



## 2009 SENATE BILL 702

April 21, 2010 – Introduced by Senators KAPANKE and SCHULTZ, cosponsored by Representatives NERISON and BALLWEG. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

1     **AN ACT to amend** 48.685 (5) (br) 3m., 100.54 (9) (b), 103.34 (1) (b) 3., 895.446 (1),  
2             895.446 (2), 895.446 (3) (a), 939.03 (1) (e), 946.82 (4), 970.03 (11), 970.03 (13),  
3             971.19 (11) and 971.366; and **to create** 943.202 of the statutes; **relating to:**  
4             unauthorized possession of a correctional employee's personal identifying  
5             information and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

Current law prohibits the unauthorized use of another person's personal identifying information or documents related to the person's identifying information. Personal identifying information includes an individual's name, address, telephone number, driver's or employment identification number, the maiden name of an individual's mother, social security number, taxpayer's identification number, access code for an individual's bank or other account, an individual's unique biometric data, including fingerprint, voice print, retina or iris image, or deoxyribonucleic acid profile.

Under current law, a person who intentionally uses, attempts to use, or possesses with the intent to use another person's personal identifying information or documents to obtain something of value, to avoid civil or criminal process or penalty, or to harm the reputation or property of the person is guilty of a Class H felony and may be fined up to \$10,000, imprisoned for up to six years, or both.

Under current law, a person who is the victim of the unauthorized use of his or her personal identifying information or documents may obtain a security freeze on

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his or her credit reports free of charge, if he or she submits proof to a credit reporting agency that he or she reported the unauthorized use to a law enforcement agency.

This draft prohibits the possession, by a person who is incarcerated in a prison or who resides in a mental health facility, of a correctional employee's personal identifying information or a document relating to the employee's personal identifying information. A person who violates this prohibition is guilty of a Class H felony. Under the bill, a correctional employee who is the victim of an unauthorized possession of his or her personal identifying information or documents may obtain a security freeze on his or her credit reports free of charge, if he or she submits proof to a credit reporting agency that he or she reported the unauthorized possession to a law enforcement agency.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 48.685 (5) (br) 3m. of the statutes, as created by 2009 Wisconsin Act  
2           76, is amended to read:

3           48.685 (5) (br) 3m. Except for purposes of permitting a person to be a nonclient  
4           resident or caregiver specified in sub. (1) (ag) 1. a. of a day care center or day care  
5           provider, a violation of s. 943.201, 943.202, 943.203, 943.32 (2), or 943.38 (1) or (2);  
6           a violation of s. 943.34 (1), 943.395 (1), 943.41 (3) (e), (4) (a), (5), (6), or (6m), 943.45  
7           (1), 943.455 (2), 943.46 (2), 943.47 (2), 943.50 (1m), or 943.70 (2) (a) or (am) or (3) (a)  
8           that is a felony; or an offense under subch. IV of ch. 943 that is a felony.

9           **SECTION 2.** 100.54 (9) (b) of the statutes is amended to read:

10           100.54 (9) (b) A consumer reporting agency may not charge a fee to an  
11           individual who submits evidence satisfactory to the consumer reporting agency that  
12           the individual made a report to a law enforcement agency under s. 943.201 (4) or  
13           943.202 (4) regarding the individual's personal identifying information or a personal

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1 identifying document. A copy of a law enforcement agency's report under s. 943.201  
2 (4) or 943.202 (4) is considered satisfactory evidence for purposes of this paragraph.

3 **SECTION 3.** 103.34 (1) (b) 3. of the statutes, as created by 2009 Wisconsin Act  
4 3, is amended to read:

5 103.34 (1) (b) 3. A violation of s. 943.20, 943.201, 943.203, 943.21, 943.23,  
6 943.24 (2), 943.34, 943.50, 943.61, 943.62, or 943.70 or of a substantially similar  
7 federal law or law of another state, if the value of the property misappropriated is  
8 \$2,500 or more, or a violation of s. 943.202 or of a substantially similar federal law  
9 or law of another state.

10 **SECTION 4.** 895.446 (1) of the statutes is amended to read:

11 895.446 (1) Any person who suffers damage or loss by reason of intentional  
12 conduct that occurs on or after November 1, 1995, and that is prohibited under s.  
13 943.01, 943.20, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50, 943.61,  
14 943.74, or 943.76, or by reason of intentional conduct that occurs on or after April 28,  
15 1998, and that is prohibited under s. 943.201, 943.202, or 943.203, or by reason of  
16 intentional conduct that occurs on or after July 1, 2004, and that is prohibited under  
17 s. 943.011, 943.012, or 943.017, has a cause of action against the person who caused  
18 the damage or loss.

19 **SECTION 5.** 895.446 (2) of the statutes is amended to read:

20 895.446 (2) The burden of proof in a civil action under sub. (1) is with the person  
21 who suffers damage or loss to prove a violation of s. 943.01, 943.011, 943.012,  
22 943.017, 943.20, 943.201, 943.202, 943.203, 943.21, 943.24, 943.26, 943.34, 943.395,  
23 943.41, 943.50, 943.61, 943.74, or 943.76 by a preponderance of the credible evidence.  
24 A conviction under s. 943.01, 943.011, 943.012, 943.017, 943.20, 943.201, 943.202,  
25 943.203, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50, 943.61, 943.74, or

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1 943.76 is not required to bring an action, obtain a judgment, or collect on that  
2 judgment under this section.

3 **SECTION 6.** 895.446 (3) (a) of the statutes is amended to read:

4 895.446 (3) (a) Actual damages, including the retail or replacement value of  
5 damaged, used, or lost property, whichever is greater, for a violation of s. 943.01,  
6 943.011, 943.012, 943.017, 943.20, 943.201, 943.202, 943.203, 943.21, 943.24,  
7 943.26, 943.34, 943.395, 943.41, 943.50, 943.61, 943.74, or 943.76.

8 **SECTION 7.** 939.03 (1) (e) of the statutes is amended to read:

9 939.03 (1) (e) The person violates s. 943.201, 943.202, or 943.203 and the  
10 victim, at the time of the violation, is an individual who resides in this state, a  
11 deceased individual who resided in this state immediately before his or her death,  
12 or an entity, as defined in s. 943.203 (1) (a), that is located in this state.

13 **SECTION 8.** 943.202 of the statutes is created to read:

14 **943.202 Unauthorized possession of personal identifying information**  
15 **or documents. (1)** In this section:

16 (a) “Correctional employee” means a person who has direct contact with a  
17 prisoner in the course of his or her employment duties.

18 (b) “Personal identification document” means any of the following:

19 1. A document containing personal identifying information.

20 2. A correctional employee’s card or plate, if it can be used, alone or in  
21 conjunction with another access device, to obtain money, goods, services, or any other  
22 thing of value or benefit, or if it can be used to initiate a transfer of funds.

23 3. Any other device that is unique to, assigned to, or belongs to a correctional  
24 employee and that is intended to be used to access services, funds, or benefits of any  
25 kind to which the individual is entitled.

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- 1 (c) "Personal identifying information" means any of the following information:
- 2 1. A correctional employee's address.
- 3 2. A correctional employee's telephone number.
- 4 3. The unique identifying driver number assigned to a correctional employee
- 5 by the department of transportation under s. 343.17 (3) (a) 4.
- 6 4. A correctional employee's social security number.
- 7 5. An identification number assigned to a correctional employee by his or her
- 8 employer.
- 9 6. The maiden name of a correctional employee's mother.
- 10 7. The identifying number of a depository account, as defined in s. 815.18 (2)
- 11 (e), of a correctional employee.
- 12 8. A correctional employee's taxpayer identification number.
- 13 9. A correctional employee's deoxyribonucleic acid profile, as defined in s.
- 14 939.74 (2d) (a).
- 15 10. Any of the following, if it can be used, alone or in conjunction with any access
- 16 device, to obtain money, goods, services, or any other thing of value or benefit, or if
- 17 it can be used to initiate a transfer of funds:
- 18 a. A correctional employee's code or account number.
- 19 b. A correctional employee's electronic serial number, mobile identification
- 20 number, personal identification number, or other telecommunications service,
- 21 equipment, or instrument identifier.
- 22 c. Any other means of account access.
- 23 12. A correctional employee's unique biometric data, including fingerprint,
- 24 voice print, retina or iris image, or any other unique physical representation.

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1           13. Any other information or data that is unique to, assigned to, or belongs to  
2 a correctional employee and that is intended to be used to access services, funds, or  
3 benefits of any kind to which the individual is entitled.

4           15. Any other information that can be associated with a particular individual  
5 through one or more identifiers or other information or circumstances.

6           (d) “Prisoner” means any person who is incarcerated, imprisoned, or otherwise  
7 detained in a prison or correctional institution or mental health facility in the state,  
8 but does not include a person confined in a jail.

9           **(2)** Any prisoner who possesses any personal identifying information or  
10 personal identification document of a correctional employee, including a deceased  
11 correctional employee, without the authorization or consent of the correctional  
12 employee is guilty of a Class H felony.

13           **(3)** It is an affirmative defense to a prosecution under this section that the  
14 defendant was authorized by law to engage in the conduct that is the subject of the  
15 prosecution. A defendant who raises this affirmative defense has the burden of  
16 proving the defense by a preponderance of the evidence.

17           **(4)** If a correctional employee reports to a law enforcement agency for the  
18 jurisdiction which is the correctional employee’s residence that personal identifying  
19 information or a personal identifying document belonging to him or her reasonably  
20 appears to be in the possession of another in violation of this section, the agency shall  
21 prepare a report on the alleged violation. If the law enforcement agency concludes  
22 that it appears not to have jurisdiction to investigate the violation, it shall inform the  
23 correctional employee which law enforcement agency may have jurisdiction. A copy  
24 of a report prepared under this subsection shall be furnished upon request to the  
25 person who made the request, subject to payment of any reasonable fee for the copy.

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1           **SECTION 9.** 946.82 (4) of the statutes, as affected by 2009 Wisconsin Act 180,  
2 is amended to read:

3           946.82 (4) "Racketeering activity" means any activity specified in 18 USC 1961  
4 (1) in effect as of April 27, 1982, or the attempt, conspiracy to commit, or commission  
5 of any of the felonies specified in: chs. 945 and 961, subch. V of ch. 551, and ss. 49.49,  
6 134.05, 139.44 (1), 180.0129, 181.0129, 185.825, 201.09 (2), 215.12, 221.0625,  
7 221.0636, 221.0637, 221.1004, 553.41 (3) and (4), 553.52 (2), 940.01, 940.19 (4) to (6),  
8 940.20, 940.201, 940.203, 940.21, 940.30, 940.302 (2), 940.305, 940.31, 941.20 (2) and  
9 (3), 941.26, 941.28, 941.298, 941.31, 941.32, 942.09, 943.01 (2), (2d), or (2g), 943.011,  
10 943.012, 943.013, 943.02, 943.03, 943.04, 943.05, 943.06, 943.10, 943.20 (3) (bf) to (e),  
11 943.201, 943.202, 943.203, 943.23 (1g), (2) and (3), 943.24 (2), 943.27, 943.28, 943.30,  
12 943.32, 943.34 (1) (bf), (bm), and (c), 943.38, 943.39, 943.40, 943.41 (8) (b) and (c),  
13 943.50 (4) (bf), (bm), and (c), 943.60, 943.70, 943.76, 943.81, 943.82, 943.83, 943.84,  
14 943.85, 943.86, 943.87, 943.88, 943.89, 943.90, 944.21 (5) (c) and (e), 944.32, 944.33  
15 (2), 944.34, 945.03 (1m), 945.04 (1m), 945.05 (1), 945.08, 946.10, 946.11, 946.12,  
16 946.13, 946.31, 946.32 (1), 946.48, 946.49, 946.61, 946.64, 946.65, 946.72, 946.76,  
17 946.79, 947.015, 948.05, 948.051, 948.08, 948.12, and 948.30.

18           **SECTION 10.** 970.03 (11) of the statutes is amended to read:

19           970.03 (11) The court may admit a statement which is hearsay and which is  
20 not excluded from the hearsay rule under ss. 908.02 to 908.045 to prove ownership  
21 of property or lack of consent to entry to or possession or destruction of property or  
22 to prove any element under s. 943.201 (2), 943.202, or 943.203 (2).

23           **SECTION 11.** 970.03 (13) of the statutes is amended to read:

24           970.03 (13) Testimony may be received into the record of a preliminary  
25 examination by telephone or live audiovisual means if the proponent shows good

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1 cause or if the testimony is used to prove an element of an offense under s. 943.201  
2 (~~2~~), ~~943.202~~, or 943.203 (2).

3 **SECTION 12.** 971.19 (11) of the statutes is amended to read:

4 971.19 (11) In an action under s. 943.201 or 943.202, the defendant may be tried  
5 in the county where the victim or intended victim resided at the time of the offense  
6 or in any other county designated under this section. In an action under s. 943.203,  
7 the defendant may be tried in the county where the victim or intended victim was  
8 located at the time of the offense or in any other county designated under this section.

9 **SECTION 13.** 971.366 of the statutes is amended to read:

10 **971.366 Use of another's personal identifying information: charges.**  
11 In any case under s. 943.201, 943.202, or 943.203 involving more than one violation,  
12 all violations may be prosecuted as a single crime if the violations were pursuant to  
13 a single intent and design.

14 (END)