

2003 Assembly Bill 288

Date of enactment: **July 24, 2003**  
Date of publication\*: **August 7, 2003**

## 2003 WISCONSIN ACT 36

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

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

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

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

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

(b) The individual furnishes the public utility a copy of a law enforcement agency report, based on the individual's report to the law enforcement agency of the use by

another individual of his or her personal identifying information without authorization or consent to obtain utility service.

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

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

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

343.237 (1) (ar) "Law enforcement agency of ~~a physically adjacent another state~~" has the meaning given in s. 175.46 (1) (b) means a governmental unit of one or more persons employed by a state other than this state or by a political subdivision of a state other than this state for the purpose of preventing and detecting crime and

\* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

enforcing laws or ordinances of that state or a political subdivision of that state, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

343.237 (4) (b) The ~~physically adjacent other~~ state allows Wisconsin law enforcement agencies similar or

greater access to similar information from that ~~physically adjacent~~ state.

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

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

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

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

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

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

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

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

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

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

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

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

**943.201** (title) **Misappropriation Unauthorized use of an individual’s personal identifying information or personal identification documents.**

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

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

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

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

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

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

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

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

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

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

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

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

a. An individual's code or account number.

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

c. Any other means of account access.

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

14. Any other information or data that is unique to, assigned to, or belongs to an individual and that is intended to be used to access services, funds, or benefits of any kind to which the individual is entitled.

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

**SECTION 21.** 943.201 (2) of the statutes, as affected by 2001 Wisconsin Act 109, is renumbered 943.201 (2) (intro.) and amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

1. A document containing identifying information.

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

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

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

1. An entity's name.

2. An entity's address.

3. An entity's telephone number.

4. An entity's employer identification number.

5. The identifying number of an entity's depository account, as defined in s. 815.18 (2) (e).

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

- a. An entity's code or account number.
  - b. An entity's electronic serial number, mobile identification number, entity identification number, or other telecommunications service, equipment, or instrument identifier.
  - c. Any other means of account access.
7. Any other information or data that is unique to, assigned to, or belongs to an entity and that is intended to be used to access services, funds, or benefits of any kind to which the entity is entitled.
8. Any other information that can be associated with a particular entity through one or more identifiers or other information or circumstances.

(2) Whoever, for any of the following purposes, intentionally uses, attempts to use, or possesses with intent to use any identifying information or identification document of an entity without the authorization or consent of the entity and by representing that the person is the entity or is acting with the authorization or consent of the entity is guilty of a Class H felony:

(a) To obtain credit, money, goods, services, or anything else of value or benefit.

(b) To harm the reputation or property of the entity.

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

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

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

**946.79 False statements to financial institutions.**

(1) In this section:

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

(b) "Financial transaction information" means information being submitted to a financial institution in connection with a transaction with that financial institution.

(c) "Monetary instrument" includes any of the following:

1. Coin or currency of the United States or any other country.
2. Traveler's check, personal check, money order, or share draft or other draft for payment.
3. Investment security or negotiable instrument, in bearer form, book entry, or other form that provides that title to the security or instrument passes upon delivery or transfer of the security or instrument.
4. Precious metals, stones, or jewels.

(d) "Personal identification document" has the meaning given in s. 943.201 (1) (a).

(e) "Personal identifying information" has the meaning given in s. 943.201 (1) (b).

(f) "Transaction" means the acquisition or disposition of property by any means, including any of the following:

1. The purchase, sale, trade, transfer, transmission, exchange, loan, pledge, investment, delivery, deposit, or withdrawal of a monetary instrument.
2. The use of a safe deposit box.
3. The extension of credit.

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

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

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

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

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

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

946.82 (4) "Racketeering activity" means any activity specified in 18 USC 1961 (1) in effect as of April 27, 1982, or the attempt, conspiracy to commit, or commission of any of the felonies specified in: chs. 945 and 961 and ss. 49.49, 134.05, 139.44 (1), 180.0129, 181.0129, 185.825, 201.09 (2), 215.12, 221.0625, 221.0636, 221.0637, 221.1004, 551.41, 551.42, 551.43, 551.44, 553.41 (3) and (4), 553.52 (2), 940.01, 940.19 (4) to (6), 940.20, 940.201, 940.203, 940.21, 940.30, 940.305, 940.31, 941.20 (2) and (3), 941.26, 941.28, 941.298, 941.31, 941.32, 942.09, 943.01 (2), (2d), or (2g), 943.011, 943.012, 943.013, 943.02, 943.03, 943.04, 943.05, 943.06, 943.10, 943.20 (3) (bf) to (e), 943.201, 943.203, 943.23 (1g), (2) and (3), 943.24 (2), 943.25, 943.27, 943.28, 943.30, 943.32, 943.34 (1) (bf), (bm), and (c), 943.38, 943.39, 943.40, 943.41 (8) (b) and (c),

943.50 (4) (bf), (bm), and (c), 943.60, 943.70, 943.76, 944.21 (5) (c) and (e), 944.32, 944.33 (2), 944.34, 945.03 (1m), 945.04 (1m), 945.05 (1), 945.08, 946.10, 946.11, 946.12, 946.13, 946.31, 946.32 (1), 946.48, 946.49, 946.61, 946.64, 946.65, 946.72, 946.76, 946.79, 947.015, 948.05, 948.08, 948.12, and 948.30.

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

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

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

970.03 (13) ~~Upon a showing by the proponent of good cause under s. 807.13 (2) (c), testimony~~ Testimony may be received into the record of a preliminary examination by telephone or live audiovisual means if the proponent shows good cause or if the testimony is used to prove an element of an offense under s. 943.201 (2) or 943.203 (2).

**SECTION 29.** 971.19 (11) of the statutes is created to read:

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

**SECTION 30.** 971.366 of the statutes is created to read:

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

**SECTION 31.** 971.367 of the statutes is created to read:

**971.367 False statements to financial institutions: charges.** In any case under s. 946.79 involving more than one violation, all violations may be prosecuted as a single crime if the violations were pursuant to a single intent and design.

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