

2013 DRAFTING REQUEST

Bill

Received: 11/6/2013 Received By: phurley
Wanted: As time permits Same as LRB:
For: Jennifer Shilling (608) 266-5490 By/Representing: Tony
May Contact: Drafter: phurley
Subject: Criminal Law - miscellaneous Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: Sen.Shilling@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Unauthorized possession of a correctional officer's or health employee's personal information

Instructions:

redraft 2011 SB 283, as amended by SA1

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>
/?	phurley 11/6/2013	kfollett 11/25/2013		_____			
/1			jmurphy 11/25/2013	_____	lparisi 11/25/2013	lparisi 12/4/2013	State Crime

FE Sent For:

At
Intro.

<END>

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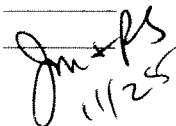
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/?	phurley	11/5f 11/25	11/5f 11/25				

FE Sent For:

<END>

Hurley, Peggy

From: Palese, Tony
Sent: Wednesday, November 06, 2013 9:37 AM
To: Hurley, Peggy
Subject: Sen. Shilling Bill Draft request

Hi Peggy,

Our office would like to re-draft a bill from last session – SB 283. We'd also like to incorporate Senate Amendment 1 which was adopted in committee.

I've attached the bill and the amendment for your information. If you have any questions, please feel free to let me know.

Thanks!

- Tony

Tony Palese
Legislative Aide
Office of Sen. Jennifer Shilling

State Capitol, Room 20 South
PO Box 7882, Madison, WI 53707
(608) 266-5490 office
(800) 385-3385 toll-free



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sa1_sb283.pdf



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cont

2011 SENATE BILL 283

11-5-13

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MNR

PWF

November 4, 2011 - Introduced by Senators KING, SHILLING, MOULTON, SCHULTZ, WANGGAARD and ERPENBACH, cosponsored by Representatives HINTZ, BERCEAU, POPE-ROBERTS, RADCLIFFE, SINICKI, SPANBAUER, WYNN, ZEPNICK and STEINEKE. Referred to Committee on Labor, Public Safety, and Urban Affairs.

or a health services employee's

1 **AN ACT to amend** 48.685 (5) (br) 3m., 100.54 (9) (b), 103.34 (1) (b) 3., 895.446 (1),
2 895.446 (2), 895.446 (3) (a), 939.03 (1) (e), 946.82 (4), 970.03 (11), 970.03 (13),
3 971.19 (11) and 971.366; and **to create** 943.202 of the statutes; **relating to:**
4 unauthorized possession of a correctional employee's personal identifying
5 information and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits the unauthorized use of another person's personal identifying information or documents related to the person's identifying information. Personal identifying information includes an individual's name, address, telephone number, driver's or employment identification number, the maiden name of an individual's mother, social security number, taxpayer's identification number, access code for an individual's bank or other account, an individual's unique biometric data, including fingerprint, voice print, retina or iris image, or deoxyribonucleic acid profile.

Under current law, a person who intentionally uses, attempts to use, or possesses with the intent to use another person's personal identifying information or documents to obtain something of value, to avoid civil or criminal process or penalty, or to harm the reputation or property of the person is guilty of a Class H felony and may be fined up to \$10,000, imprisoned for up to six years, or both.

Under current law, a person who is the victim of the unauthorized use of his or her personal identifying information or documents may obtain a security freeze on

SENATE BILL 283

imprisoned or otherwise in the custody of or supervised by the department of corrections, or who is a patient at a mental health facility

his or her credit reports free of charge, if he or she submits proof to a credit reporting agency that he or she reported the unauthorized use to a law enforcement agency.

This bill prohibits the possession, by a person who is ~~incarcerated in a prison~~ or who resides in a mental health facility, of a correctional employee's personal identifying information or a document relating to the employee's personal identifying information. A person who violates this prohibition is guilty of a Class H felony. Under the bill, a correctional employee who is the victim of an unauthorized possession of his or her personal identifying information or documents may obtain a security freeze on his or her credit reports free of charge, if he or she submits proof to a credit reporting agency that he or she reported the unauthorized possession to a law enforcement agency.

mental health facility

or health services employee

or health services employees

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* 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:

SECTION 1. 48.685 (5) (br) 3m. of the statutes is amended to read:

48.685 (5) (br) 3m. Except for purposes of permitting a person to be a nonclient resident or caregiver specified in sub. (1) (ag) 1. a. of a ^{plain} day child care center or ^{plain} day child care provider, a violation of s. 943.201, [✓] 943.202, 943.203, 943.32 (2), or 943.38 (1) or (2); a violation of s. 943.34 (1), 943.395 (1), 943.41 (3) (e), (4) (a), (5), (6), or (6m), 943.45 (1), 943.455 (2), 943.46 (2), 943.47 (2), 943.50 (1m), or 943.70 (2) (a) or (am) or (3) (a) that is a felony; or an offense under subch. IV of ch. 943 that is a felony.

SECTION 2. 100.54 (9) (b) of the statutes is amended to read:

100.54 (9) (b) A consumer reporting agency may not charge a fee to an individual who submits evidence satisfactory to the consumer reporting agency that the individual made a report to a law enforcement agency under s. 943.201 (4) or [✓] 943.202 (4) regarding the individual's personal identifying information or a personal

SENATE BILL 283

1 identifying document. A copy of a law enforcement agency's report under s. 943.201
2 (4) or 943.202 (4) is considered satisfactory evidence for purposes of this paragraph.

3 **SECTION 3.** 103.34 (1) (b) 3. of the statutes [✓] is amended to read:

4 103.34 (1) (b) 3. A violation of s. 943.20, 943.201, 943.203, 943.21, 943.23,
5 943.24 (2), 943.34, 943.50, 943.61, 943.62, or 943.70 or of a substantially similar
6 federal law or law of another state, if the value of the property misappropriated is
7 \$2,500 or more, [✓] or a violation of s. 943.202 or of a substantially similar federal law
8 or law of another state.

9 **SECTION 4.** 895.446 (1) of the statutes is amended to read:

10 895.446 (1) Any person who suffers damage or loss by reason of intentional
11 conduct that occurs on or after November 1, 1995, and that is prohibited under s.
12 943.01, 943.20, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50, 943.61,
13 943.74, or 943.76, or by reason of intentional conduct that occurs on or after April 28,
14 1998, and that is prohibited under s. 943.201, 943.202, [✓] or 943.203, or by reason of
15 intentional conduct that occurs on or after July 1, 2004, and that is prohibited under
16 s. 943.011, 943.012, or 943.017, has a cause of action against the person who caused
17 the damage or loss.

18 **SECTION 5.** 895.446 (2) of the statutes [✓] is amended to read:

19 895.446 (2) The burden of proof in a civil action under sub. (1) is with the person
20 who suffers damage or loss to prove a violation of s. 943.01, 943.011, 943.012,
21 943.017, 943.20, 943.201, 943.202, [✓] 943.203, 943.21, 943.24, 943.26, 943.34, 943.395,
22 943.41, 943.50, 943.61, 943.74, or 943.76 by a preponderance of the credible evidence.
23 A conviction under s. 943.01, 943.011, 943.012, 943.017, 943.20, 943.201, 943.202, [✓]
24 943.203, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50, 943.61, 943.74, or

SENATE BILL 283

SECTION 5

1 943.76 is not required to bring an action, obtain a judgment, or collect on that
2 judgment under this section.

3 SECTION 6. 895.446 (3) (a) of the statutes is amended to read:

4 895.446 (3) (a) Actual damages, including the retail or replacement value of
5 damaged, used, or lost property, whichever is greater, for a violation of s. 943.01,
6 943.011, 943.012, 943.017, 943.20, 943.201, 943.202, 943.203, 943.21, 943.24,
7 943.26, 943.34, 943.395, 943.41, 943.50, 943.61, 943.74, or 943.76.

8 SECTION 7. 939.03 (1) (e) of the statutes is amended to read:

9 939.03 (1) (e) The person violates s. 943.201, 943.202, or 943.203 and the
10 victim, at the time of the violation, is an individual who resides in this state, a
11 deceased individual who resided in this state immediately before his or her death,
12 or an entity, as defined in s. 943.203 (1) (a), that is located in this state.

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

14 **943.202 Unauthorized possession of personal identifying information**
15 **or documents. (1) In this section:**

16 (a) "Correctional employee" means a person who has direct contact with ^{an}
17 prisoner in the course of his or her employment duties. an offender

18 (b) "Personal identification document" means any of the following:

- 19 1. A document containing personal identifying information. or health services employees
- 20 2. A correctional employee's card or plate, if it can be used, alone or in
21 conjunction with another access device, to obtain money, goods, services, or any other
22 thing of value or benefit, or if it can be used to initiate a transfer of funds.

23 3. Any other device that is unique to, assigned to, or belongs to a correctional
24 employee and that is intended to be used to access services, funds, or benefits of any
25 kind to which the individual is entitled.

or health services employee

insert
17

(d)

SENATE BILL 283

(e) "Personal identifying information" means any of the following information:

1. A correctional employee's address.

or health services employees

2. A correctional employee's telephone number.

3. The unique identifying driver number assigned to a correctional employee

or health services employee

by the department of transportation under s. 343.17 (3) (a) 4.

4. A correctional employee's social security number.

5. An identification number assigned to a correctional employee by his or her employer.

or health services employees

6. The maiden name of a correctional employee's mother.

7. The identifying number of a depository account, as defined in s. 815.18 (2) (e), of a correctional employee.

or health services employee

8. A correctional employee's taxpayer identification number.

9. A correctional employee's deoxyribonucleic acid profile, as defined in s. 939.74 (2d) (a).

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

a. A correctional employee's code or account number.

or health services employees

b. A correctional employee's electronic serial number, mobile identification number, personal identification number, or other telecommunications service, equipment, or instrument identifier.

c. Any other means of account access.

11. A correctional employee's unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation.

or health services employee

1 12. Any other information or data that is unique to, assigned to, or belongs to
2 a correctional employee and that is intended to be used to access services, funds, or
3 benefits of any kind to which the individual is entitled.

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

6 (d) "Prisoner" means any person who is incarcerated, imprisoned, or otherwise
7 detained in a prison or correctional institution or mental health facility in the state,
8 but does not include a person confined in a jail.

9 (2) Any prisoner who possesses any personal identifying information or
10 personal identification document of a correctional employee, including a deceased
11 correctional employee, without the authorization or consent of the correctional
12 employee is guilty of a Class H felony.

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 a correctional employee reports to a law enforcement agency for the
18 jurisdiction which is the correctional employee's residence that personal identifying
19 information or a personal identification document belonging to him or her
20 reasonably appears to be in the possession of another in violation of this section, the
21 agency shall prepare a report on the alleged violation. If the law enforcement agency
22 concludes that it appears not to have jurisdiction to investigate the violation, it shall
23 inform the correctional employee which law enforcement agency may have
24 jurisdiction. A copy of a report prepared under this subsection shall be furnished

or health services employees

or health services employee

or health services employee

or health services employee

SENATE BILL 283

1 upon request to the person who made the request, subject to payment of any
2 reasonable fee for the copy.

3 **SECTION 9.** 946.82 (4) of the statutes is amended to read:

4 946.82 (4) "Racketeering activity" means any activity specified in 18 USC 1961
5 (1) in effect as of April 27, 1982, or the attempt, conspiracy to commit, or commission
6 of any of the felonies specified in: chs. 945 and 961, subch. V of ch. 551, and ss. 49.49,
7 134.05, 139.44 (1), 180.0129, 181.0129, 185.825, 201.09 (2), 215.12, 221.0625,
8 221.0636, 221.0637, 221.1004, 553.41 (3) and (4), 553.52 (2), 940.01, 940.19 (4) to (6),
9 940.20, 940.201, 940.203, 940.21, 940.30, 940.302 (2), 940.305, 940.31, 941.20 (2) and
10 (3), 941.26, 941.28, 941.298, 941.31, 941.32, 942.09, 943.01 (2), (2d), or (2g), 943.011,
11 943.012, 943.013, 943.02, 943.03, 943.04, 943.05, 943.06, 943.10, 943.20 (3) (bf) to (e),
12 943.201, 943.202, 943.203, 943.23 (1g), (2) and (3), 943.24 (2), 943.27, 943.28, 943.30,
13 943.32, 943.34 (1) (bf), (bm), and (c), 943.38, 943.39, 943.40, 943.41 (8) (b) and (c),
14 943.50 (4) (bf), (bm), and (c), ^{and (4m)} 943.60, 943.70, 943.76, 943.81, 943.82, 943.83, 943.84,
15 943.85, 943.86, 943.87, 943.88, 943.89, 943.90, 944.21 (5) (c) and (e), 944.32, 944.33
16 (2), 944.34, 945.03 (1m), 945.04 (1m), 945.05 (1), 945.08, 946.10, 946.11, 946.12,
17 946.13, 946.31, 946.32 (1), 946.48, 946.49, 946.61, 946.64, 946.65, 946.72, 946.76,
18 946.79, 947.015, 948.05, 948.051, 948.08, 948.12, and 948.30.

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

20 970.03 (11) The court may admit a statement which is hearsay and which is
21 not excluded from the hearsay rule under ss. 908.02 to 908.045 to prove ownership
22 of property or lack of consent to entry to or possession or destruction of property or
23 to prove any element under s. 943.201 (2), 943.202, or 943.203 (2).

24 **SECTION 11.** 970.03 (13) of the statutes is amended to read:

SENATE BILL 283**SECTION 11**

1 970.03 **(13)** Testimony may be received into the record of a preliminary
2 examination by telephone or live audiovisual means if the proponent shows good
3 cause or if the testimony is used to prove an element of an offense under s. 943.201
4 (2), 943.202, or 943.203 (2). ✓

5 **SECTION 12.** 971.19 (11) of the statutes is amended to read: ✓

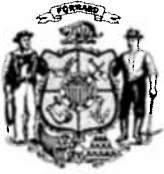
6 971.19 **(11)** In an action under s. 943.201 or 943.202, the defendant may be tried ✓
7 in the county where the victim or intended victim resided at the time of the offense
8 or in any other county designated under this section. In an action under s. 943.203,
9 the defendant may be tried in the county where the victim or intended victim was
10 located at the time of the offense or in any other county designated under this section.

11 **SECTION 13.** 971.366 of the statutes is amended to read: ✓

12 **971.366 Use of another's personal identifying information: charges.**

13 In any case under s. 943.201, 943.202, or 943.203 involving more than one violation, ✓
14 all violations may be prosecuted as a single crime if the violations were pursuant to
15 a single intent and design.

16 **(END)**



**SENATE AMENDMENT 1,
TO 2011 SENATE BILL 283**

February 23, 2012 - Offered by Senators WANGGAARD and KING.

Insert 4.17

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At the locations indicated, amend the bill as follows:

1. Page 1, line 4: after “employee’s” insert “or health services employee’s”.
2. Page 4, line 16: delete “with a” and substitute “with an”.
3. Page 4, line 17: delete “prisoner” and substitute “offender”.
4. Page 4, line 17: after that line insert:

(b) “Health services employee” means a person who has direct contact with a health services patient in the course of his or her employment duties.

(c) “Health services patient” means a person who is a patient at a mental health institute, as defined in s. 51.01 (12), at the secure mental health facility established under s. 46.055, or at the Wisconsin Resource Center established under s. 46.056.

(cm) “Offender” means any person who is an inmate in a state prison or correctional facility, any person who is on probation, parole, or extended supervision to the department of corrections, or any person under the supervision of the

Insert U. 17, cont.

1 department of corrections within the meaning of s. 938.505 (1) or pursuant to s.
2 48.366, or a person subject to a criminal penalty who is placed in an institution under
3 s. 973.013 (3m), regardless of age”.

4 **5.** Page 4, line 18: delete “(b)” and substitute “(d)”.

5 **6.** Page 4, line 20: after “employee’s” insert “or health services employee’s”.

6 **7.** Page 4, line 24: after “employee” insert “or health services employee”.

7 **8.** Page 5, line 1: delete “(c)” and substitute “(e)”.

8 **9.** Page 5, line 2: after “employee’s” insert “or health services employee’s”.

9 **10.** Page 5, line 3: after “employee’s” insert “or health services employee’s”.

10 **11.** Page 5, line 4: after “employee” insert “or health services employee”.

11 **12.** Page 5, line 6: after “employee’s” insert “or health services employee’s”.

12 **13.** Page 5, line 7: after “employee” insert “or health services employee”.

13 **14.** Page 5, line 9: after “employee’s” insert “or health services employee’s”.

14 **15.** Page 5, line 11: after “employee” insert “or health services employee”.

15 **16.** Page 5, line 12: after “employee’s” insert “or health services employee’s”.

16 **17.** Page 5, line 13: after “employee’s” insert “or health services employee’s”.

17 **18.** Page 5, line 18: after “employee’s” insert “or health services employee’s”.

18 **19.** Page 5, line 19: after “employee’s” insert “or health services employee’s”.

19 **20.** Page 5, line 23: after “employee’s” insert “or health services employee’s”.

20 **21.** Page 6, line 2: after “employee” insert “or health services employee”.

21 **22.** Page 6, line 6: delete lines 6 to 8.

1 **23.** Page 6, line 9: delete “prisoner” and substitute “offender or health services
2 patient”.

3 **24.** Page 6, line 10: after “employee” insert “or health services employee”.

4 **25.** Page 6, line 11: delete “correctional employee” and substitute “employee”.

5 **26.** Page 6, line 12: after “employee” insert “or health services employee”.

6 **27.** Page 6, line 17: after “employee” insert “or health services employee”.

7 **28.** Page 6, line 18: after “employee’s” insert “or health services employee’s”.

8 **29.** Page 6, line 23: after “employee” insert “or health services employee”.

9

(END)

Barman, Mike

From: Palese, Tony
Sent: Wednesday, December 04, 2013 9:37 AM
To: LRB.Legal
Subject: Draft Review: LRB -3582/1 Topic: Unauthorized possession of a correctional officer's or health employee's personal information

Please Jacket LRB -3582/1 for the SENATE.