

2003 ASSEMBLY BILL 288

1 **AN ACT** *to renumber and amend* 343.237 (1) (a), 943.201 (1) (a) and 943.201 (2);
2 *to amend* 343.237 (3) (intro.), 343.237 (3) (b), 343.237 (3) (c) (intro.), 343.237
3 (4) (intro.), 343.237 (4) (a), 343.237 (4) (b), 895.80 (1), 939.03 (1) (intro.) and (a)
4 to (c), 943.201 (title), 946.82 (4), 970.03 (11) and 970.03 (13); and **to create**
5 196.23, 343.237 (1) (ag), 343.237 (3) (e), 939.03 (1) (e), 939.32 (1) (f), 943.201 (1)
6 (a) 1., 943.201 (1) (a) 2., 943.201 (1) (a) 3., 943.201 (1) (b) 10. to 15., 943.201 (2)
7 (a), (b) and (c), 943.201 (3) and (4), 943.203, 946.79, 971.19 (11), 971.366 and
8 971.367 of the statutes; **relating to:** identity theft, unlawful use of an entity's
9 identification documents or identifying information, false statements to
10 financial institutions, and access by law enforcement agencies to driver's
11 license and state identification card photographs and providing penalties.

Analysis by the Legislative Reference Bureau

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

ASSEMBLY BILL 288**SECTION 1**

1 **SECTION 1.** 196.23 of the statutes is created to read:

2 **196.23 Utility service for victims of misappropriated identifying**
3 **information. (1)** If an individual uses personal identifying information of another
4 individual, without the authorization or consent of the other individual, to apply for
5 and receive service from a public utility and, as a result, the individual whose
6 personal identifying information was used without authorization or consent is
7 unable to obtain service from the public utility, the utility shall provide service to that
8 individual if all of the following apply:

9 (a) The individual furnishes the public utility an affidavit indicating that to the
10 best of the individual's knowledge his or her personal identifying information was
11 used by another individual, without the authorization or consent of the affiant, to
12 obtain the utility service.

13 (b) The individual furnishes the public utility a copy of a law enforcement
14 agency report, based on the individual's report to the law enforcement agency of the
15 use by another individual of his or her personal identifying information without
16 authorization or consent to obtain utility service.

17 (c) The individual otherwise qualifies to receive the service from the utility.

18 **(2)** A public utility may contest the accuracy of an affidavit or report furnished
19 by an individual under sub. (1) (a) or (b) by petitioning for a summary investigation
20 under s. 196.28 (1). If a petition is filed, the commission shall conduct a summary
21 investigation. If a hearing is held under s. 196.28 (2) and the commission determines
22 that the conditions of sub. (1) (intro.) have not been met, the public utility is not
23 required to provide utility service under this section to the individual.

24 **SECTION 2.** 343.237 (1) (a) of the statutes is renumbered 343.237 (1) (ar) and
25 amended to read:

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1 343.237 (1) (ar) “Law enforcement agency of ~~a physically adjacent~~ another
2 state” ~~has the meaning given in s. 175.46 (1) (b)~~ means a governmental unit of one
3 or more persons employed by a state other than this state or by a political subdivision
4 of a state other than this state for the purpose of preventing and detecting crime and
5 enforcing laws or ordinances of that state or a political subdivision of that state,
6 employees of which unit are authorized to make arrests for crimes while acting
7 within the scope of their authority.

8 **SECTION 3.** 343.237 (1) (ag) of the statutes is created to read:

9 343.237 (1) (ag) “Federal law enforcement agency” means a governmental unit
10 of one or more persons employed by the federal government for the purpose of
11 preventing and detecting crime and enforcing federal laws, employees of which unit
12 are authorized to make arrests for crimes while acting within the scope of their
13 authority.

14 **SECTION 4.** 343.237 (3) (intro.) of the statutes is amended to read:

15 343.237 (3) (intro.) The department shall provide a Wisconsin law enforcement
16 agency or a federal law enforcement agency with a copy of a photograph taken on or
17 after September 1, 1997, of an applicant under s. 343.14 (3) or 343.50 (4) if the
18 department receives a written request on the Wisconsin law enforcement agency’s
19 letterhead that contains all of the following:

20 **SECTION 5.** 343.237 (3) (b) of the statutes is amended to read:

21 343.237 (3) (b) The name of the person making the request and the Wisconsin
22 law enforcement agency that employs the requester.

23 **SECTION 6.** 343.237 (3) (c) (intro.) of the statutes is amended to read:

ASSEMBLY BILL 288**SECTION 6**

1 343.237 (3) (c) (intro.) A statement signed by a division commander or higher
2 authority within the Wisconsin law enforcement agency that the photograph is
3 requested for any of the following purposes:

4 **SECTION 7.** 343.237 (3) (e) of the statutes is created to read:

5 343.237 (3) (e) If the requester is a federal law enforcement agency, a statement
6 that the agency agrees to comply with all of the requirements under this section.

7 **SECTION 8.** 343.237 (4) (intro.) of the statutes is amended to read:

8 343.237 (4) (intro.) If a law enforcement agency of ~~a physically adjacent~~
9 another state makes a request meeting all the requirements specified for a request
10 by a Wisconsin law enforcement agency or a federal law enforcement agency under
11 sub. (3), the department shall comply with the request if all of the following apply:

12 **SECTION 9.** 343.237 (4) (a) of the statutes is amended to read:

13 343.237 (4) (a) The law enforcement agency of the ~~physically adjacent~~ other
14 state agrees to comply with all of the requirements under this section.

15 **SECTION 10.** 343.237 (4) (b) of the statutes is amended to read:

16 343.237 (4) (b) The ~~physically adjacent~~ other state allows Wisconsin law
17 enforcement agencies similar or greater access to similar information from that
18 ~~physically adjacent~~ state.

19 **SECTION 11.** 895.80 (1) of the statutes is amended to read:

20 895.80 (1) Any person who suffers damage or loss by reason of intentional
21 conduct that occurs on or after November 1, 1995, and that is prohibited under s.
22 943.01, 943.20, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50, 943.61,
23 943.74, or 943.76, or by reason of intentional conduct that occurs on or after April 28,
24 1998, and that is prohibited under s. 943.201 or 943.203, has a cause of action against
25 the person who caused the damage or loss.

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1 **SECTION 12.** 939.03 (1) (intro.) and (a) to (c) of the statutes are amended to read:

2 939.03 (1) (intro.) A person is subject to prosecution and punishment under the
3 law of this state if any of the following applies:

4 (a) The person commits a crime, any of the constituent elements of which takes
5 place in this state; ~~or,~~

6 (b) While out of this state, the person aids and abets, conspires with, or advises,
7 incites, commands, or solicits another to commit a crime in this state; ~~or,~~

8 (c) While out of this state, the person does an act with intent that it cause in
9 this state a consequence set forth in a section defining a crime; ~~or,~~

10 **SECTION 13.** 939.03 (1) (e) of the statutes is created to read:

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

15 **SECTION 14.** 939.32 (1) (f) of the statutes is created to read:

16 939.32 (1) (f) Whoever attempts to commit a crime under s. 946.79 is subject
17 to the penalty provided in that section for the completed act.

18 **SECTION 15.** 943.201 (title) of the statutes is amended to read:

19 **943.201 (title) ~~Misappropriation~~ Unauthorized use of an individual's**
20 **personal identifying information or personal identification documents.**

21 **SECTION 16.** 943.201 (1) (a) of the statutes is renumbered 943.201 (1) (a) (intro.)
22 and amended to read:

23 943.201 (1) (a) (intro.) “Personal identification document” means ~~a birth~~
24 ~~certificate or a financial transaction card, as defined in s. 943.41 (1) (em).~~ any of the
25 following:

ASSEMBLY BILL 288**SECTION 17**

1 **SECTION 17.** 943.201 (1) (a) 1. of the statutes is created to read:

2 943.201 (1) (a) 1. A document containing personal identifying information.

3 **SECTION 18.** 943.201 (1) (a) 2. of the statutes is created to read:

4 943.201 (1) (a) 2. An individual's card or plate, if it can be used, alone or in
5 conjunction with another access device, to obtain money, goods, services, or any other
6 thing of value or benefit, or if it can be used to initiate a transfer of funds.

7 **SECTION 19.** 943.201 (1) (a) 3. of the statutes is created to read:

8 943.201 (1) (a) 3. Any other device that is unique to, assigned to, or belongs to
9 an individual and that is intended to be used to access services, funds, or benefits of
10 any kind to which the individual is entitled.

11 **SECTION 20.** 943.201 (1) (b) 10. to 15. of the statutes are created to read:

12 943.201 (1) (b) 10. An individual's taxpayer identification number.

13 11. An individual's deoxyribonucleic acid profile, as defined in s. 939.74 (2d) (a).

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

17 a. An individual's code or account number.

18 b. An individual's electronic serial number, mobile identification number,
19 personal identification number, or other telecommunications service, equipment, or
20 instrument identifier.

21 c. Any other means of account access.

22 13. An individual's unique biometric data, including fingerprint, voice print,
23 retina or iris image, or any other unique physical representation.

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1 14. Any other information or data that is unique to, assigned to, or belongs to
2 an individual and that is intended to be used to access services, funds, or benefits of
3 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 **SECTION 21.** 943.201 (2) of the statutes, as affected by 2001 Wisconsin Act 109,
7 is renumbered 943.201 (2) (intro.) and amended to read:

8 943.201 (2) (intro.) Whoever, for any of the following purposes, intentionally
9 uses or, attempts to use, or possesses with intent to use any personal identifying
10 information or personal identification document of an individual to obtain credit,
11 money, goods, services or anything else of value, including a deceased individual,
12 without the authorization or consent of the individual and by representing that he
13 or she is the individual or, that he or she is acting with the authorization or consent
14 of the individual, or that the information or document belongs to him or her is guilty
15 of a Class H felony.:

16 **SECTION 22.** 943.201 (2) (a), (b) and (c) of the statutes are created to read:

17 943.201 (2) (a) To obtain credit, money, goods, services, employment, or any
18 other thing of value or benefit.

19 (b) To avoid civil or criminal process or penalty.

20 (c) To harm the reputation, property, person, or estate of the individual.

21 **SECTION 23.** 943.201 (3) and (4) of the statutes are created to read:

22 943.201 (3) It is an affirmative defense to a prosecution under this section that
23 the defendant was authorized by law to engage in the conduct that is the subject of
24 the prosecution. A defendant who raises this affirmative defense has the burden of
25 proving the defense by a preponderance of the evidence.

ASSEMBLY BILL 288**SECTION 23**

1 **(4)** If an individual reports to a law enforcement agency for the jurisdiction
2 which is the individual's residence that personal identifying information or a
3 personal identifying document belonging to the individual reasonably appears to be
4 in the possession of another in violation of this section or that another has used or
5 has attempted to use it in violation of this section, the agency shall prepare a report
6 on the alleged violation. If the law enforcement agency concludes that it appears not
7 to have jurisdiction to investigate the violation, it shall inform the individual which
8 law enforcement agency may have jurisdiction. A copy of a report prepared under
9 this subsection shall be furnished upon request to the individual who made the
10 request, subject to payment of any reasonable fee for the copy.

11 **SECTION 24.** 943.203 of the statutes is created to read:

12 **943.203 Unauthorized use of an entity's identifying information or**
13 **documents. (1)** In this section:

14 (a) "Entity" means a person other than an individual.

15 (b) "Identification document" means any of the following:

16 1. A document containing identifying information.

17 2. An entity's card or plate, if it can be used, alone or in conjunction with another
18 access device, to obtain money, goods, services, or any other thing of value or benefit,
19 or if it can be used to initiate a transfer of funds.

20 3. Any other device that is unique to, assigned to, or belongs to an entity and
21 that is intended to be used to access services, funds, or benefits of any kind to which
22 the entity is entitled.

23 (c) "Identifying information" means any of the following information:

24 1. An entity's name.

25 2. An entity's address.

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- 1 3. An entity's telephone number.
- 2 4. An entity's employer identification number.
- 3 5. The identifying number of an entity's depository account, as defined in s.
- 4 815.18 (2) (e).
- 5 6. Any of the following, if it can be used, alone or in conjunction with any access
- 6 device, to obtain money, goods, services, or any other thing of value or benefit, or if
- 7 it can be used to initiate a transfer of funds:
- 8 a. An entity's code or account number.
- 9 b. An entity's electronic serial number, mobile identification number, entity
- 10 identification number, or other telecommunications service, equipment, or
- 11 instrument identifier.
- 12 c. Any other means of account access.
- 13 7. Any other information or data that is unique to, assigned to, or belongs to
- 14 an entity and that is intended to be used to access services, funds, or benefits of any
- 15 kind to which the entity is entitled.
- 16 8. Any other information that can be associated with a particular entity
- 17 through one or more identifiers or other information or circumstances.
- 18 **(2)** Whoever, for any of the following purposes, intentionally uses, attempts to
- 19 use, or possesses with intent to use any identifying information or identification
- 20 document of an entity without the authorization or consent of the entity and by
- 21 representing that the person is the entity or is acting with the authorization or
- 22 consent of the entity is guilty of a Class H felony:
- 23 (a) To obtain credit, money, goods, services, or anything else of value or benefit.
- 24 (b) To harm the reputation or property of the entity.

ASSEMBLY BILL 288**SECTION 24**

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

5 **(4)** If an entity reports to a law enforcement agency for the jurisdiction in which
6 the entity is located that personal identifying information or a personal identifying
7 document belonging to the entity reasonably appears to be in the possession of
8 another in violation of this section or that another has used or has attempted to use
9 it in violation of this section, the agency shall prepare a report on the alleged
10 violation. If the law enforcement agency concludes that it appears not to have
11 jurisdiction to investigate the violation, it shall inform the entity which law
12 enforcement agency may have jurisdiction. A copy of a report prepared under this
13 subsection shall be furnished upon request to the entity that made the request,
14 subject to payment of any reasonable fee for the copy.

15 **SECTION 25.** 946.79 of the statutes is created to read:

16 **946.79 False statements to financial institutions. (1)** In this section:

17 (a) “Financial institution” means a bank, savings bank, savings and loan
18 association, credit union, loan company, sales finance company, insurance premium
19 finance company, community currency exchange, seller of checks, insurance
20 company, trust company, securities broker–dealer, as defined in s. 551.02 (3),
21 mortgage banker, mortgage broker, pawnbroker, as defined in s. 134.71 (1) (e),
22 telegraph company, or dealer in precious metals, stones, or jewels.

23 (b) “Financial transaction information” means information being submitted to
24 a financial institution in connection with a transaction with that financial
25 institution.

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1 (c) “Monetary instrument” includes any of the following:

2 1. Coin or currency of the United States or any other country.

3 2. Traveler’s check, personal check, money order, or share draft or other draft
4 for payment.

5 3. Investment security or negotiable instrument, in bearer form, book entry, or
6 other form that provides that title to the security or instrument passes upon delivery
7 or transfer of the security or instrument.

8 4. Precious metals, stones, or jewels.

9 (d) “Personal identification document” has the meaning given in s. 943.201 (1)

10 (a).

11 (e) “Personal identifying information” has the meaning given in s. 943.201 (1)

12 (b).

13 (f) “Transaction” means the acquisition or disposition of property by any means,
14 including any of the following:

15 1. The purchase, sale, trade, transfer, transmission, exchange, loan, pledge,
16 investment, delivery, deposit, or withdrawal of a monetary instrument.

17 2. The use of a safe deposit box.

18 3. The extension of credit.

19 **(2)** Whoever knowingly does any of the following in connection with the
20 submission of financial transaction information is guilty of a Class H felony:

21 (a) Falsifies or conceals or attempts to falsify or conceal an individual’s identity.

22 (b) Makes a false statement regarding an individual’s identity.

23 (c) Makes or uses a writing containing false information regarding an
24 individual’s identity.

ASSEMBLY BILL 288**SECTION 25**

1 (d) Uses a false personal identification document or false personal identifying
2 information.

3 **SECTION 26.** 946.82 (4) of the statutes, as affected by 2001 Wisconsin Act 109,
4 is amended to read:

5 946.82 (4) “Racketeering activity” means any activity specified in 18 USC 1961
6 (1) in effect as of April 27, 1982, or the attempt, conspiracy to commit, or commission
7 of any of the felonies specified in: chs. 945 and 961 and ss. 49.49, 134.05, 139.44 (1),
8 180.0129, 181.0129, 185.825, 201.09 (2), 215.12, 221.0625, 221.0636, 221.0637,
9 221.1004, 551.41, 551.42, 551.43, 551.44, 553.41 (3) and (4), 553.52 (2), 940.01,
10 940.19 (4) to (6), 940.20, 940.201, 940.203, 940.21, 940.30, 940.305, 940.31, 941.20
11 (2) and (3), 941.26, 941.28, 941.298, 941.31, 941.32, 942.09, 943.01 (2), (2d), or (2g),
12 943.011, 943.012, 943.013, 943.02, 943.03, 943.04, 943.05, 943.06, 943.10, 943.20 (3)
13 (bf) to (e), 943.201, 943.203, 943.23 (1g), (2) and (3), 943.24 (2), 943.25, 943.27,
14 943.28, 943.30, 943.32, 943.34 (1) (bf), (bm), and (c), 943.38, 943.39, 943.40, 943.41
15 (8) (b) and (c), 943.50 (4) (bf), (bm), and (c), 943.60, 943.70, 943.76, 944.21 (5) (c) and
16 (e), 944.32, 944.33 (2), 944.34, 945.03 (1m), 945.04 (1m), 945.05 (1), 945.08, 946.10,
17 946.11, 946.12, 946.13, 946.31, 946.32 (1), 946.48, 946.49, 946.61, 946.64, 946.65,
18 946.72, 946.76, 946.79, 947.015, 948.05, 948.08, 948.12, and 948.30.

19 **SECTION 27.** 970.03 (11) of the statutes is amended to read:

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

24 **SECTION 28.** 970.03 (13) of the statutes is amended to read:

