



2013 ASSEMBLY BILL 628

January 16, 2014 - Introduced by Representatives HINTZ, BERCEAU, BERNARD SCHABER, NERISON, OHNSTAD, POPE, RINGHAND, SCHRAA, SINICKI, THIESFELDT and WRIGHT, cosponsored by Senators SHILLING, ERPENBACH, GUDEx, HARRIS, LASSA, LEHMAN, SCHULTZ and WIRCH. Referred to Committee on State Affairs and Government Operations.

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 (13), 971.19 (11) and
3 971.366; and **to create** 943.202 of the statutes; **relating to:** unauthorized
4 possession of a correctional employee's or a health services employee's personal
5 identifying information and providing a penalty.

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 bill prohibits the possession, by a person who is imprisoned or otherwise in the custody of or supervised by the Department of Corrections, or who is a patient at a mental health facility or who resides in a mental health facility, of a correctional employee's or health services 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 or health services 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.

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 is amended to read:

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

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

9 100.54 (9) (b) A consumer reporting agency may not charge a fee to an
10 individual who submits evidence satisfactory to the consumer reporting agency that
11 the individual made a report to a law enforcement agency under s. 943.201 (4) or
12 943.202 (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 is amended to read:

4 103.34 (1) (b) 3. A violation of s. 943.20, 943.201, 943.203, 943.21, 943.23,
5 943.24 (2), 943.34, 943.50, 943.61, 943.62, or 943.70 or of a substantially similar
6 federal law or law of another state, if the value of the property misappropriated is
7 \$2,500 or more, or a violation of s. 943.202 or of a substantially similar federal law
8 or law of another state.

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

10 895.446 (1) Any person who suffers damage or loss by reason of intentional
11 conduct that occurs on or after November 1, 1995, and that is prohibited under s.
12 943.01, 943.20, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50, 943.61,
13 943.74, or 943.76, or by reason of intentional conduct that occurs on or after April 28,
14 1998, and that is prohibited under s. 943.201, 943.202, or 943.203, or by reason of
15 intentional conduct that occurs on or after July 1, 2004, and that is prohibited under
16 s. 943.011, 943.012, or 943.017, has a cause of action against the person who caused
17 the damage or loss.

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

19 895.446 (2) The burden of proof in a civil action under sub. (1) is with the person
20 who suffers damage or loss to prove a violation of s. 943.01, 943.011, 943.012,
21 943.017, 943.20, 943.201, 943.202, 943.203, 943.21, 943.24, 943.26, 943.34, 943.395,
22 943.41, 943.50, 943.61, 943.74, or 943.76 by a preponderance of the credible evidence.
23 A conviction under s. 943.01, 943.011, 943.012, 943.017, 943.20, 943.201, 943.202,
24 943.203, 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 an
17 offender in the course of his or her employment duties.

18 (b) "Health services employee" means a person who has direct contact with a
19 health services patient in the course of his or her employment duties.

20 (c) "Health services patient" means a person who is a patient at a mental health
21 institute, as defined in s. 51.01 (12), at the secure mental health facility established
22 under s. 46.055, or at the Wisconsin Resource Center established under s. 46.056.

23 (cm) "Offender" means any person who is an inmate in a state prison or
24 correctional facility, any person who is on probation, parole, or extended supervision
25 to the department of corrections, or any person under the supervision of the

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1 department of corrections within the meaning of s. 938.505 (1) or pursuant to s.
2 48.366, or a person subject to a criminal penalty who is placed in an institution under
3 s. 973.013 (3m), regardless of age.

4 (d) "Personal identification document" means any of the following:

5 1. A document containing personal identifying information.

6 2. A correctional employee's or health services employee's card or plate, if it can
7 be used, alone or in conjunction with another access device, to obtain money, goods,
8 services, or any other thing of value or benefit, or if it can be used to initiate a transfer
9 of funds.

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

13 (e) "Personal identifying information" means any of the following information:

14 1. A correctional employee's or health services employee's address.

15 2. A correctional employee's or health services employee's telephone number.

16 3. The unique identifying driver number assigned to a correctional employee
17 or health services employee by the department of transportation under s. 343.17 (3)

18 (a) 4.

19 4. A correctional employee's or health services employee's social security
20 number.

21 5. An identification number assigned to a correctional employee or health
22 services employee by his or her employer.

23 6. The maiden name of a correctional employee's or health services employee's
24 mother.

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1 7. The identifying number of a depository account, as defined in s. 815.18 (2)
2 (e), of a correctional employee or health services employee.

3 8. A correctional employee's or health services employee's taxpayer
4 identification number.

5 9. A correctional employee's or health services employee's deoxyribonucleic
6 acid profile, as defined in s. 939.74 (2d) (a).

7 10. Any of the following, if it can be used, alone or in conjunction with any access
8 device, to obtain money, goods, services, or any other thing of value or benefit, or if
9 it can be used to initiate a transfer of funds:

10 a. A correctional employee's or health services employee's code or account
11 number.

12 b. A correctional employee's or health services employee's electronic serial
13 number, mobile identification number, personal identification number, or other
14 telecommunications service, equipment, or instrument identifier.

15 c. Any other means of account access.

16 11. A correctional employee's or health services employee's unique biometric
17 data, including fingerprint, voice print, retina or iris image, or any other unique
18 physical representation.

19 12. Any other information or data that is unique to, assigned to, or belongs to
20 a correctional employee or health services employee and that is intended to be used
21 to access services, funds, or benefits of any kind to which the individual is entitled.

22 13. Any other information that can be associated with a particular individual
23 through one or more identifiers or other information or circumstances.

24 **(2)** Any offender or health services patient who possesses any personal
25 identifying information or personal identification document of a correctional

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1 employee or health services employee, including a deceased employee, without the
2 authorization or consent of the correctional employee or health services employee is
3 guilty of a Class H felony.

4 (3) It is an affirmative defense to a prosecution under this section that the
5 defendant was authorized by law to engage in the conduct that is the subject of the
6 prosecution. A defendant who raises this affirmative defense has the burden of
7 proving the defense by a preponderance of the evidence.

8 (4) If a correctional employee or health services employee reports to a law
9 enforcement agency for the jurisdiction which is the correctional employee's or
10 health services employee's residence that personal identifying information or a
11 personal identification document belonging to him or her reasonably appears to be
12 in the possession of another in violation of this section, the agency shall prepare a
13 report on the alleged violation. If the law enforcement agency concludes that it
14 appears not to have jurisdiction to investigate the violation, it shall inform the
15 correctional employee or health services employee which law enforcement agency
16 may have jurisdiction. A copy of a report prepared under this subsection shall be
17 furnished upon request to the person who made the request, subject to payment of
18 any reasonable fee for the copy.

19 **SECTION 9.** 946.82 (4) of the statutes is amended to read:

20 946.82 (4) "Racketeering activity" means any activity specified in 18 USC 1961
21 (1) in effect as of April 27, 1982, or the attempt, conspiracy to commit, or commission
22 of any of the felonies specified in: chs. 945 and 961, subch. V of ch. 551, and ss. 49.49,
23 134.05, 139.44 (1), 180.0129, 181.0129, 185.825, 201.09 (2), 215.12, 221.0625,
24 221.0636, 221.0637, 221.1004, 553.41 (3) and (4), 553.52 (2), 940.01, 940.19 (4) to (6),
25 940.20, 940.201, 940.203, 940.21, 940.30, 940.302 (2), 940.305, 940.31, 941.20 (2) and

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1 (3), 941.26, 941.28, 941.298, 941.31, 941.32, 942.09, 943.01 (2), (2d), or (2g), 943.011,
2 943.012, 943.013, 943.02, 943.03, 943.04, 943.05, 943.06, 943.10, 943.20 (3) (bf) to (e),
3 943.201, 943.202, 943.203, 943.23 (1g), (2) and (3), 943.24 (2), 943.27, 943.28, 943.30,
4 943.32, 943.34 (1) (bf), (bm), and (c), 943.38, 943.39, 943.40, 943.41 (8) (b) and (c),
5 943.50 (4) (bf), (bm), and (c) and (4m), 943.60, 943.70, 943.76, 943.81, 943.82, 943.83,
6 943.84, 943.85, 943.86, 943.87, 943.88, 943.89, 943.90, 944.21 (5) (c) and (e), 944.32,
7 944.33 (2), 944.34, 945.03 (1m), 945.04 (1m), 945.05 (1), 945.08, 946.10, 946.11,
8 946.12, 946.13, 946.31, 946.32 (1), 946.48, 946.49, 946.61, 946.64, 946.65, 946.72,
9 946.76, 946.79, 947.015, 948.05, 948.051, 948.08, 948.12, and 948.30.

10 **SECTION 10.** 970.03 (13) of the statutes is amended to read:

11 970.03 (13) Testimony may be received into the record of a preliminary
12 examination by telephone or live audiovisual means if the proponent shows good
13 cause or if the testimony is used to prove an element of an offense under s. 943.201
14 (2), 943.202, or 943.203 (2).

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

16 971.19 (11) In an action under s. 943.201 or 943.202, the defendant may be tried
17 in the county where the victim or intended victim resided at the time of the offense
18 or in any other county designated under this section. In an action under s. 943.203,
19 the defendant may be tried in the county where the victim or intended victim was
20 located at the time of the offense or in any other county designated under this section.

21 **SECTION 12.** 971.366 of the statutes is amended to read:

22 **971.366 Use of another's personal identifying information: charges.**

23 In any case under s. 943.201, 943.202, or 943.203 involving more than one violation,

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1 all violations may be prosecuted as a single crime if the violations were pursuant to
2 a single intent and design.

3 (END)