



2005 SENATE BILL 581

February 7, 2006 - Introduced by Senators DECKER, ROBSON, RISSER, TAYLOR, BRESKE, HANSEN and CARPENTER, cosponsored by Representatives MUSSER, SEIDEL, BLACK, SINICKI, VRUWINK and MOLEPSKE. Referred to Committee on Judiciary, Corrections and Privacy.

1 **AN ACT** *to amend* 165.25 (4) (ar) and 343.17 (3) (a) 4.; *to repeal and recreate*
2 942.05; and *to create* 100.54, 103.135, 138.25, 939.646 and 971.19 (12) of the
3 statutes; **relating to:** mail theft, penalty enhancers for identity theft crimes
4 against certain persons, protection of social security numbers of employees,
5 prohibiting discrimination against an individual who refuses to disclose the
6 individual's social security number, prohibiting social security numbers as
7 identifying numbers on driver's licenses and identification cards, allowing
8 individuals to restrict release of credit reports, and providing penalties.

Analysis by the Legislative Reference Bureau

This bill does the following: 1) makes changes regarding mail theft and identity theft; 2) makes changes regarding the use of social security numbers by businesses and employers; and 3) allows individuals to restrict access to their credit reports.

MAIL THEFT

Current law prohibits a person from opening any sealed letter or package if the person knows that he or she does not have the consent of the sender or the addressee and prohibits a person from publishing the contents of any letter or package that was opened without the consent of the sender or the addressee. Whoever violates one of these prohibitions is guilty of a misdemeanor and may be fined up to \$10,000 or sentenced to a term of imprisonment for up to nine months or both.

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This bill prohibits a person without a claim of right, as defined in the bill, from removing mail from any mail box or post office box, taking mail from a mail carrier, deceiving another person to obtain custody of mail, removing the contents of mail, taking mail left for collection, or possessing, publishing, buying, or concealing mail that was acquired through one of the new prohibitions the bill creates. Whoever violates one of the prohibitions is guilty of a felony and may be fined up to \$10,000 or sentenced to a term of imprisonment for up to three years and six months or both. Although current law generally requires criminal cases to be tried in the county where the crime was committed, this bill specifies that such mail theft cases may be tried also in the county in which the victim resided at the time of the offense, or, if the victim was a business or other entity, in the county where its place of business was located.

IDENTITY THEFT

Under current law, a person is prohibited from using another person's personal identifying information or personal identification document without authorization from the other person in order to obtain something of value, to avoid civil or criminal process or penalties, or to harm the other person. A person who violates the prohibition is guilty of a felony and may be fined up to \$10,000 or sentenced to a term of imprisonment of up to six years or both. This bill creates an additional penalty for cases in which the offender sought to obtain something of value or to avoid civil or criminal process or penalties and in which the victim was selected because he or she was a vulnerable adult or was disabled, elderly, or under the age of 18. The additional penalty increases the maximum fine by \$5,000 and increases the maximum term of imprisonment by five years.

SOCIAL SECURITY NUMBERS

This bill prohibits a person that conducts business in this state from discriminating with respect to the sale or purchase of goods or services against an individual who refuses to disclose the individual's social security number, unless state or federal law requires or specifically authorizes the person to obtain the individual's social security number. Under the bill, the Department of Agriculture, Trade and Consumer Protection (DATCP) investigates violations of this prohibition and may bring an enforcement action against a violator for injunctive relief or for a penalty specified in current law. In an enforcement action, DATCP is represented by the attorney general.

This bill prohibits an employer from soliciting from any applicant for employment the social security number of the applicant until the employer makes an offer of employment to the applicant. In addition, the bill prohibits an employer from using the social security number or any derivative of a social security number of an employee as an identifier unless that use is required or specifically authorized by state or federal law. The bill also prohibits an employer from displaying the social security number or any derivative of a social security number of an employee on any identification card that is issued by the employer.

Under current law, each driver's license and identification card issued to a person by the Department of Transportation (DOT) must bear a unique identifying number assigned by DOT. This bill prohibits DOT from using a person's social

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security number as the unique identifying number on the person's driver's license or identification card.

CREDIT REPORTS

The bill allows an individual to prohibit, with certain exceptions, a credit reporting agency from releasing the individual's credit report to third parties without the individual's authorization. Under the bill, if an individual provides the notice by certified mail or telephone to a credit reporting agency, then, no later than five business days after receipt of the notice, the credit reporting agency may not, with certain exceptions, release the individual's credit report to third parties without first obtaining the individual's authorization. The bill also allows, but does not require, a credit reporting agency to accept notices by electronic mail. If such notice is allowed, the credit reporting agency's deadline for not releasing credit reports is three business days after receipt of the notice. The bill also requires a credit reporting agency, within five business days after receipt of a notice, to provide an individual a unique personal identification number or password for authorizing the release of credit reports as described below.

As an alternative to giving prior authorization, the bill allows an individual who provides the notice described above to request the credit reporting agency to release a credit report to a third party identified by the individual. In addition, the bill allows an individual to request a credit reporting agency to release credit reports, for a period of time specified by the individual, to persons eligible to obtain them under federal law. An individual must provide the identification number or password described above to request release of a credit report under such circumstances. The bill requires a credit reporting agency to establish procedures for making such requests. The procedures must allow the requests to be made by certified mail or telephone and may allow the requests to be made by electronic mail. The bill requires a credit reporting agency to comply with a request within three business days after receipt of the request.

The bill contains exceptions to the prohibition on releasing credit reports without an individual's prior authorization. If an individual makes a material misrepresentation of fact in the notice describe above, the credit reporting agency may release a credit report, but only if the credit reporting agency first notifies the individual in writing about the misrepresentation at least five business days before releasing the credit report.

Also, the bill allows a credit reporting agency to release an individual's credit report to a person, or subsidiary, affiliate, agent, or assignee of a person, with whom the individual has an account, contract, or debtor-creditor relationship, provided that the release is for certain account review activities. In addition, the bill allows a credit reporting agency to release a credit report to any of the following: 1) a court, state or local governmental agency, or law enforcement agency; 2) a person acting pursuant to a court order, warrant, or subpoena; 3) the Department of Workforce Development (DWD) or a county child support agency for the purpose of enforcing support or maintenance obligations; 4) DWD or the Department of Health and Family Services for the purpose of investigating suspected fraudulent activity regarding specified benefits programs; 5) the Department of Revenue for the purpose

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of collecting delinquent taxes; 6) a person administering a credit file monitoring service to which the individual has subscribed; or 7) a person who provides the individual with a copy of a credit report at the individual's request. In addition, a credit reporting agency may release reports for the purpose of prescreening that is allowed under the federal Fair Credit Reporting Act. (Prescreening is a process in which credit reporting agencies compile lists of consumers who meet specific criteria and provide the lists to third parties for credit or insurance solicitation purposes.)

The bill also does all of the following:

1. Allows an individual to rescind a notice described above.
2. Allows a credit reporting agency to advise a third party that the credit reporting agency must obtain an individual's authorization before releasing a credit report to the third party.
3. Allows a third party to treat an individual's application for credit or any other purpose as incomplete if the bill prohibits a credit reporting agency from releasing the individual's credit report to the third party.
4. If a credit reporting agency releases an individual's credit report in violation of the bill's requirements, requires a credit reporting agency to notify the individual within 5 business days after releasing the credit report.
5. Prohibits a credit reporting agency from charging fees for taking actions required under the bill, except for reissuing personal identification numbers and passwords under certain circumstances.
6. Allows an individual to bring an action against a credit reporting agency that violates the bill's requirements regarding credit reports and recover damages or \$10,000 per violation, whichever is greater.
7. Requires credit reporting agencies to provide individuals with a notice describing their rights under the bill whenever the credit reporting agency is required to provide a notice under federal law regarding consumer rights with respect to credit reports.

Finally, the bill requires the Division of Banking in the Department of Financial Institutions to enforce the foregoing requirements.

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 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:

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1 **100.54 Refusals to disclose social security number; discrimination**
2 **prohibited.** (1) No person that conducts business in this state may discriminate
3 with respect to the terms or conditions of the sale or purchase of goods or services
4 against an individual who refuses to disclose the individual's social security number,
5 unless the person is required or specifically authorized by state or federal law to
6 obtain the individual's social security number.

7 (2) The department may exercise its authority under ss. 93.14 and 93.15 to
8 investigate violations of this section.

9 (3) The department may commence an action in the name of the state to
10 restrain by temporary or permanent injunction a violation of this section. Before
11 entry of final judgment, the court may make any necessary orders to restore to any
12 person any pecuniary loss suffered by the person because of the violation.

13 **SECTION 2.** 103.135 of the statutes is created to read:

14 **103.135 Employee social security number protection.** (1) DEFINITION.
15 In this section, "employer" means any person engaging in any activity, enterprise, or
16 business in this state employing at least one individual. "Employer" includes the
17 state and any office, department, independent agency, authority, institution,
18 association, society, or other body in state government created or authorized to be
19 created by the constitution or any law, including the legislature and the courts.

20 (2) UNNECESSARY SOLICITATION OR USE PROHIBITED. No employer may solicit from
21 any applicant for employment the social security number of the applicant until the
22 employer makes an offer of employment to the applicant. No employer may use the
23 social security number of any derivative of the social security number of an employee
24 as an identifier unless that use is required or specifically authorized by state or
25 federal law.

SENATE BILL 581**SECTION 2**

1 **(3) DISPLAY PROHIBITED.** No employer may display the social security number
2 or any derivative of a social security number of an employee on any identification
3 card that is issued by the employer.

4 **SECTION 3.** 138.25 of the statutes is created to read:

5 **138.25 Access to credit reports. (1) DEFINITIONS.** In this section:

6 (a) “Account review” includes review activities related to account maintenance
7 or monitoring, credit line increases, or account upgrades or enhancements.

8 (b) “Business day” means a business day, as defined in s. 421.301 (6), that is not
9 a legal holiday under s. 895.20 or a federal legal holiday.

10 (c) “Credit report” means any written, oral, or other communication of any
11 information by a credit reporting agency bearing on a individual’s credit worthiness,
12 credit standing, or credit capacity, which is used or is expected to be used, or collected
13 in whole or in part, for a purpose specified in 15 USC 1681b or for the purpose of
14 serving as a factor in establishing the individual’s eligibility for any of the following:

- 15 1. Credit to be used primarily for personal, family, or household purposes.
- 16 2. Employment, promotion, reassignment, or retention as an employee.
- 17 3. Rental of a residential dwelling unit.

18 (d) “Credit reporting agency” means any person who, for fees, dues, or other
19 compensation, or on a cooperative nonprofit basis, regularly engages in whole or in
20 part in the business of assembling or evaluating credit or other information on
21 individuals for the purpose of furnishing credit reports to 3rd parties, but does not
22 include any governmental agency whose records are maintained primarily for traffic
23 safety, law enforcement, or licensing purposes.

24 (e) “Eligible user” means a person who is allowed under federal law to obtain
25 an individual’s credit report.

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1 **(2) RESTRICTION OF ACCESS.** (a) *Notice.* 1. If an individual provides notice, as
2 specified in subd. 2., to a credit reporting agency to restrict access to the individual's
3 credit report, then, no later than the deadline specified in subd. 2., the credit
4 reporting agency may not, except as provided in sub. (3), release the credit report,
5 or any information included in the credit report, to a 3rd party without the
6 individual's prior authorization.

7 2. An individual may provide the notice required under subd. 1. to a credit
8 reporting agency by certified mail, telephone, or, if allowed by the credit reporting
9 agency, electronic mail. The notice shall include information that allows the credit
10 reporting agency to verify the identity of the individual providing the notice. If a
11 notice includes such information, a credit reporting agency shall comply with subd.
12 1. no later than 5 business days after an individual provides notice by certified mail
13 or telephone and no later than 3 business days after an individual provides notice
14 by electronic mail.

15 3. No later than 5 business days after the deadline specified in subd. 2., the
16 credit reporting agency shall provide the individual with a unique personal
17 identification number or password for the individual to authorize release of the
18 individual's credit report as described in par. (b).

19 (b) *Access authorization.* 1. An individual who has provided notice under par.
20 (a) 1. to a credit reporting agency may request the credit reporting agency to release
21 the individual's credit report to a 3rd party upon the 3rd party's request or to any
22 eligible user who requests the credit report during a specified period of time. In
23 making a request, an individual shall provide the credit reporting agency with the
24 unique personal identification number or password described in par. (a) 3. and
25 identify the 3rd party or specify the period of time.

SENATE BILL 581**SECTION 3**

1 2. A credit reporting agency shall establish procedures for individuals to make
2 requests under subd. 1. The procedures shall allow an individual to make a request
3 by certified mail or telephone. The procedures may allow an individual to make a
4 request by electronic mail. A credit reporting agency shall disclose the procedures
5 to individuals who provide notice under par. (a) 1.

6 3. A credit reporting agency shall comply with a request made under subd. 1.
7 no later than 3 business days after the credit reporting agency's receipt of the
8 request.

9 **(3) RELEASE OF REPORTS.** (a) A credit reporting agency may release to 3rd
10 parties and eligible users the credit report of an individual who provides notice under
11 sub. (2) (a) 1. if any of the following apply:

12 1. The individual requests the credit reporting agency to release the credit
13 report to the 3rd party or eligible user under sub. (2) (b).

14 2. The individual provides the credit reporting agency a subsequent written
15 notice by certified mail that rescinds the notice provided under sub. (2) (a) 1. and
16 includes with the notice the unique personal identification number or password
17 described in sub. (2) (a) 3. No later than 3 business days after receipt of the notice,
18 the credit reporting agency shall eliminate the restrictions on access to the
19 individual's credit report that are otherwise required under sub. (2) (a) 1.

20 3. The individual makes a material misrepresentation of fact in a notice under
21 sub. (2) (a) 1., provided that the credit reporting agency notifies the individual in
22 writing about the misrepresentation at least 5 business days before the credit
23 reporting agency releases the credit report to 3rd parties.

24 (b) If a credit reporting agency releases an individual's credit report to a 3rd
25 party to whom the credit reporting agency is not authorized to release the report

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1 under par. (a), the credit reporting agency shall, no later than 5 business days after
2 releasing report, notify the individual about the release. The notification shall
3 identify the 3rd party and the information released to the 3rd party.

4 (4) EXCEPTIONS. This section does not apply to the credit reports of an individual
5 that a credit reporting agency releases to, or for, any of the following:

6 (a) A person, or subsidiary, affiliate, agent, or assignee of a person, with whom
7 the individual has or, prior to assignment, had an account, contract, or
8 debtor-creditor relationship, for the purpose of account review or collection of a
9 financial obligation owing on the account, contract, or debt.

10 (b) A subsidiary, affiliate, agent, assignee, or prospective assignee of a 3rd party
11 or eligible user to whom the credit reporting agency is allowed to release a credit
12 report under sub. (3) (a).

13 (c) A court, state or local governmental agency, or law enforcement agency.

14 (d) A person acting pursuant to a court order, warrant, or subpoena.

15 (e) The department of workforce development or a county child support agency
16 for the purpose of enforcing support or maintenance obligations owed by the
17 individual.

18 (f) The department of health and family services or the department of
19 workforce development for the purpose of investigating suspected fraudulent
20 activity regarding the Wisconsin works program under ss. 49.141 to 49.161, medical
21 assistance under subch. IV of ch. 49, food stamp benefits under the food stamp
22 program under 7 USC 2011 to 2036, supplemental security income payments under
23 s. 49.77, payments for the support of children of supplemental security income
24 recipients under s. 49.775, or health care benefits under the Badger Care health care
25 program under s. 49.665.

SENATE BILL 581**SECTION 3**

1 (g) The department of revenue for the purpose of collecting delinquent taxes.

2 (h) The use of credit information for the purposes of prescreening as provided
3 under 15 USC 1681b (c).

4 (i) A person administering a credit file monitoring subscription service to which
5 the individual has subscribed.

6 (j) A person for the purpose of providing an individual with a copy of his or her
7 credit report upon the individual's request.

8 **(5) THIRD PARTIES.** (a) If a 3rd party requests access to a credit report that a
9 credit reporting agency may not release to the 3rd party under this section, then all
10 of the following apply:

11 1. If the 3rd party's request is in connection with the individual's application
12 to the 3rd party for credit or any other purpose, the 3rd party may treat the
13 application as incomplete.

14 2. The credit reporting agency shall notify the individual about the request.

15 (b) This section does not prohibit a credit reporting agency from advising a 3rd
16 party that an individual has provided a notice under sub. (2) (a) and that the credit
17 reporting agency must obtain the individual's authorization before releasing the
18 individual's credit report.

19 **(6) FEES.** (a) Except as provided in par. (b), a credit reporting agency may not
20 charge a fee to an individual for providing notice under sub. (2) (a), making a request
21 under sub. (2) (b), rescinding a notice under sub. (3) (a) 2., or taking any other action
22 allowed under this section.

23 (b) If an individual fails to retain the personal identification number or
24 password specified in sub. (2) (a) 3., a credit reporting agency may not charge the
25 individual a fee for reissuing the personal identification number or password or

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1 issuing a new personal identification number or password, but the credit reporting
2 agency may charge the individual a fee of no more than \$5 for each subsequent
3 reissuance or issuance.

4 (7) NOTICE. Whenever a consumer reporting agency is required to provide an
5 individual with a notice under 15 USC 1681g regarding consumer rights under the
6 federal credit reporting law, the consumer reporting agency shall also provide the
7 individual with a notice in 12-point type in substantially the following form:

8 **RIGHT TO RESTRICT ACCESS TO CREDIT REPORTS**

9 Under Wisconsin law, you may restrict access to your credit report at no charge
10 to protect your privacy and ensure that credit is not granted in your name without
11 your knowledge. Wisconsin law provides this right so that you can prevent credit,
12 loans, and services from being approved in your name without your consent. If you
13 exercise this right, you can prohibit a consumer credit reporting agency from
14 releasing any information in your credit report without your express authorization.

15 If you notify a credit reporting agency that you want to exercise this right, the
16 credit reporting agency must, within 5 business days after receiving the notice,
17 provide you with a personal identification number or password, which you may use
18 for authorizing the release of your credit report to a specific party or to any party for
19 a specified period of time. Within 3 business days after you authorize the release of
20 your credit report, the credit reporting agency must make the report available to the
21 party you specified or for the period of time you specified.

22 The right described above does not apply if a party with whom you have an
23 existing account, contract, or debtor-creditor relationship requests your credit
24 report for certain account review activities.

SENATE BILL 581**SECTION 3**

1 If you are actively seeking credit, you should understand that, if you exercise
2 the right described above, you may delay your applications for credit. You should
3 plan ahead and authorize release of your credit report a few days before you actually
4 apply for credit.

5 If you exercise the right describe above, Wisconsin law allows you to bring a civil
6 action against a credit reporting agency that releases your credit report without your
7 authorization.

8 **(8) ENFORCEMENT.** The division of banking shall enforce this section.

9 **(9) PRIVATE CAUSE OF ACTION.** Any person who suffers damages as the result of
10 another person's violation of this section may bring an action against the violator for
11 injunctive relief and to recover the amount of those damages or \$10,000 for each
12 violation, whichever is greater. Notwithstanding s. 814.04 (1), in an action under
13 this subsection, the court shall award a prevailing plaintiff reasonable attorney fees
14 and costs of the investigation and litigation.

15 **SECTION 4.** 165.25 (4) (ar) of the statutes is amended to read:

16 165.25 (4) (ar) The department of justice shall furnish all legal services
17 required by the department of agriculture, trade and consumer protection relating
18 to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,
19 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50
20 and, 100.51, and 100.54, and chs. 126, 136, 344, 704, 707, and 779, together with any
21 other services as are necessarily connected to the legal services.

22 **SECTION 5.** 343.17 (3) (a) 4. of the statutes is amended to read:

23 343.17 (3) (a) 4. A unique identifying driver number assigned by the
24 department, which may not be the person's social security number.

25 **SECTION 6.** 939.646 of the statutes is created to read:

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1 **939.646 Penalty; identity theft crimes committed against vulnerable**
2 **persons. (1)** If a person does all of the following, the penalties for the underlying
3 crime are increased as provided in sub. (2):

4 (a) Commits a crime under s. 943.201 (2) (a) or (b).

5 (b) Intentionally selects the person against whom the crime under par. (a) is
6 committed because the person is a vulnerable adult, as defined in s. 940.285 (1) (e),
7 has a disability that makes him or her more vulnerable, or appear to be more
8 vulnerable, to a crime under s. 943.201 (2) (a) or (b), is a person who is elderly, or is
9 a person under the age of 18.

10 **(2)** The maximum fine prescribed by law for the crime is increased by \$5,000
11 and the maximum term of imprisonment prescribed by law for the crime is increased
12 by 5 years.

13 **(3)** This section provides for the enhancement of the penalties applicable for
14 the underlying crime. The court shall direct that the trier of fact find a special verdict
15 as to all of the issues specified in sub. (1).

16 **SECTION 7.** 942.05 of the statutes is repealed and recreated to read:

17 **942.05 Mail theft. (1)** In this section:

18 (a) "Mail" means a letter, postal card, package, bag, or other sealed article that
19 is being mailed.

20 (b) "Mail depository" means a mail box, letter box, mail receptacle, post office,
21 a station of a post office, a mail route, or a postal service vehicle.

22 (c) "Person with a claim of right" means a person who owns or rents the mail
23 depository, who has permission from the owner or renter of the mail depository, who
24 is currently working in the line of duty for the postal service, or who is the sender of
25 or the addressee on the mail.

SENATE BILL 581**SECTION 7**

1 **(2)** Whoever, without a claim of right, does any of the following is guilty of a
2 Class I felony:

3 (a) Removes mail from a mail depository.

4 (b) Takes mail from a mail carrier.

5 (c) Deceives a person with a claim of right in order to obtain custody of mail.

6 (d) Removes the contents of mail.

7 (e) Removes mail that has been left for collection at a mail depository.

8 (f) Receives, possesses, transfers, publishes, buys, or conceals mail obtained by
9 an act described in pars. (a) to (e) if the person knows or should know that the mail
10 was obtained by an act described in pars. (a) to (e).

11 **SECTION 8.** 971.19 (12) of the statutes is created to read:

12 971.19 **(12)** In an action under s. 942.05, the defendant may be tried in the
13 county where the crime was committed, in the county where the victim resided at the
14 time of the offense, or, if the victim was an entity, as defined in s. 943.203 (1) (a), in
15 the county in which the victim's place of business was located at the time of the
16 offense.

17 **SECTION 9. Nonstatutory provisions.**

18 (1) EMPLOYEE SOCIAL SECURITY NUMBERS.

19 (a) *Use of employee social security numbers.* Notwithstanding section 103.135
20 (2) of the statutes, as created by this act, and SECTION 10 (2) (a) of this act, within 90
21 days after the effective date of this subsection, an employer that before the effective
22 date of this subsection used a social security number or derivative of a social security
23 number of an employee as an identifier shall cease using that number or derivative
24 as an identifier, except as permitted under section 103.135 (2) of the statutes, as
25 created by this act.

