343.165 (2) of the statutes, as created by [2007 Wisconsin Act 20](#), is amended to read:

343.165 (2) (a) The Subject to sub. (7), the department shall, in processing any application for an operator's license or identification card under sub. (1), capture a digital image of each document presented or provided to the department by an applicant. Images captured under this paragraph shall be maintained, in electronic storage and in a transferable format, in the applicant's file or record as provided under ss. 343.23 (2) (a) and 343.50 (8) (a).

(b) ~~The Subject to sub. (7),~~ the department shall record in the applicant's file under s. 343.23 (2) (a) or record under s. 343.50 (8) (a) the date on which verification under subs. (1) and (3) is completed.

SECTION 11. 343.165 (3) (a) of the statutes, as created by [2007 Wisconsin Act 20](#), is amended to read:

343.165 (3) (a) Except as provided in pars. (b) and (c) and subject to sub. (7), the department shall verify, in the manner and to the extent required under federal law, each document presented or provided to the department that is required to be presented or provided to the department by an applicant under sub. (1).

SECTION 12. 343.165 (4) (a) of the statutes, as created by [2007 Wisconsin Act 20](#), is amended to read:

343.165 (4) (a) Subsection (1) does not apply to an application for renewal of an operator's license or identification card received by the department after ~~May 10, 2008~~ the effective date of this paragraph [LRB inserts date], if in connection with a prior application after ~~May 10, 2008~~ the effective date of this paragraph [LRB inserts date], the applicant previously presented or provided, and the department verified under sub. (3) or (7), the information specified in sub. (1) and, if verified under sub. (3), the department recorded the date on which the verification procedures were completed as described in sub. (2) (b).

SECTION 13. 343.165 (4) (c) of the statutes, as created by [2007 Wisconsin Act 20](#), is amended to read:

343.165 (4) (c) Notwithstanding pars. (a) and (b), no operator's license displaying the legend required under s. 343.03 (3m) or identification card displaying the legend required under s. 343.50 (3) (a) may be renewed unless the applicant presents or provides valid documentary proof under sub. (1) (e) and this proof shows

that the status by which the applicant qualified for the license or identification card has been extended by the secretary of the federal department of homeland security.

SECTION 14. 343.165 (4) (d) of the statutes, as created by 2007 Wisconsin Act 20, is amended to read:

343.165 (4) (d) With any license or identification card renewal following a license or identification card expiration established under s. 343.20 (1m) or 343.50 (5) (c) at other than an 8-year interval, the department may determine whether the applicant's photograph is to be taken, or if the renewal is for a license the applicant is to be examined, or both, at the time of such renewal, so long as the applicant's photograph is taken, and if the renewal is for a license the applicant is examined, with a license or card renewal at least once every 8 years and the applicant's license or identification card at all times includes a photograph unless an exception under s. 343.14 (3m) or 343.50 (4g) applies.

SECTION 15. 343.165 (5) of the statutes, as created by 2007 Wisconsin Act 20, is amended to read:

343.165 (5) The department may, by rule, require that applications for reinstatement of operator's licenses or identification cards, issuance of occupational licenses, reissuance of operator's licenses, or issuance of duplicate operator's licenses or identification cards, received by the department after May 10, 2008 the effective date of this subsection ... [LRB inserts date], be processed in a manner consistent with the requirements established under this section for applications for initial issuance or renewal of operator's licenses and identification cards.

SECTION 16. 343.165 (7) of the statutes is created to read:

SECTION 16

343.165 (7) (a) The department may process an application for, and issue or renew, an operator's license or identification card without meeting the requirements under subs. (2) and (3) if all of the following apply:

1. The operator's license contains the marking specified in s. 343.03 (3r) or the identification card contains the marking specified in s. 343.50 (3) (b).

2. The operator's license or identification card is processed and issued or renewed in compliance with applicable department practices and procedures that were in effect immediately prior to the effective date of this subdivision [LRB inserts date].

(b) In addition to other instances of original issuance or renewal, this subsection specifically applies to renewals occurring after the effective date of this paragraph [LRB inserts date], of operator's licenses or identification cards originally issued prior to the effective date of this paragraph [LRB inserts date].

SECTION 17. 343.17 (3) (a) 2. of the statutes is amended to read:

343.17 (3) (a) 2. A color photograph of the person, unless the exception under s. 343.14 (3m) applies.

SECTION 18. 343.17 (3) (a) 14. of the statutes is created to read:

343.17 (3) (a) 14. If the license contains the marking specified in s. 343.03 (3r), a distinctive appearance specified by the department that clearly distinguishes the license from other operator's licenses or identification cards issued by the department and that alerts federal agency and other law enforcement personnel that the license may not be accepted for federal identification or any other official purpose.

SECTION 19. 343.17 (5) of the statutes is amended to read:

343.17 (5) NO PHOTOS ON TEMPORARY LICENSES. The temporary licenses issued under ss. 343.10, 343.11 (1) and (3), 343.16 (6) (b), and 343.305 (8) (a) shall be on forms provided by the department and shall contain the information required by sub. (3), except the license is that temporary licenses under ss. 343.16 (6) (b) and 343.305 (8) (a) are not required to include a photograph of the licensee.

SECTION 20. 343.17 (5) of the statutes, as affected by [2007 Wisconsin Act 20](#) and [2011 Wisconsin Act ...](#) (this act), is repealed and recreated to read:

343.17 (5) NO PHOTOS ON TEMPORARY LICENSES. The temporary licenses issued under ss. 343.10, 343.11 (1) and (3), 343.16 (6) (b), and 343.305 (8) (a) shall be on forms provided by the department and shall contain the information required by sub. (3), except that temporary licenses under ss. 343.16 (6) (b) and 343.305 (8) (a) are not required to include a photograph of the licensee. This subsection does not apply to a noncitizen temporary license, as described in s. 343.03 (3m).

SECTION 21. 343.50 (1) of the statutes is renumbered 343.50 (1) (a).

SECTION 22. 343.50 (1) of the statutes, as affected by [2007 Wisconsin Act 20](#) and [2011 Wisconsin Act ...](#) (this act), is repealed and recreated to read:

343.50 (1) (a) Subject to par. (b) and s. 343.165, the department shall issue to every qualified applicant, who has paid all required fees, an identification card as provided in this section.

(b) The department may not issue an identification card to a person previously issued an operator's license in another jurisdiction unless the person surrenders to the department any valid operator's license possessed by the person issued by another jurisdiction, which surrender operates as a cancellation of the license insofar as the person's privilege to operate a motor vehicle in this state is concerned. Within 30 days following issuance of the identification card under this section, the

department shall destroy any operator's license surrendered under this paragraph and report to the jurisdiction that issued the surrendered operator's license that the license has been destroyed and the person has been issued an identification card in this state.

(c) The department may issue a receipt to any applicant for an identification card, which receipt shall constitute a temporary identification card while the application is being processed and shall be valid for a period not to exceed 60 days. If the application for an identification card is processed under the exception specified in s. 343.165 (7), the receipt shall include the marking specified in sub. (3) (b).

SECTION 23. 343.50 (1) (c) of the statutes is created to read:

343.50 (1) (c) The department may issue a receipt to any applicant for an identification card, which receipt shall constitute a temporary identification card while the application is being processed and shall be valid for a period not to exceed 60 days.

SECTION 24. 343.50 (3) of the statutes is amended to read:

343.50 (3) DESIGN AND CONTENTS OF CARD. The card shall be the same size as an operator's license but shall be of a design which is readily distinguishable from the design of an operator's license and bear upon it the words "IDENTIFICATION CARD ONLY". The information on the card shall be the same as specified under s. 343.17 (3). The card may serve as a record of gift under s. 157.06 (2) (t) and the holder may affix a sticker thereto as provided in s. 343.175 (3). The card may also serve as a record of refusal under s. 157.06 (2) (u). The Except as provided in sub. (4g), the card shall contain the holder's photograph and, if applicable, shall be of the design specified under s. 343.17 (3) (a) 12.

SECTION 25. 343.50 (3) of the statutes, as affected by [2007 Wisconsin Act 20](#) and [2011 Wisconsin Act ...](#) (this act), is repealed and recreated to read:

343.50 (3) DESIGN AND CONTENTS OF CARD. (a) The card shall be the same size as an operator's license but shall be of a design which is readily distinguishable from the design of an operator's license and bear upon it the words "IDENTIFICATION CARD ONLY." The information on the card shall be the same as specified under s. 343.17 (3). If the issuance of the card requires the applicant to present any documentary proof specified in s. 343.14 (2) (es) 4. to 7., the card shall display, on the front side of the card, a legend identifying the card as temporary. The card shall contain physical security features consistent with any requirement under federal law. The card may serve as a record of gift under s. 157.06 (2) (t) and the holder may affix a sticker thereto as provided in s. 343.175 (3). The card may also serve as a record of refusal under s. 157.06 (2) (u). Except as provided in sub. (4g), the card shall contain the holder's photograph and, if applicable, shall be of the design specified under s. 343.17 (3) (a) 12.

(b) If an identification card is issued based upon the exception specified in s. 343.165 (7), the card shall, in addition to any other required legend or design, be of the design specified under s. 343.17 (3) (a) 14. and include a marking similar or identical to the marking described in s. 343.03 (3r).

***NOTE: This draft reconciles the treatment of s. 343.50 (4) in LRB-0315 and LRB-0321 by removing the applicable treatment from LRB-0321 and adding it to LRB-0315.

SECTION 26. 343.50 (4g) of the statutes is created to read:

343.50 (4g) PHOTOGRAPH REQUIREMENT; EXCEPTION. An application for an identification card may be processed and the identification card issued or renewed without a photograph being taken of the applicant if the applicant provides to the

department an affidavit stating that the applicant has a sincerely held religious belief against being photographed; identifying the religion to which he or she belongs or the tenets of which he or she adheres to; and stating that the tenets of the religion prohibit him or her from being photographed.

SECTION 27. 343.50 (4g) of the statutes, as created by 2011 Wisconsin Act ... (this act), is repealed and recreated to read:

343.50 (4g) PHOTOGRAPH REQUIREMENT; EXCEPTION. If the application for an identification card is processed under the exception specified in s. 343.165 (7), the application may be processed and the identification card issued or renewed without a photograph being taken of the applicant if the applicant provides to the department an affidavit stating that the applicant has a sincerely held religious belief against being photographed; identifying the religion to which he or she belongs or the tenets of which he or she adheres to; and stating that the tenets of the religion prohibit him or her from being photographed.

SECTION 9448. Effective dates; Transportation.

(1) **REAL ID NONCOMPLIANT OPERATOR'S LICENSES AND IDENTIFICATION CARDS.** The treatment of sections 343.03 (3r), 343.06 (1) (L), 343.10 (7) (d), 343.11 (3) (by SECTION 6), 343.14 (3) and (3m), 343.165 (1) (intro.), (2), (3) (a), (4) (a), (c), and (d), (5), and (7), and 343.17 (3) (a) 2. and 14. of the statutes and the repeal and recreation of sections 343.17 (5) and 343.50 (1), (3), and (4g) of the statutes take effect on July 1, 2011, on the day 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 latest.

***NOTE: This draft reconciles the treatment of s. 343.50 (4) in LRB-0315 and LRB-0321 by removing the applicable treatment from LRB-0321 and adding it to LRB-0315. The effective date provision has been modified to reflect this.

(END)