

1999 ASSEMBLY BILL 729

February 8, 2000 – Introduced by Representatives TRAVIS, HUEBSCH, SCHNEIDER, KESTELL, ALBERS, URBAN, J. LEHMAN, STONE, WARD, KELSO, BERCEAU, MUSSER, BLACK, BOYLE, FREESE, WILLIAMS and PLALE, cosponsored by Senators ERPENBACH and WELCH. Referred to Committee on Judiciary and Personal Privacy.

1 **AN ACT to amend** 939.22 (21) (p), 941.38 (1) (b) 16., 943.20 (1) (intro.), 943.20 (3)
 2 (title) and 949.03 (1) (b); and **to create** 895.50 (2) (d), 943.20 (1d), 943.20 (3d),
 3 943.202 and 968.132 of the statutes; **relating to:** personal information
 4 contained in garbage or trash, the theft of garbage or trash and providing a
 5 penalty.

Analysis by the Legislative Reference Bureau

Current law provides certain remedies for a person whose privacy is unreasonably invaded. An invasion of privacy is defined to mean certain highly offensive intrusions upon the privacy of another, the unauthorized use of the name, portrait or picture of a living person for certain commercial purposes and certain kinds of highly offensive publicity given to a private matter of another. This bill defines an invasion of privacy to include the unauthorized possession of personal information about another if it is derived from sealed trash (i.e., garbage or trash placed in an opaque bag or a covered opaque container and properly disposed of).

The bill also creates new crimes involving the theft of sealed trash and the possession of personal information derived from sealed trash. Under current law, a person commits the offense of theft by, among other things, intentionally taking and carrying away movable property of another without the other's consent and with intent to deprive the other of possession of the property. A person convicted of theft may be imprisoned from up to nine months to up to 15 years (depending on the value of the property) or fined up to \$10,000 or both. Current law also prohibits the

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intentional misappropriation of personal identifying information. A person who violates this prohibition may be imprisoned for up to ten years or fined up to \$10,000 or both.

Under the bill, a person may not intentionally take and carry away, use, transfer, conceal or retain possession of anything in another person's sealed trash without the other person's consent with intent to deprive the person permanently of possession or control of such trash or after possession or control of the trash has been conveyed to a third person for its disposal. A person who violates this prohibition is subject to a forfeiture of up to \$1,000. In addition, under the bill, a person may not possess personal information about an individual that was derived from sealed trash if the person knows that the personal information was derived from the sealed trash without the individual's consent. A person who violates this prohibition may be imprisoned for up to 90 days or fined up to \$1,000 or both.

Finally, under Wisconsin case law, a person does not have a reasonable expectation of privacy in garbage or trash if the garbage or trash is left for collection in a place that is not adjacent to the home. As a result, such garbage or trash may be searched or seized by government officials without a warrant. This bill establishes an individual's expectation of privacy in sealed trash as reasonable under the Wisconsin constitution, thereby subjecting searches or seizures of the sealed trash to the warrant requirements of article I, section 11 of the Wisconsin constitution.

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

1 **SECTION 1.** 895.50 (2) (d) of the statutes is created to read:

2 895.50 **(2)** (d) The unauthorized possession of personal information, as defined
3 in s. 943.202 (1), about another if the personal information was derived from trash,
4 as defined in s. 943.20 (1d) (a).

5 **SECTION 2.** 939.22 (21) (p) of the statutes is amended to read:

6 939.22 **(21)** (p) Theft, as prohibited in s. 943.20 (1).

7 **SECTION 3.** 941.38 (1) (b) 16. of the statutes is amended to read:

8 941.38 **(1)** (b) 16. Theft, as prohibited in s. 943.20 (1).

9 **SECTION 4.** 943.20 (1) (intro.) of the statutes is amended to read:

10 943.20 **(1)** ACTS IN GENERAL. (intro.) ~~Whoever~~ Except as provided in sub. (1d),
11 whoever does any of the following may be penalized as provided in sub. (3):

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1 **SECTION 5.** 943.20 (1d) of the statutes is created to read:

2 **943.20 (1d)** ACTS RELATED TO TRASH. (a) In this subsection, “trash” means
3 anything placed in an opaque bag or an opaque container with a lid, if the bag or the
4 contents of the container have been disposed of in a manner routinely used for the
5 collection and disposal of garbage, including setting the bag or container out for
6 collection, leaving the bag or the contents of the container at a transfer station or
7 disposing of the bag or the contents of the container directly at a landfill.

8 (b) Whoever intentionally takes and carries away, uses, transfers, conceals or
9 retains possession of another person’s trash without the other person’s consent and
10 with intent to deprive the person permanently of possession or control of such trash
11 or after possession or control of the trash has been conveyed to a third person for its
12 disposal may be penalized as provided in sub. (3d).

13 **SECTION 6.** 943.20 (3) (title) of the statutes is amended to read:

14 **943.20 (3)** (title) PENALTIES IN GENERAL.

15 **SECTION 7.** 943.20 (3d) of the statutes is created to read:

16 **943.20 (3d)** PENALTY RELATING TO THEFT OF TRASH. Whoever violates sub. (1d)
17 is subject to a Class B forfeiture.

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

19 **943.202 Personal information derived from garbage or trash. (1)** In this
20 section, “personal information” means any of the following:

21 (a) Information about an individual, including information about an
22 individual’s family, friends and associates, beliefs, appearance, employment,
23 activities, memberships, political affiliations, physical or mental condition, diet,
24 medications, habits, possessions, finances and purchases.

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1 (b) Personal identifying data about an individual that is not generally
2 considered to be public knowledge, including account numbers and account balances,
3 social security number and other identifying numbers, insurance coverage and tax
4 information.

5 (2) Whoever intentionally possesses any personal information about another
6 individual, knowing that it was derived from trash, as defined in s. 943.20 (1d) (a),
7 without the consent of the individual, is guilty of a Class B misdemeanor:

8 **SECTION 9.** 949.03 (1) (b) of the statutes is amended to read:

9 949.03 (1) (b) The commission or the attempt to commit any crime specified in
10 s. 346.62 (4), 346.63 (2) or (6), 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08,
11 940.09, 940.10, 940.19, 940.20, 940.201, 940.21, 940.22 (2), 940.225, 940.23, 940.24,
12 940.25, 940.285, 940.29, 940.30, 940.305, 940.31, 940.32, 941.327, 943.02, 943.03,
13 943.04, 943.10, 943.20 (1), 943.23 (1g), (1m) or (1r), 943.32, 948.02, 948.025, 948.03,
14 948.04, 948.07, 948.095, 948.20, 948.30 or 948.51.

15 **SECTION 10.** 968.132 of the statutes is created to read:

16 **968.132 Privacy for garbage or trash.** For purposes of article I, section 11,
17 of the Wisconsin Constitution, an individual has a reasonable expectation of privacy
18 in trash as defined in s. 943.20 (1d) (a).

19 (END)