

2003 DRAFTING REQUEST

Bill

Received: **01/17/2003**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Gundrum**

By/Representing: **Don Dyke**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous
Public Util. - misc.
Transportation - driver licenses
Fin. Inst. - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Gundrum@legis.state.wi.us**

Carbon copy (CC:) to: **don.dyke@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Identity theft

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 01/24/2003			_____			S&L Crime
/P1	mdsida 02/20/2003	kgilfoy 03/05/2003	jfrantze 01/24/2003	_____	sbasford 03/05/2003		S&L Crime

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
			jfrantze	_____			
			03/05/2003	_____			
/1	mdsida	kgilfoy	rschluet	_____	sbasford	sbasford	S&L
	03/12/2003	03/12/2003	03/13/2003	_____	03/13/2003	04/16/2003	Crime
				_____		sbasford	
				_____		04/16/2003	

FE Sent For: 04/11/2003, 04/11/2003, 04/11/2003.

<END>

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			jfrantze 03/05/2003	_____			
/1	mdsida 03/12/2003	kgilfoy 03/12/2003	rschluet 03/13/2003	_____	sbasford 03/13/2003		S&L Crime

FE Sent For:

<END>

→ 04-11-2003
(" / 1 ")
Requested
By
Jolene

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/?	mdsida 01/24/2003						S&L Crime
/P1	mdsida 02/20/2003	kgilfoy 03/05/2003	jfrantze 01/24/2003		shasford 03/05/2003		

*1/22-3/12
Kmg*

*3-12-3
SJD*

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

jfrantze _____
03/05/2003 _____

FE Sent For:

<END>

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Fin. Inst. - miscellaneous

Extra Copies: TNF
PJH
ARG

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17	mdsida	1/13-3/4 kmj	1/24 re convert 1/3/5				
FE Sent For:				1/3/5 J/cph			

<END>

1 **AN ACT** to renumber and amend 343.237 (1) (a) and 943.201 (2); to amend 343.237
2 (3) (intro.), 343.237 (3) (b), 343.237 (3) (c) (intro.), 343.237 (4) (intro.), 343.237 (4)
3 (a), 343.237 (4) (b), 943.201 (title), 943.201 (1) (a) and 970.03 (11); and to create
4 196.23, 343.237 (1) (ag), 343.237 (3) (e), 943.201 (1) (b) 10., 11., 12., 13., and 14.,
5 943.201 (2) (a), (b) and (c), 943.201 (3) to (5), 943.203, 946.79, 970.03 (13m),
6 971.19 (11) and 971.367 of the statutes; relating to:

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

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

8 **196.23 Utility service for victims of misappropriated identifying information. (1)**

9 If an individual uses personal identifying information of another individual, without the
10 authorization or consent of the other individual, to apply for and receive service from a public
11 utility and, as a result, the individual whose personal identifying information was used without
12 authorization or consent is unable to obtain service from the public utility, the utility shall
13 provide service to that individual if all of the following apply:

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

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

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

2 (2) A public utility may contest the accuracy of the affidavit under sub. (1) (a) or the
3 report under sub. (1) (b) by petitioning for a summary investigation under s. 196.28 (1). If a
4 petition is filed, the commission shall conduct a summary investigation. If a hearing is held
5 under s. 196.28 (2) and the commission determines that the conditions of sub. (1) (intro.) have
6 not been met, the public utility is not required to provide utility service under this section to
7 the individual who furnished the affidavit under sub. (1) (a) or whose personal identifying
8 information was the subject of the report under sub. (1) (b).

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

11 343.237 (1) (ar) "Law enforcement agency of ~~a physically adjacent another state~~" has
12 ~~the meaning given in s. 175.46 (1) (b)~~ means a governmental unit of one or more persons
13 employed by a state other than this state or by a political subdivision of a state other than this
14 state for the purpose of preventing and detecting crime and enforcing laws or ordinances of
15 that state or a political subdivision of that state, employees of which unit are authorized to
16 make arrests for crimes while acting within the scope of their authority.

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

18 343.237 (1) (ag) "Federal law enforcement agency" means a governmental unit of one
19 or more persons employed by the federal government for the purpose of preventing and
20 detecting crime and enforcing federal laws, employees of which unit are authorized to make
21 arrests for crimes while acting within the scope of their authority.

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

23 343.237 (3) (intro.) The department shall provide a Wisconsin law enforcement agency
24 or a federal law enforcement agency with a copy of a photograph taken on or after

1 September 1, 1997, of an applicant under s. 343.14 (3) or 343.50 (4) if the department receives
2 a written request on the ~~Wisconsin~~ law enforcement agency's letterhead that contains all of
3 the following:

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

5 343.237 (3) (b) The name of the person making the request and the ~~Wisconsin~~ law
6 enforcement agency that employs the requester.

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

8 343.237 (3) (c) (intro.) A statement signed by a division commander or higher authority
9 within the ~~Wisconsin~~ law enforcement agency that the photograph is requested for any of the
10 following purposes:

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

12 343.237 (3) (e) If a federal law enforcement agency, a statement that the agency agrees
13 to comply with all of the requirements under this section.

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

15 343.237 (4) (intro.) If a law enforcement agency of ~~a physically adjacent~~ another state
16 makes a request meeting all the requirements specified for a request by a Wisconsin law
17 enforcement agency or a federal law enforcement agency under sub. (3), the department shall
18 comply with the request if all of the following apply:

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

20 343.237 (4) (a) The law enforcement agency of the ~~physically adjacent~~ other state
21 agrees to comply with all of the requirements under this section.

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

23 343.237 (4) (b) The ~~physically adjacent~~ other state allows Wisconsin law enforcement
24 agencies similar or greater access to similar information from that ~~physically adjacent~~ state.

1 **SECTION 11.** 943.201 (title) of the statutes is amended to read:

2 **943.201 (title) ~~Misappropriation~~ Unauthorized use of an individual's personal**
3 **identifying information or personal identification documents.**

COMMENT: Revises the title of s. 943.201 to shift the emphasis from "misappropriation" to "unauthorized use". Adds reference to an "individual's" information or documents to distinguish this section from new s. 943.203, unauthorized use of an entity's identifying information or documents", created by SECTION 17 of this draft.

4 **SECTION 12.** 943.201 (1) (a) of the statutes is amended to read:

5 **943.201 (1) (a) "Personal identification document" means a birth certificate or a**
6 **financial transaction card, as defined in s. 943.41 (1) (em) document containing personal**
7 **identifying information.**

COMMENT: Expands the definition of "personal identification document" for purposes of the identity theft statute. It is recognized that defining "personal identification document" in this manner arguably makes retention of the definition redundant. However, reference in the statute to personal identification document is retained to avoid any inference that deletion of reference to documents narrows the scope of the statute.

8 **SECTION 13.** 943.201 (1) (b) 10., 11., 12., 13., and 14. of the statutes are created to read:

9 **943.201 (1) (b) 10. An individual's taxpayer identification number.**

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

11 **12. An individual's card, plate, code, account number, electronic serial number, mobile**
12 **identification number, personal identification number, or other telecommunications service,**
13 **equipment, or instrument identifier, or other means of account access that can be used, alone**
14 **or in conjunction with another access device, to obtain money, goods, services, or any other**
15 **thing of value or benefit, or that can be used to initiate a transfer of funds.**

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

1 14. Any other information, data, or device 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 any kind
3 to which the individual is entitled.

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

COMMENT: 1. Expands the definition of "personal identifying information" for purposes of the identity theft statute.

 2. Subdivision 12. is based on, with some revision, 18 USC s. 1029 (1) (e). Subdivision 13. is based on 18 USC s. 1028 (d) (3) B.

6 **SECTION 14.** 943.201 (2) of the statutes is renumbered 943.201 (2) (intro.) and amended
7 to read:

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

15 **SECTION 15.** 943.201 (2) (a), (b) and (c) of the statutes are created to read:

16 943.201 (2) (a) To obtain credit, money, goods, services, employment, or anything else
17 of value or benefit.

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

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

COMMENT: 1. SECTIONS 14 and 15 revise the crime of identity theft by:
a. Adding "possession with intent to use".

b. Including unauthorized use of documents or information of deceased individuals.

c. Clarifying that the statute extends to the use of information or documents to obtain "employment", to obtain anything of "benefit", or to "avoid civil or criminal process or penalty".

d. Adding use of information or documents to "harm the reputation, property, person, or estate of the individual".

e. Adding a third option, "by representing that the information or document belongs to him or her" to the current element "by representing that he or she is the individual or is acting with the authorization or consent of the individual".

2. Because "attempt" is expressly included as a violation of s. 943.201 and is subject to the same penalty as the completed act, there is no need to address the application of s. 939.32, stats.

1 **SECTION 16.** 943.201 (3) to (5) of the statutes are created to read:

2 943.201 (3) Regardless of whether any of the conditions under s. 939.03 (1) apply, a
3 person alleged to have used, attempted to use, or possessed with intent to use personal
4 identifying information or a personal identifying document belonging to a resident of this state
5 in violation of this section is subject to prosecution and punishment under the law of this state.

COMMENT: Expands jurisdiction over identity theft violations.

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

10 **(5)** If an individual reports to a law enforcement agency for the jurisdiction which is
11 the individual's lawful residence that personal identifying information or a personal
12 identifying document belonging to the individual reasonably appears to be in the possession
13 of another in violation of this section or to have been, or attempted to have been, used in
14 violation of this section, the agency shall prepare a report on the alleged violation. If the law

1 enforcement agency concludes that it appears not to have jurisdiction to investigate the
2 violation, it shall inform the individual which law enforcement agency may have jurisdiction.
3 A copy of a report prepared under this subsection shall be furnished upon request to the
4 individual who made the request, subject to payment of any reasonable fee for the copy.

COMMENT: It is not contemplated that this section requires preparation
of a formal incident report.

5 **SECTION 17.** 943.203 of the statutes is created to read:

6 **943.203 Unauthorized use of an entity's identifying information or documents. (1)**

7 In this section:

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

9 (b) "Identification document" means any document containing an entity's identifying
10 information.

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

12 1. An entity's name.

13 2. An entity's address.

14 3. An entity's telephone number.

15 4. An entity's employer identification number.

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

17 (e).

18 6. An entity's card, plate, code, account number, electronic serial number, mobile
19 identification number, personal identification number, or other telecommunication service,
20 equipment, or instrument identifier, or other means of account access that can be used, alone
21 or in conjunction with another access device, to obtain money, goods, services, or anything
22 of value, or that can be used to initiate a transfer of funds.

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

4 8. Any other information that can be associated with a particular entity through one or
5 more identifiers or other information or circumstances.

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

10 (a) Obtain credit, money, goods, services, or anything else of value or benefit.

11 (b) Harm the reputation or property of the entity.

12 (3) Regardless of whether any of the conditions under s. 939.03 (1) apply, a person
13 alleged to have used, attempted to use, or possessed with intent to use identifying information
14 or an identifying document belonging to an entity located in the state in violation of this section
15 is subject to prosecution and punishment under the law of this state.

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

20 (5) If an entity reports to a law enforcement agency for the jurisdiction in which the
21 entity is located that personal identifying information or a personal identifying document
22 belonging to the entity reasonably appears to be in the possession of another in violation of
23 this section or to have been, or attempted to have been, used in violation of this section, the
24 agency shall prepare a report on the alleged violation. If the law enforcement agency

1 concludes that it appears not to have jurisdiction to investigate the violation, it shall inform
2 the entity which law enforcement agency may have jurisdiction. A copy of a report prepared
3 under this subsection shall be furnished upon request to the entity that made the request,
4 subject to payment of any reasonable fee for the copy.

COMMENT: Creates a new crime of unauthorized use of identifying information belonging to entities, rather than individuals. It parallels revised s. 943.201.

5 **SECTION 18.** 946.79 of the statutes is created to read:

6 **946.79 False statements to financial institutions.** (1) In this section: (a) "Financial
7 institution" means a bank, savings bank, savings and loan association, credit union, insurance
8 company, trust company, a securities broker or dealer, a pawnbroker, as defined in s. 134.71
9 (1) (e), a telegraph company, or a dealer in precious metals, stones, or jewels.

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

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

12 (d) "Transaction" has the meaning given in s. 946.78 (1) (c).

13 (2) Whoever knowingly does any of the following with respect to information that is
14 requested by or submitted to a financial institution in connection with a transaction with that
15 financial institution is guilty of a class H felony:

16 (a) Falsifies or conceals or attempts to falsify or conceal the identity of a person.

17 (b) Makes a false or fraudulent statement or representation regarding the identity of a
18 person.

19 (c) Makes or uses a writing containing false information regarding the identity of a
20 person.

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

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

2 970.03 (11) The court may admit a statement which is hearsay and which is not excluded
3 from the hearsay rule under ss. 908.02 to 908.045 to prove ownership of property or lack of
4 consent to entry to or possession or destruction of property or to prove any element under s.
5 943.201 (2) or 943.203 (2).

COMMENT: Permits a court to admit a hearsay statement in a preliminary
examination to prove any element under the identity theft statutes.

6 **SECTION 20.** 970.03 (13m) of the statutes is created to read:

7 970.03 (13m) Testimony may be received into the record of a preliminary examination
8 by telephone or live audio visual means to prove any element under s. 943.201 (2) or 943.203
9 (2).

COMMENT: Allows testimony to be received into the record of a
preliminary examination by telephone or live audiovisual means to prove
any element of an identity theft violation.

10 **SECTION 21.** 971.19 (11) of the statutes is created to read:

11 971.19 (11) In an action under s. 943.201 or 943.203, the defendant may be tried in the
12 county where the person who was the victim or intended victim resides or is located or in any
13 other county designated under this section.

COMMENT: Permits venue in an identity theft prosecution in the county
where the person who was a victim or intended victim resides, in the
case of an individual, or is located, in the case of an entity (or in any
other county currently designated under the venue statute).

14 **SECTION 22.** 971.367 of the statutes is created to read:

15 **971.367 Use of another's personal identifying information: charges.** In any case
16 under s. 943.201 or 943.203 involving more than one violation, all violations may be
17 prosecuted as a single crime if the violations were pursuant to a single intent and design.

COMMENT: Authorizes multiple violations of the identity theft statute to
be prosecuted as a single crime if the violations were pursuant to a single

Dsida, Michael

From: Dsida, Michael
Sent: Tuesday, February 04, 2003 10:37 AM
To: Dyke, Don
Subject: Identity theft bill

Here are some questions that I have regarding the bill. If you can help answer them (not necessarily by email), I would appreciate it.

It seems that the cards, plates, equipment, and devices that are referred to in s. 943.201 (1) (b) 12. and 14. are more like personal identification documents (which are tangible objects) than personal identifying information (which are otherwise not). What do you think?

What is 943.201 (4) intended to cover?

Just curious -- why is the steering provision (sub. (5)) needed if venue is everywhere?

Did you look at the constitutionality of section 19? I haven't yet, but I wonder if it's a problem that only these offenses are given special hearsay treatment.

Your comment following section 21 suggests that "is located" only applies to entity victims, but the language of the section itself makes that phrase applicable to individual victims also. How did the working group intend for that phrase to be applied?

Thanks.

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@state.legis.wi.us

1) ~~Prosecutors don't want~~
Ok to play with terminology

Prosecutors want to keep both "Doc" + "Info"

2) ~~Sub (4)~~ intended to permit police to use it.

Me - D-Note

either means nothing or may cover more than
shd be intended

3) Me - ignore

4) Ask Bob Donahoe in ~~the~~ Mke

5) ~~A~~ indiv - reside
Entity - location

Dsida, Michael

From: Dsida, Michael
Sent: Tuesday, February 04, 2003 3:01 PM
To: Dyke, Don
Subject: FW: More questions re identity theft

1. Was the decision to omit entities from section 1 intentional?
2. At least one previously introduced versions of s. 946.79 specified that attempts to commit that offense are to be punished in the same way as the completed offense. Should this bill take the same approach?
3. What bill did you use in creating s. 946.79? I need it to get the definition of "transaction."
4. Do you want that section to apply to statements relating to entities too?
5. Was the decision to omit s. 946.79 from section 22 intentional?
6. Should I add a cross-reference to s. 941.203 to s. 895.80 (1)? To that section and s. 946.79 in s. 946.82 (4)?
7. How do you want to cover jurisdiction in cases in which the personal info belonged to someone who is now dead?
8. I'm not sure what a dead person's personal identifying information would be. This provision might be construed as allowing the state to reach back in time to well before the person's death. Perhaps I am being too fine with this point. If not, how about changing ", including a deceased individual" to "or relating to a deceased individual" sub. (2) and adding the following subsection:

For the purposes of this section, a personal identification document or personal identifying information relates to a deceased individual if it was the individual's personal identification document or personal identifying information at the time of his or her death.
9. Would a birth certificate of a person who has changed his or her name still constitute a "personal identification document" under the revised definition of that term?
10. Is s. 943.201 (1) (b) 12. intended to apply exclusively to phone-related identifiers?
11. In s. 943.201 (1) (b) 12., you refer to "any other thing of value or benefit." In s. 943.203 (1) (c) 6., you refer to "anything of value." The bill should probably use the same language in both places. Do you have a preference? (FYI -- you use "anything else of value or benefit" in sub. (2) (a) in both sections.)

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@state.legis.wi.us

1) Yes

2) D-Note ~~Yes~~ - Leave as is

3) SB 363

4) No

5) Yes, but range in D-Note re "SB 363"

6) a) Yes

b) Yes, No ?

7) Silent

} D-Note ?

8) Don't worry -
Name, DL + SSN = Acct
No. are
only ones used, - those won't change

9) No but it's
Probably covered under subd. 15

10) Will check

11) Add benefit

2/10 - Plc from Don

"electronic serial no ... or instrument identifier" added
as a block through an amdt.



D-Note

King

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 2/20

soon

- 1 AN ACT ^{Sen. Act.} relating to: identity theft, unlawful use of an entity's identification
- 2 documents or identifying information, false statements to financial
- 3 institutions, and access by law enforcement agencies to driver's license and
- 4 state identification card photographs and providing penalties. ^{stet}

Analysis by the Legislative Reference Bureau

Identity theft

Current law prohibits identity theft — the unauthorized use of a personal identification document or personal identifying information of an individual (the victim) to obtain credit, money, goods, services, or anything else of value. To convict a person of this offense, the state must show that the defendant represented that he or she was the victim or was acting with the authorization or consent of the victim (the deception element). Under current law, "personal identification document" is defined to mean a birth certificate or a financial transaction card (which itself is defined to include a credit or debit card, a check-cashing card, and an automated teller machine card). Personal identifying information covered by the identity theft prohibition includes an individual's name, address, telephone number, driver's license number, social security number, and checking or savings account number; the name of an individual's employer; and the maiden name of an individual's mother. A person who commits identity theft may be fined not more than \$10,000, ^{falsely} sentenced to a term of imprisonment (consisting of confinement in state prison followed by extended supervision) of not more than six years or both.

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This bill makes a number of changes related to the crime of identity theft. First, the bill revises the definition of "personal identification document" so that it covers any document containing personal identifying information; an individual's card or plate, if it can be used to obtain anything of value or benefit or to initiate a transfer of funds; and any other device that is unique to, assigned to, or belongs to an individual and that permits the individual to access services, funds, or benefits. Second, the bill expands the definition of "personal identifying information" so that it covers: 1) an individual's (DNA) profile; 2) an individual's code, account number, identification number, or any other means of account access that can be used to obtain anything of value or benefit or to initiate a transfer of funds; 3) biometric data (such as a fingerprint, a voice print, or a retina or iris image); 4) any other information or data that is unique to, assigned to, or belongs to an individual and that permits the individual to access services, funds, or benefits; and 5) any other information that can be associated with a particular individual through one or more identifiers or other information or circumstances. Third, the bill specifies that the prohibition on identity theft applies to a personal identification document or personal identifying information relating to a deceased individual.

Fourth, the bill expands the scope of the prohibition to cover the unauthorized use of an individual's personal identification document or personal identifying information to harm the reputation, property, or person of the individual; to harm the individual's estate if he or she is deceased; to avoid delivery of a summons, subpoena, or similar court paper; or to avoid a penalty imposed by a court. The bill also prohibits a person from possessing a personal identification document or personal identifying information with intent to use it for one of those purposes or to obtain something of value. Fifth, the bill specifies that the state may prove the deception element by proving that a defendant falsely represented that the personal identification document or personal identifying information was his or her own.

Unauthorized use of an entity's identifying documents or information

document →

The bill creates a new crime, prohibiting the unauthorized use of identifying documents or information relating to a corporation, partnership, association, government, or government agency (an entity). The elements of and the maximum penalty for this offense are (the essentially) same as those for identity theft, with two exceptions. First, information that relates to an individual but not to an entity (such as a driver's license number, a social security number, or a DNA profile) is not covered by the term "identifying information" for the purposes of this new crime. Second, the prohibition relating to entities does not apply to conduct undertaken for the sole purpose of avoiding delivery of a court paper or avoiding a penalty imposed by a court. The bill also permits an entity that is the victim of this offense to bring a civil action against the person committing it in the same way that current law allows victims of identity theft to bring such an action.

Jurisdiction, venue, and procedure for identity theft and unauthorized use of entity identifying documents or information

Under current law, a person may be prosecuted and punished for a crime under Wisconsin law if, among other things: 1) the person commits a crime and any elements of the crime occur in this state; or 2) while out of this state, the person does

an act with intent that it cause, within the state, a consequence set forth in a law defining a crime. This bill specifies that a person may be prosecuted and punished for identity theft if the victim is a Wisconsin resident and for unauthorized use of an entity's identifying documents or information if the entity is located in Wisconsin. The bill also specifies that the case may be brought in the county in which the victim resides, if the victim is an individual, or is located, if the victim is an entity, or in any other county in which the case may be brought under current law. In addition, the bill permits more frequent use of hearsay and telephonic or televised testimony at preliminary hearings in such cases.

Utility service for victims of identity theft

The bill allows an individual who is a victim of identity theft to obtain service from a public utility if the individual is unable to obtain that service solely because of the identity theft. If the individual furnishes the public utility with an affidavit and law enforcement agency report regarding the identity theft, and if the individual otherwise qualifies for the service, the public utility must provide the service, unless the public utility contests the accuracy of the affidavit or report by filing a petition with the Public Service Commission (PSC). *In such a case,* The PSC must investigate the petition and may hold a hearing on the matter. Unless the PSC determines that the identity theft did not occur, the public utility must provide the service.

False statements to financial institutions

Current law prohibits making false statements for the purpose of obtaining a financial transaction card. A person who violates that prohibition may be fined not more than \$10,000, sentenced to the county jail for not more than nine months, or both. This bill prohibits *or* making various false statements, in connection with a transaction with a financial institution. The prohibited activities include: 1) falsifying or concealing an individual's identity; 2) making a false statement *or representation* regarding an individual's identity; 3) making or using a writing that contains false information regarding an individual's identity; or 4) using *or presenting* a false personal identification document or false personal identifying information. A person who violates this prohibition may be fined not more than \$10,000, sentenced to a term of imprisonment *or not more than* six years, or both.

Law enforcement agency access to driver's license photographs

Additional information

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 **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:

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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:

5

343.237 (3) (e) ~~If 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:

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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:

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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,

23

1 1998, and that is prohibited under s. 943.201 or 943.203, has a cause of action against
2 the person who caused the damage or loss.

History: 1995 a. 27; 1997 a. 101; 2001 a. 16, 91.

3 **SECTION 12.** 939.03 (1) (e) of the statutes is created to read:

4 939.03 (1) (e) The person violates s. 943.201 or 943.203 and the victim is an
5 individual who resides in this state or an entity, as defined in s. 943.203 (1) (a), that is
6 located in this state.

7 **SECTION 13.** 943.201 (title) of the statutes is amended to read:

8 **943.201 (title) Misappropriation Unauthorized use of an individual's**
9 **personal identifying information or personal identification documents.**

10 **SECTION 14.** 943.201 (1) (a) of the statutes is renumbered 943.201 (1) (a) (intro.)
11 and amended to read:

12 943.201 (1) (a) (intro.) "Personal identification document" means a birth
13 certificate or a financial transaction card, as defined in s. 943.41 (1) (a), ^e any of the
14 following:

15 **SECTION 15.** 943.201 (1) (a) 1. of the statutes is created to read:

16 943.201 (1) (a) 1. A document containing personal identifying information.

17 **SECTION 16.** 943.201 (1) (a) 2. of the statutes is created to read:

18 943.201 (1) (a) 2. An individual's card or plate, if it can be used, alone or in
19 conjunction with another access device, to obtain money, goods, services, or any other
20 thing of value or benefit, or if it can be used to initiate a transfer of funds.

21 **SECTION 17.** 943.201 (1) (a) 3. of the statutes is created to read:

22 943.201 (1) (a) 3. Any other device that is unique to, assigned to, or belongs to
23 an individual and that is intended to be used to access services, funds, or benefits of
24 any kind to which the individual is entitled.

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SECTION 18. 943.201 (1) (b) 10. 11., 12., 13., and 14. of the statutes are created

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to read:

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

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

5

12. Any of the following, if it can be used, alone or in conjunction with ~~another~~ ^{any}

6

access device, to obtain money, goods, services, or any other thing of value or benefit,

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or if it can be used to initiate a transfer of funds:

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a. An individual's code or account number.

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b. An individual's electronic serial number, mobile identification number,

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personal identification number, or other telecommunications service, equipment, or

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instrument identifier.

12

c. Any other means of account access.

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13. An individual's unique biometric data, including fingerprint, voice print,

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retina or iris image, ^{any} or other unique physical representation.

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14. Any other information or data that is unique to, assigned to, or belongs to

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an individual and that is intended to be used to access services, funds, or benefits of

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any kind to which the individual is entitled.

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15. Any other information that can be associated with a particular individual

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through one or more identifiers or other information or circumstances.

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SECTION 19. 943.201 (2) of the statutes, as affected by 2001 Wisconsin Act 109, ✓

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is renumbered 943.201 (2) (intro.) and amended to read:

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943.201 (2) (intro.) ^{for any of the following purposes,} Whoever intentionally uses ~~or~~ attempts to use, or possesses

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with intent to use any personal identifying information or personal identification

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document of an individual ~~to obtain credit, money, goods, services or anything else~~

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of value, including a deceased individual, without the authorization or consent of the

rule



1 individual and by representing that he or she is the individual ~~or, that he or she is~~
2 acting with the authorization or consent of the individual, ~~or that the information or~~
3 ~~document belongs to him or her~~ is guilty of a Class H felony. ~~if done for any of the~~
4 ~~following purposes:~~

5 SECTION 20. 943.201 (2) (a), (b) and (c) of the statutes are created to read:

6 943.201 (2) (a) To obtain credit, money, goods, services, employment, or any
7 other thing of value or benefit.

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

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

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

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

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

25 SECTION 22. 943.203 of the statutes is created to read:

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

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

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

5 1. A document containing identifying information.

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

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

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

13 1. An entity's name.

14 2. An entity's address.

15 3. An entity's telephone number.

16 4. An entity's employer identification number.

17 5. The identifying number of an entity's depository account, as defined in s.
18 815.18 (2) (e). ✓

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

22 a. An entity's code or account number.

23 b. An entity's electronic serial number, mobile identification number, entity
24 identification number, or other telecommunications service, equipment, or
25 instrument identifier.

1 c. Any other means of account access.

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

5 8. Any other information that can be associated with a particular entity
6 through one or more identifiers or other information or circumstances.

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

12 (a) ^{to} Obtain credit, money, goods, services, or anything else of value or benefit.

13 (b) ^{to} Harm the reputation or property of the entity.

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

18 (4) If an entity reports to a law enforcement agency for the jurisdiction in which
19 the entity is located that personal identifying information or a personal identifying
20 document belonging to the entity reasonably appears to be in the possession of
21 another in violation of this section or that another has used or has attempted to use
22 it in violation of this section, the agency shall prepare a report on the alleged
23 violation. If the law enforcement agency concludes that it appears not to have
24 jurisdiction to investigate the violation, it shall inform the entity which law
25 enforcement agency may have jurisdiction. A copy of a report prepared under this

1 subsection shall be furnished upon request to the entity that made the request,
2 subject to payment of any reasonable fee for the copy.

3 SECTION 23. 946.79 of the statutes is created to read:

4 946.79 False statements to financial institutions. (1) In this section:

5 (a) "Financial institution" means a bank, savings bank, savings and loan
6 association, credit union, insurance company, trust company, securities broker or
7 dealer, pawnbroker, as defined in s. 134.71 (1) (e), telegraph company, or a dealer
8 in precious metals, stones, or jewels.

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9 (b) "Monetary instrument" includes any of the following:

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

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

18 (a).

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

20 (b).

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

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

- 25 2. The use of a safe deposit box.

1 3. The extension of credit.

*in connection with the submission
of financial
transaction*

2 (2) Whoever knowingly does any of the following ~~with respect to~~ information
3 ~~that is requested by or submitted to a financial institution in connection with a~~
4 ~~transaction with that financial institution~~ is guilty of a Class H felony:

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

6 (b) Makes a false ~~or fraudulent~~ statement ~~or representation~~ regarding an
7 individual's identity.

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

10 (d) Uses ~~or presents~~ a false personal identification document or false personal
11 identifying information.

12 SECTION 24. 946.82 (4) of the statutes, as affected by 2001 [✓] Wisconsin Act 109, [✓]
13 is amended to read:

14 946.82 (4) "Racketeering activity" means any activity specified in 18 USC 1961

15 (1) in effect as of April 27, 1982 or the attempt, conspiracy to commit, or commission
16 of any of the felonies specified ² in: chs. 945 and 961 and ss. 49.49, 134.05, 139.44 (1),
17 180.0129, 181.0129, 185.825, 201.09 (2), 215.12, 221.0625, 221.0636, 221.0637,
18 221.1004, 551.41, 551.42, 551.43, 551.44, 553.41 (3) and (4), 553.52 (2), 940.01,
19 940.19 (4) to (6), 940.20, 940.201, 940.203, 940.21, 940.30, 940.305, 940.31, 941.20
20 (2) and (3), 941.26, 941.28, 941.298, 941.31, 941.32, 942.09, 943.01 (2), (2d), or (2g),
21 943.011, 943.012, 943.013, 943.02, 943.03, 943.04, 943.05, 943.06, 943.10, 943.20 (3)
22 (bf) to (e), 943.201, 943.203, 943.23 (1g), (2) and (3), 943.24 (2), 943.25, 943.27,
23 943.28, 943.30, 943.32, 943.34 (1) (bf), (bm), and (c), 943.38, 943.39, 943.40, 943.41
24 (8) (b) and (c), 943.50 (4) (bf), (bm), and (c), 943.60, 943.70, 943.76, 944.21 (5) (c) and
25 (e), 944.32, 944.33 (2), 944.34, 945.03 (1m), 945.04 (1m), 945.05 (1), 945.08, 946.10,

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1 946.11, 946.12, 946.13, 946.31, 946.32 (1), 946.48, 946.49, 946.61, 946.64, 946.65,
 2 946.72, 946.76, 947.015, 948.05, 948.08, 948.12, and 948.30.

NOTE: NOTE: Sub. (4) is shown as affected by two acts of the 2001 legislature, eff. 2-1-03, and as merged by the revisor under s. 13.93 (2) (c). Prior to 2-1-03 it reads:NOTE:

3 (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
 4 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,
 5 551.41, 551.42, 551.43, 551.44, 553.41 (3) and (4), 553.52 (2), 940.01, 940.19 (3) to (6), 940.20, 940.201, 940.203, 940.21, 940.30, 940.305, 940.31, 941.20 (2) and (3), 941.26,
 6 941.28, 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) (c) and (d), 943.201,
 7 943.23 (1g), (1m), (1r), (2) and (3), 943.24 (2), 943.25, 943.27, 943.28, 943.30, 943.32, 943.34 (1) (c), 943.38, 943.39, 943.40, 943.41 (8) (b) and (c), 943.50 (4) (c), 943.60,
 8 943.70, 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,
 9 946.49, 946.61, 946.64, 946.65, 946.72, 946.76, 947.015, 948.05, 948.08, 948.12, and 948.30.

History: 1981 c. 280; 1983 a. 438; 1985 a. 104; 1985 a. 236 s. 15; 1987 a. 266 s. 5; 1987 a. 332, 348, 349, 403; 1989 a. 121, 303; 1991 a. 32, 39, 189; 1993 a. 50, 92, 94,
 10 112, 280, 441, 491; 1995 a. 133, 249, 336, 448; 1997 a. 35, 79, 101, 140, 143, 252; 1999 a. 9, 150; 2001 a. 16, 105, 109; s. 13.93 (2) (c).

10 SECTION 25. 970.03 (11) of the statutes is amended to read:

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

15 SECTION 26. 970.03 (13) of the statutes is amended to read:

16 970.03 (13) ~~Upon a showing by the proponent of good cause under s. 807.13 (2)~~
 17 ~~(e), testimony~~ Testimony may be received into the record of a preliminary
 18 examination by telephone or live audiovisual means if the proponent shows good
 19 cause or if the testimony is used to prove an element of an offense under s. 943.201
 20 (2) or 943.203 (2).

History: 1975 c. 184; 1977 c. 449; 1979 c. 112, 332; 1985 a. 267; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 332 s. 64; 1987 a. 403; Sup. Ct. Order, 158 Wis. 2d xvii
 (1990); 1991 a. 193, 276; 1993 a. 27, 98, 227, 486; 1995 a. 456; 1997 a. 252; 1999 a. 111; 2001 a. 103.

21 SECTION 27. 971.19 (11) of the statutes is created to read:

22 971.19 (11) In an action under s. 943.201, the defendant may be tried in the
 23 county where the victim or intended victim resides or in any other county designated
 24 under this section. In an action under s. 943.203, the defendant may be tried in the
 25 county where the victim or intended victim is located or in any other county
 26 designated under this section.

27 SECTION 28. 971.367 of the statutes is created to read:

2003 BILL

Inserts
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Analysis
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"KA"

1 AN ACT *to repeal* 343.237 (3) (d); *to renumber and amend* 343.237 (1) (a); *to*
 2 *amend* 343.237 (3) (intro.), 343.237 (3) (b), 343.237 (3) (c) (intro.), 343.237 (4)
 3 (intro.), 343.237 (4) (a) and 343.237 (4) (b); and *to create* 343.237 (1) (ag) of the
 4 statutes; **relating to:** access by law enforcement agencies to photographs on
 5 ~~motor vehicle operators' licenses and identification cards.~~

Analysis by the Legislative Reference Bureau a driver's

state With limited exceptions, current law requires the Department of
 Transportation (DOT) to take a photograph of all applicants for ~~an operator's~~ license
 or identification card. DOT may keep copies of the photographs for its own use but
 generally must keep the photographs confidential. However, DOT may release a
 photograph to the individual whose photograph was taken. In addition, DOT may
 under certain circumstances, release a copy of a photograph taken on or after
 September 1, 1997, to a Wisconsin law enforcement agency or to a law enforcement
 agency of a physically adjacent state.

DOT may release a copy of a photograph to a Wisconsin law enforcement agency
 only if the agency submits a written request specifying the name of the person whose
 photograph is requested and stating that the photograph is requested for the purpose
 of investigating unlawful activity, looking for a missing person, or identifying an
 accident victim or a deceased person. DOT may also provide a copy of the photograph to
 a law enforcement agency of a physically adjacent state if the agency makes a written
 request in the same manner as a Wisconsin law enforcement agency and if the
 such a

BILL

identification cards

physically adjacent state provides Wisconsin law enforcement agencies with access to similar information photographs taken for that state's drivers licenses and state

(H) If a law enforcement agency receives a copy of a photograph from DOT ~~the~~ agency must keep ^{that} the copy of the photograph confidential and may disclose it only if necessary to perform a law enforcement function. When the copy of the photograph is no longer necessary for the investigatory or identification purpose specified in the request for a copy of the photograph, the law enforcement agency must destroy any copies of the photograph in its possession.

This bill allows DOT to release a copy of a photograph to any state or federal law enforcement agency if the law enforcement agency makes a written request in the same manner as a Wisconsin law enforcement agency. The same restrictions regarding the use and possession of a released photograph that apply to Wisconsin law enforcement agencies also apply to the other state's law enforcement agency and the federal law enforcement agency requesting a photograph from DOT.

For further information see the ~~state fiscal estimate~~, which will be printed as an appendix to this bill. *(the)*

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

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

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

10 SECTION 2. 343.237 (1) (ag) of the statutes is created to read:

11 343.237 (1) (ag) "Federal law enforcement agency" means a governmental unit
12 of one or more persons employed by the federal government for the purpose of
13 preventing and detecting crime and enforcing federal laws, employees of which unit

INS 12/8



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

SECTION #. (AM) 939.03 (1) (a) to (d) (intro.) and

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

939.03(1)(b)

(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 _

939.03(1)(c)

(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 _

939.03(1)(d)

(d) While out of this state, the person steals and subsequently brings any of the stolen property into this state.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1585/1dn

MGD:/::...

(P1)

kmg

Rep. Gundrum:

Identity theft

- ✓ 1. From what Don Dyke has told me, ss. 943.201 (3) and 943.203 (3) are intended to prevent law enforcement officers from being prosecuted. But those provisions are not needed in order to achieve that objective, since a law enforcement officer will presumably be able to show that he or she did not intend to do any of the things listed in s. 943.201 (2) (a), (b), or (c) or 943.203 (2) (a) or (b). Is there some other goal behind those provisions?
- ✓ 2. It is not clear whether s. 939.03 (1) (e) would apply in cases in which the victim is deceased. Should it?

Utility service for identity theft victims

- ✓ 3. The term "public utility" does not include certain telephone companies, such as wireless phone companies, nor does it include cooperative associations. Is that okay?

False statements to financial institutions

- ✓ 4. Under 2001 Senate Bill 363 — the bill from which this bill's version of s. 946.79 was based — an attempt to make a false statement to a financial institution was punishable in the same way as the completed offense. This bill does not take that approach, except with respect to attempts covered by s. 946.79 (a). Instead, the maximum penalty for an attempt is half the penalty for the completed offense. Is that okay?
- ✓ 5. SB-363 permitted more than one violation of s. 946.79 to be prosecuted as a single crime if the violations were pursuant to the same scheme. This bill does not contain such a provision. Is that okay?
- ✓ 6. Unlike SB-363, this bill does not treat a violation of s. 946.79 as racketeering activity. Is that okay?

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1585/P1dn
MGD:kmg:jf

March 5, 2003

Rep. Gundrum:

Identity theft

1. From what Don Dyke has told me, ss. 943.201 (3) and 943.203 (3) are intended to prevent law enforcement officers from being prosecuted. But those provisions are not needed in order to achieve that objective, since a law enforcement officer will presumably be able to show that he or she did not intend to do any of the things listed in s. 943.201 (2) (a), (b), or (c) or 943.203 (2) (a) or (b). Is there some other goal behind those provisions? }

2. It is not clear whether s. 939.03 (1) (e) would apply in cases in which the victim is deceased. Should it?

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1585/P1dn
MGD:kmg:jf

March 5, 2003

P/c from Don Dyke -

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Identity theft

1. From what Don Dyke has told me, ss. 943.201 (3) and 943.203 (3) are intended to prevent law enforcement officers from being prosecuted. But those provisions are not needed in order to achieve that objective, since a law enforcement officer will presumably be able to show that he or she did not intend to do any of the things listed in s. 943.201 (2) (a), (b), or (c) or 943.203 (2) (a) or (b). Is there some other goal behind those provisions?

*keep
in bill*

2. It is not clear whether s. 939.03 (1) (e) would apply in cases in which the victim is deceased. Should it? *Clarify if needed*

Utility service for identity-theft victims

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False statements to financial institutions

4. Under 2001 Senate Bill 363 — the bill on which this bill's version of s. 946.79 was based — an attempt to make a false statement to a financial institution was punishable in the same way as the completed offense. This bill does not take that approach, except with respect to attempts covered by s. 946.79 (2) (a). Instead, the maximum penalty for an attempt is half the penalty for the completed offense. Is that okay?

*add
SB
363
provis*

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Michael Dsida
Legislative Attorney
Phone: (608) 266-9867



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-1585/PT
MGD:kmg:jf

11

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

8/11
JN 3/12

Gen. Cat.

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), 943.201 (1) (a) 1., 943.201
6 (1) (a) 2., 943.201 (1) (a) 3., 943.201 (1) (b) 10. to 15., 943.201 (2) (a), (b) and (c),
7 943.201 (3) and (4), 943.203, 946.79, 971.19 (11) and 971.367 of the statutes;
8 **relating to:** identity theft, unlawful use of an entity's identification documents
9 or identifying information, false statements to financial institutions, and
10 access by law enforcement agencies to driver's license and state identification
11 card photographs and providing penalties.

Analysis by the Legislative Reference Bureau

Identity theft

Current law prohibits identity theft — the unauthorized use of a personal identification document or personal identifying information of an individual (the

victim) to obtain credit, money, goods, services, or anything else of value. To convict a person of this offense, the state must show that the defendant falsely represented that he or she was the victim or was acting with the authorization or consent of the victim (the deception element). Under current law, "personal identification document" is defined to mean a birth certificate or a financial transaction card (which itself is defined to include a credit or debit card, a check-cashing card, and an automated teller machine card). Personal identifying information covered by the identity theft prohibition includes an individual's name, address, telephone number, driver's license number, social security number, and checking or savings account number; the name of an individual's employer; and the maiden name of an individual's mother. A person who commits identity theft may be fined not more than \$10,000 or sentenced to a term of imprisonment (consisting of confinement in state prison followed by a term of extended supervision) of not more than six years, or both.

This bill makes a number of changes related to the crime of identity theft. First, the bill revises the definition of "personal identification document" so that it covers any document containing personal identifying information; an individual's card or plate, if it can be used to obtain anything of value or benefit or to initiate a transfer of funds; and any other device that is unique to, assigned to, or belongs to an individual and that permits the individual to access services, funds, or benefits. Second, the bill expands the definition of "personal identifying information" so that it covers: 1) an individual's DNA profile; 2) an individual's code, account number, identification number, or any other means of account access that can be used to obtain anything of value or benefit or to initiate a transfer of funds; 3) biometric data (such as a fingerprint, a voice print, or a retina or iris image); 4) any other information or data that is unique to, assigned to, or belongs to an individual and that permits the individual to access services, funds, or benefits; and 5) any other information that can be associated with a particular individual through one or more identifiers or other information or circumstances. Third, the bill specifies that the prohibition on identity theft applies to a personal identification document or personal identifying information relating to a deceased individual.

Fourth, the bill expands the scope of the prohibition to cover the unauthorized use of an individual's personal identification document or personal identifying information to harm the reputation, property, or person of the individual; to harm the individual's estate if he or she is deceased; to avoid delivery of a summons, subpoena, or similar court paper; or to avoid a penalty imposed by a court. The bill also prohibits a person from possessing a personal identification document or personal identifying information with intent to use it for one of those purposes or to obtain something of value. Fifth, the bill specifies that the state may prove the deception element by proving that a defendant falsely represented that the personal identification document or personal identifying information was his or her own.

Unauthorized use of an entity's identifying documents or information

The bill creates a new crime, prohibiting the unauthorized use of identifying documents or information relating to a corporation, partnership, association, government, or government agency (an entity). The elements of and the maximum penalty for this offense are essentially the same as those for identity theft, with two

exceptions. First, information that relates to an individual but not to an entity (such as a driver's license number, a social security number, or a DNA profile) is not covered by the term "identifying information" for the purposes of this new crime. Second, the prohibition relating to entities does not apply to conduct undertaken for the sole purpose of avoiding delivery of a court document or avoiding a penalty imposed by a court. The bill also permits an entity that is the victim of this offense to bring a civil action against the person committing it in the same way that current law allows victims of identity theft to bring such an action.

Jurisdiction, venue, and procedure for identity theft and unauthorized use of entity-identifying documents or information

Under current law, a person may be prosecuted and punished for a crime under Wisconsin law if, among other things: 1) the person commits a crime and any elements of the crime occur in this state; or 2) while out of this state, the person does an act with intent that it cause, within the state, a consequence set forth in a law defining a crime. This bill specifies that a person may be prosecuted and punished for identity theft if the victim is a Wisconsin resident and for unauthorized use of an entity's identifying documents or information if the entity is located in Wisconsin. The bill also specifies that the case may be brought in the county in which the victim resides, if the victim is an individual, or is located, if the victim is an entity, or in any other county in which the case may otherwise be brought under current law. In addition, the bill permits more frequent use of hearsay and telephonic or televised testimony at preliminary hearings in such cases.

Utility service for victims of identity theft

The bill allows an individual who is a victim of identity theft to obtain service from a public utility if the individual is unable to obtain that service solely because of the identity theft. If the individual furnishes the public utility with an affidavit and law enforcement agency report regarding the identity theft, and if the individual otherwise qualifies for the service, the public utility must provide the service, unless the public utility contests the accuracy of the affidavit or report by filing a petition with the Public Service Commission (PSC). In such a case, the PSC must investigate the petition and may hold a hearing on the matter. Unless the PSC determines that the identity theft did not occur, the public utility must provide the service.

False statements to financial institutions

Current law prohibits making false statements for the purpose of obtaining a financial transaction card. A person who violates that prohibition may be fined not more than \$10,000 or sentenced to the county jail for not more than nine months or both. This bill prohibits certain deceptive activities undertaken in connection with a transaction with a financial institution. The prohibited activities include: 1) falsifying or concealing an individual's identity; 2) making a false statement regarding an individual's identity; 3) making or using a writing that contains false information regarding an individual's identity; or 4) using a false personal identification document or false personal identifying information. A person who violates this prohibition may be fined not more than \$10,000 or sentenced to a term of imprisonment of up to six years or both.

Law enforcement agency access to driver's license photographs

With limited exceptions, current law requires the Department of Transportation (DOT) to take a photograph of all applicants for a driver's license or state identification card. DOT may keep copies of the photographs for its own use but generally must keep the photographs confidential. DOT, however, may release a photograph to the individual whose photograph was taken. In addition, DOT may release a copy of a photograph taken on or after September 1, 1997, to a Wisconsin law enforcement agency if the agency submits a written request specifying the name of the person whose photograph is requested and stating that the photograph is requested for the purpose of investigating unlawful activity, looking for a missing person, or identifying an accident victim or a deceased person. DOT may also provide a copy of such a photograph to a law enforcement agency of a physically adjacent state if the agency makes a written request in the same manner as a Wisconsin law enforcement agency and if the physically adjacent state provides Wisconsin law enforcement agencies with access to photographs taken for that state's driver's licenses and state identification cards. A law enforcement agency that receives a copy of a photograph from DOT must keep it confidential.

This bill allows DOT to release a copy of a photograph to any state or federal law enforcement agency if the law enforcement agency makes a written request in the same manner as a Wisconsin law enforcement agency. The same restrictions regarding the use and possession of a released photograph that apply to Wisconsin law enforcement agencies also apply to the other state's law enforcement agency or the federal law enforcement agency requesting the photograph from DOT.

Additional information

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:

- 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

1 unable to obtain service from the public utility, the utility shall provide service to that
2 individual if all of the following apply:

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

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

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

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

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

20 343.237 (1) (ar) "Law enforcement agency of ~~a physically adjacent another~~
21 ~~state~~" has the meaning given in s. 175.46 (1) (b) means a governmental unit of one
22 or more persons employed by a state other than this state or by a political subdivision
23 of a state other than this state for the purpose of preventing and detecting crime and
24 enforcing laws or ordinances of that state or a political subdivision of that state,

1 employees of which unit are authorized to make arrests for crimes while acting
2 within the scope of their authority.

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

4 343.237 (1) (ag) “Federal law enforcement agency” means a governmental unit
5 of one or more persons employed by the federal government for the purpose of
6 preventing and detecting crime and enforcing federal laws, employees of which unit
7 are authorized to make arrests for crimes while acting within the scope of their
8 authority.

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

10 343.237 (3) (intro.) The department shall provide a Wisconsin law enforcement
11 agency or a federal law enforcement agency with a copy of a photograph taken on or
12 after September 1, 1997, of an applicant under s. 343.14 (3) or 343.50 (4) if the
13 department receives a written request on the ~~Wisconsin~~ law enforcement agency’s
14 letterhead that contains all of the following:

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

16 343.237 (3) (b) The name of the person making the request and the ~~Wisconsin~~
17 law enforcement agency that employs the requester.

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

19 343.237 (3) (c) (intro.) A statement signed by a division commander or higher
20 authority within the ~~Wisconsin~~ law enforcement agency that the photograph is
21 requested for any of the following purposes:

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

23 343.237 (3) (e) If the requester is a federal law enforcement agency, a statement
24 that the agency agrees to comply with all of the requirements under this section.

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

1 343.237 (4) (intro.) If a law enforcement agency of ~~a physically adjacent~~
2 another state makes a request meeting all the requirements specified for a request
3 by a Wisconsin law enforcement agency or a federal law enforcement agency under
4 sub. (3), the department shall comply with the request if all of the following apply:

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

6 343.237 (4) (a) The law enforcement agency of the ~~physically adjacent~~ other
7 state agrees to comply with all of the requirements under this section.

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

9 343.237 (4) (b) The ~~physically adjacent~~ other state allows Wisconsin law
10 enforcement agencies similar or greater access to similar information from that
11 ~~physically adjacent~~ state.

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

13 895.80 (1) Any person who suffers damage or loss by reason of intentional
14 conduct that occurs on or after November 1, 1995, and that is prohibited under s.
15 943.01, 943.20, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50, 943.61,
16 943.74, or 943.76, or by reason of intentional conduct that occurs on or after April 28,
17 1998, and that is prohibited under s. 943.201 or 943.203, has a cause of action against
18 the person who caused the damage or loss.

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

20 939.03 (1) (intro.) A person is subject to prosecution and punishment under the
21 law of this state if any of the following applies:

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

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

a deceased individual who resided in this state immediately before his or her death,

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

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

4 939.03 (1) (e) The person violates s. 943.201 or 943.203 and the victim is an
5 individual who resides in this state or an entity, as defined in s. 943.203 (1) (a), that
6 is located in this state.

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7 SECTION 14. 943.201 (title) of the statutes is amended to read:

8 943.201 (title) ~~Misappropriation~~ Unauthorized use of an individual's
9 personal identifying information or personal identification documents.

10 SECTION 15. 943.201 (1) (a) of the statutes is renumbered 943.201 (1) (a) (intro.)
11 and amended to read:

12 943.201 (1) (a) (intro.) "Personal identification document" means ~~a birth~~
13 ~~certificate or a financial transaction card, as defined in s. 943.41 (1) (em).~~ any of the
14 following:

15 SECTION 16. 943.201 (1) (a) 1. of the statutes is created to read:

16 943.201 (1) (a) 1. A document containing personal identifying information.

17 SECTION 17. 943.201 (1) (a) 2. of the statutes is created to read:

18 943.201 (1) (a) 2. An individual's card or plate, if it can be used, alone or in
19 conjunction with another access device, to obtain money, goods, services, or any other
20 thing of value or benefit, or if it can be used to initiate a transfer of funds.

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

22 943.201 (1) (a) 3. Any other device that is unique to, assigned to, or belongs to
23 an individual and that is intended to be used to access services, funds, or benefits of
24 any kind to which the individual is entitled.

25 SECTION 19. 943.201 (1) (b) 10. to 15. of the statutes are created to read:

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

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

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

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

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

10 c. Any other means of account access.

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

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

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

18 **SECTION 20.** 943.201 (2) of the statutes, as affected by 2001 Wisconsin Act 109,
19 is renumbered 943.201 (2) (intro.) and amended to read:

20 943.201 (2) (intro.) Whoever, for any of the following purposes, intentionally
21 uses or, attempts to use, or possesses with intent to use any personal identifying
22 information or personal identification document of an individual to obtain credit,
23 money, goods, services or anything else of value, including a deceased individual,
24 without the authorization or consent of the individual and by representing that he
25 or she is the individual or, that he or she is acting with the authorization or consent

1 of the individual, or that the information or document belongs to him or her is guilty
2 of a Class H felony.:

3 **SECTION 21.** 943.201 (2) (a), (b) and (c) of the statutes are created to read:

4 943.201 (2) (a) To obtain credit, money, goods, services, employment, or any
5 other thing of value or benefit.

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

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

8 **SECTION 22.** 943.201 (3) and (4) of the statutes are created to read:

9 943.201 (3) It is an affirmative defense to a prosecution under this section that
10 the defendant was authorized by law to engage in the conduct that is the subject of
11 the prosecution. A defendant who raises this affirmative defense has the burden of
12 proving the defense by a preponderance of the evidence.

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

23 **SECTION 23.** 943.203 of the statutes is created to read:

24 **943.203 Unauthorized use of an entity's identifying information or**
25 **documents.** (1) In this section:

1 (a) “Entity” means a person other than an individual.

2 (b) “Identification document” means any of the following:

3 1. A document containing identifying information.

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

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

10 (c) “Identifying information” means any of the following information:

11 1. An entity’s name.

12 2. An entity’s address.

13 3. An entity’s telephone number.

14 4. An entity’s employer identification number.

15 5. The identifying number of an entity’s depository account, as defined in s.
16 815.18 (2) (e).

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

20 a. An entity’s code or account number.

21 b. An entity’s electronic serial number, mobile identification number, entity
22 identification number, or other telecommunications service, equipment, or
23 instrument identifier.

24 c. Any other means of account access.

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

4 8. Any other information that can be associated with a particular entity
5 through one or more identifiers or other information or circumstances.

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

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

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

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

17 (4) If an entity reports to a law enforcement agency for the jurisdiction in which
18 the entity is located that personal identifying information or a personal identifying
19 document belonging to the entity reasonably appears to be in the possession of
20 another in violation of this section or that another has used or has attempted to use
21 it in violation of this section, the agency shall prepare a report on the alleged
22 violation. If the law enforcement agency concludes that it appears not to have
23 jurisdiction to investigate the violation, it shall inform the entity which law
24 enforcement agency may have jurisdiction. A copy of a report prepared under this

1 subsection shall be furnished upon request to the entity that made the request,
2 subject to payment of any reasonable fee for the copy.

3 **SECTION 24.** 946.79 of the statutes is created to read:

4 **946.79 False statements to financial institutions.** (1) In this section:

5 (a) “Financial institution” means a bank, savings bank, savings and loan
6 association, credit union, insurance company, trust company, securities broker or
7 dealer, pawnbroker, as defined in s. 134.71 (1) (e), telegraph company, or dealer in
8 precious metals, stones, or jewels.

9 (b) “Financial transaction information” means information being submitted to
10 a financial institution in connection with a transaction with that financial
11 institution.

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

- 13 1. Coin or currency of the United States or any other country.
- 14 2. Traveler’s check, personal check, money order, or share draft or other draft
15 for payment.
- 16 3. Investment security or negotiable instrument, in bearer form or other form
17 that provides that title to the security or instrument passes upon delivery of the
18 security or instrument.
- 19 4. Precious metals, stones, or jewels.

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

21 (a).

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

23 (b).

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

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

3 2. The use of a safe deposit box.

4 3. The extension of credit.

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

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

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

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

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

13 **SECTION 25.** 946.82 (4) of the statutes, as affected by 2001 Wisconsin Act 109,
14 is amended to read:

15 946.82 (4) "Racketeering activity" means any activity specified in 18 USC 1961
16 (1) in effect as of April 27, 1982, or the attempt, conspiracy to commit, or commission
17 of any of the felonies specified in: chs. 945 and 961 and ss. 49.49, 134.05, 139.44 (1);
18 180.0129, 181.0129, 185.825, 201.09 (2), 215.12, 221.0625, 221.0636, 221.0637,
19 221.1004, 551.41, 551.42, 551.43, 551.44, 553.41 (3) and (4), 553.52 (2), 940.01,
20 940.19 (4) to (6), 940.20, 940.201, 940.203, 940.21, 940.30, 940.305, 940.31, 941.20
21 (2) and (3), 941.26, 941.28, 941.298, 941.31, 941.32, 942.09, 943.01 (2), (2d), or (2g),
22 943.011, 943.012, 943.013, 943.02, 943.03, 943.04, 943.05, 943.06, 943.10, 943.20 (3)
23 (bf) to (e), 943.201, 943.203, 943.23 (1g), (2) and (3), 943.24 (2), 943.25, 943.27,
24 943.28, 943.30, 943.32, 943.34 (1) (bf), (bm), and (c), 943.38, 943.39, 943.40, 943.41
25 (8) (b) and (c), 943.50 (4) (bf), (bm), and (c), 943.60, 943.70, 943.76, 944.21 (5) (c) and

946.79, ✓

1 (e), 944.32, 944.33 (2), 944.34, 945.03 (1m), 945.04 (1m), 945.05 (1), 945.08, 946.10,
2 946.11, 946.12, 946.13, 946.31, 946.32 (1), 946.48, 946.49, 946.61, 946.64, 946.65,
3 946.72, 946.76, 947.015, 948.05, 948.08, 948.12, and 948.30.

4 **SECTION 26.** 970.03 (11) of the statutes is amended to read:

5 970.03 (11) The court may admit a statement which is hearsay and which is
6 not excluded from the hearsay rule under ss. 908.02 to 908.045 to prove ownership
7 of property or lack of consent to entry to or possession or destruction of property or
8 to prove any element under s. 943.201 (2) or 943.203 (2).

9 **SECTION 27.** 970.03 (13) of the statutes is amended to read:

10 970.03 (13) ~~Upon a showing by the proponent of good cause under s. 807.13 (2)~~
11 ~~(e), testimony~~ 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) or 943.203 (2).

15 **SECTION 28.** 971.19 (11) of the statutes is created to read:

16 971.19 (11) In an action under s. 943.201, the defendant may be tried in the
17 county where the victim or intended victim resides or in any other county designated
18 under this section. In an action under s. 943.203, the defendant may be tried in the
19 county where the victim or intended victim is located or in any other county
20 designated under this section.

21 **SECTION 29.** 971.36⁶ of the statutes is created to read:

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

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

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

3

(END)

INS 16/2 ✓

2003-2004 DRAFTING INSERT
FROM THE
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INSERT 8/6 ✓

-4081/P2.1 SECTION 1. 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.

INSERT 16/2 ✓

-4081/P2.6 SECTION 2. 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. ΔΔ

Memo

To: Senator Representative Gundrum (The Draft's Requester)

Per your request: ... the attached fiscal estimate was prepared for your unIntroduced 2003 draft.

LRB Number: LRB - 1585

Version: "/ 1"

Fiscal Estimate Prepared By: (agency abbr.) PSC

If you have questions about the enclosed fiscal estimate, you may contact the state agency representative that prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

Entered In Computer And Copy Sent To Requester Via E-Mail: 4 / 17 / 2003 ⁴¹²⁵

* * * * *

To: LRB - Legal Section PA's

Subject: *Fiscal Estimate Received For An Unintroduced Draft*

- > **If redrafted** ... please insert this cover sheet and attached early fiscal estimate into the drafting file ... after the draft's old version (the version that this fiscal estimate was based on), and before the markup of the draft on the updated version.
- > **If introduced** ... and the version of the attached fiscal estimate is for a **previous version** ... please insert this cover sheet and attached early fiscal estimate into the drafting file ... after the draft's old version (the version that this fiscal estimate was based on), and before the markup of the draft on the updated version. Have Mike (or Lynn) get the ball rolling on getting a fiscal estimate prepared for the introduced version.
- > **If introduced** ... and the version of the attached fiscal estimate is for the **current version** ... please write the draft's introduction number below and give to Mike (or Lynn) to process.

THIS DRAFT WAS INTRODUCED AS: 2003 AB 288

Emery, Lynn

From: Emery, Lynn
Sent: Thursday, April 17, 2003 1:26 PM
To: Rep.Gundrum
Subject: LRB-1585/1 (FE by PSC - attached - for your review)



FE_Gundrum.pdf

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