

1       **AN ACT** *to renumber and amend* 943.201 (2); *to amend* 943.201 (title), 943.201 (1)  
 2           (a) and 970.03 (11); and *to create* 895.507, 943.201 (1) (b) 10., 11., 12., 13., and 14.,  
 3           943.201 (2) (a), (b) and (c), 943.201 (3), 943.203, 946.79, 970.03 (13m), 971.19 (11)  
 4           and 971.367 of the statutes; **relating to:** . . . .

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

**COMMENT:** This draft was prepared for the Identity Theft Task Force, based on the Task Force’s consideration of the previous draft (WLC: 0012/2) at its November 19, 2002 meeting. See COMMENTS to individual provisions of the draft for additional information.

5       **SECTION 1.** 895.507 of the statutes is created to read:

6       **895.507 Notice of unauthorized use of personal identifying information. (1)**

7       DEFINITIONS. In this section:

8           (a) “Entity” means a person other than an individual that in the ordinary course of  
 9       business maintains personal identifying information.

10          (c) “Personal identifying information” has the meaning given in s. 943.201 (1) (b).

11          (2) **REQUIRED NOTICE.** An entity that knows of the unauthorized use or attempted use  
 12       of personal identifying information that was obtained while in the custody of the entity shall  
 13       notify each individual who is the subject of the information. The notification shall indicate  
 14       that the entity is aware of the unauthorized use or attempted use of personal identifying  
 15       information belonging to the individual that was obtained from the entity while in the custody  
 16       of the entity. Notice shall be given both in person or by telephone and in writing or by  
 17       electronic mail or other computerized communication system. Notice in person or by  
 18       telephone shall be given no later than 5 business days after the unauthorized use or attempted

1 use was discovered and is satisfied if the entity makes a reasonable attempt to reach the  
2 individual by telephone. If sent by mail, notice shall be mailed no later than 5 business days  
3 after the unauthorized attempted use or use was discovered to the address of the person  
4 indicated in the records of the person required to send notice. If sent by electronic mail or other  
5 computerized communication system, notice shall be sent no later than 5 business days after  
6 the unauthorized attempted use or use was discovered to the address of the person indicated  
7 in the records of the person required to send notice.

8 (3) EFFECT ON CLAIMS OF NEGLIGENCE. Compliance with this section is not an affirmative  
9 defense to a claim of negligence in a civil action or proceeding. Failure to comply with this  
10 section does not constitute negligence per se.

**COMMENT:** 1. Revises the provision in the previous draft by:

a. Substituting the definition of “entity” for definitions of “governmental body” and “person”. As used in the definition of “entity”, “person” includes “all partnerships, associations, and bodies politic or corporate”. See s. 990.01 (26), stats.

b. Linking the definition of “personal identifying information” to the definition of that term under the identity theft statute.

c. Clarifying that notice is required only when the personal identifying information that was used or attempted to be used in an unauthorized manner “was obtained while in the custody of the entity”.

d. Clarifying that the required notice must indicate that the entity is aware of the unauthorized use or attempted use of personal identifying information belonging to the individual that was obtained from the entity while in the custody of the entity.

e. Requiring that notice be given “in person or by telephone”, in addition to in writing or by electronic mail.

f. Clarifying that the 5-day periods for meeting the notice requirements are 5 “business” days.

g. Providing that compliance with the notice requirement is not an affirmative defense to a claim of negligence in a civil action or proceeding and, conversely, that failure to comply does not constitute negligence per se.

1           **SECTION 2.** 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:** 1. 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 8 of this draft.

          2. The task force has discussed relocating this section from ch. 943 (property crimes) to a different chapter. Should the provision be relocated?

4           **SECTION 3.** 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), or any document that, when  
7 completed or partially completed with information concerning a particular individual, is of a  
8 type intended or commonly accepted for the purpose of identification of individuals.] [~~a birth~~  
9 ~~certificate or a financial transaction card, as defined in s. 943.41 (1) (em) a document~~  
10 containing personal identifying information.]

**COMMENT:** Expands the definition of “personal identification document” for purposes of the identity theft statute. The first alternative was included in the previous draft. The 2nd alternative was discussed by the task force at its November 19 meeting.

11           **SECTION 4.** 943.201 (1) (b) 10., 11., 12., 13., and 14. of the statutes are created to read:

12           943.201 (1) (b) 10. An individual’s deoxyribonucleic acid profile, as defined in s.  
13 939.74 (2d) (a).

14           11. A card, plate, code, account number, electronic serial number, mobile identification  
15 number, personal identification number, or other telecommunications service, equipment, or  
16 instrument identifier, or other means of account access that can be used, alone or in

1 conjunction with another access device, to obtain money, goods, services, or any other thing  
2 of value, or that can be used to initiate a transfer of funds, other than a transfer originated solely  
3 by paper instrument.

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

6 13. Any other information, data, or device that is unique to, assigned to, or belongs to  
7 an individual and that is necessary to access services, funds, or benefits of any kind to which  
8 the individual is entitled.

9 14. Any other information that can be associated with a particular individual through  
10 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 11. is revised from the previous draft and is based on 18 USC s. 1029 (e) (1).

3. Subdivision 13. was suggested at the November 19 meeting of the task force. There was discussion of merging the new language with subd. 14; however, the provisions are retained separately in this draft for further consideration by the task force.

11 **SECTION 5.** 943.201 (2) of the statutes is renumbered 943.201 (2) (intro.) and amended  
12 to read:

13 943.201 (2) ~~Whoever~~ Except as otherwise authorized by law, whoever intentionally  
14 possesses with intent to use, uses, or attempts to use any personal identifying information or  
15 personal identification document of an individual ~~to obtain credit, money, goods, services or~~  
16 ~~anything else of value, including a deceased individual,~~ without the authorization or consent  
17 of the individual and by representing that he or she is the individual or is acting with the  
18 authorization or consent of the individual to do any of the following is guilty of a Class H  
19 felony.:

1           **SECTION 6.** 943.201 (2) (a), (b) and (c) of the statutes are created to read:

2           943.201 (2) (a) Obtain credit, money, goods, services, employment, or anything else  
3 of value or benefit.

4           (b) Avoid civil or criminal process or penalty.

5           (c) Harm the reputation, property, person, or estate of the individual.

**COMMENT:** SECTIONS 5 and 6 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. Adding obtaining anything of “benefit”.

d. Clarifying that the statute extends to the use of information or documents to obtain “employment” or to “avoid civil or criminal process or penalty.”

e. Adding use of information or documents to “harm the reputation, property, person, or estate of the individual”.

2. SECTIONS 5 and 6 reorganize revised s. 943.201 (2) for improved readability. The readability could be improved further by repealing and recreating (i.e., rewriting) the provision; that is not done in this draft in order to make it easier to identify the changes to current language.

3. The Task Force considered, but made no decision concerning, adding the element “by representing that the information or document belongs to him or her” as an alternative to the current element “by representing that he or she is the individual or is acting with the authorization or consent of the individual”.

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

7           943.201 (3) Regardless of whether any of the conditions under s. 939.03 (1) apply, a  
8 person alleged to have possessed with intent to use, used, or attempted to use personal  
9 identifying information or a personal identifying document belonging to a resident of this state  
10 in violation of this section is subject to prosecution and punishment under the law of this state.

**COMMENT:** Expands jurisdiction over identity theft violations.

1           **SECTION 8.** 943.203 of the statutes is created to read:

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

3           In this section:

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

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

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

8           1. An entity's name.

9           2. An entity's address.

10          3. An entity's telephone number.

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

12          (e).

13          5. A card, plate, code, account number, electronic serial number, mobile identification  
14          number, personal identification number, or other telecommunication service, equipment, or  
15          instrument identifier, or other means of account access that can be used, alone or in  
16          conjunction with another access device, to obtain money, goods, services, or anything of  
17          value, or that can be used to initiate a transfer of funds, other than a transfer originated solely  
18          by paper instrument.

19          6. Any other information, data, or device that is unique to, assigned to, or belongs to  
20          an entity and that is necessary to access services, funds, [or benefits of any kind] to which the  
21          entity is entitled.

22          7. Any other information that can be associated with a particular entity through one or  
23          more identifiers or other information or circumstances.

1           (2) Except as otherwise authorized by law, whoever intentionally possesses with intent  
2 to use, uses, or attempts to use any identifying information or identification document of an  
3 entity without the authorization or consent of the entity and by representing that he or she is  
4 the entity or is acting with the authorization or consent of the entity to do any of the following  
5 is guilty of a class H felony:

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

8           (b) Avoid civil or criminal process or penalty.

9           (c) Harm the reputation or property of the entity.

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

**COMMENT:** 1. Creates a new crime of unauthorized use of identifying  
information belonging to entities, rather than individuals. It parallels  
revised s. 943.201.

          2. Should anything be added to the definition of “identifying  
information”?

14          **SECTION 9.** 946.79 of the statutes is created to read:

15          **946.79 False statements to financial institutions.** (1) In this section: (a) “Financial  
16 institution” means a bank, savings bank, savings and loan association, credit union, insurance  
17 company, trust company, a securities broker or dealer, a pawnbroker, as defined in s. 134.71  
18 (1) (e), a telegraph company, or a dealer in precious metals, stones, or jewels.

19          (b) “Personal identification document” has the meaning given in s. 943.201 (1) (a).

20          (c) “Personal identifying information” has the meaning given in s. 943.201 (1) (b).

21          (d) “Transaction” has the meaning given in s. 946.78 (1) (c).

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

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

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

7           (c) Makes or uses a false writing knowing that the writing contains false information  
8 regarding the identity of a person.

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

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

12           970.03 (11) The court may admit a statement which is hearsay and which is not excluded  
13 from the hearsay rule under ss. 908.02 to 908.045 to prove ownership of property or lack of  
14 consent to entry to or possession or destruction of property or to prove any element under s.  
15 943.201 (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.

16           **SECTION 11.** 970.03 (13m) of the statutes is created to read:

17           970.03 (13m) Testimony may be received into the record of a preliminary examination  
18 by telephone or live audio visual means to prove any element under s. 943.201 (2) or 943.203  
19 (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.

20           **SECTION 12.** 971.19 (11) of the statutes is created to read:

1           971.19 **(11)** In an action under s. 943.201 or 943.203, the defendant may be tried in the  
2 county where the person who was the victim or intended victim resides or is located or in any  
3 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 or is located (or in any other county currently designated under the venue statute).

4           **SECTION 13.** 971.367 of the statutes is created to read:

5           **971.367 Use of another's personal identifying information: charges.** In any case  
6 under s. 943.201 or 943.203 involving more than one violation, all violations may be  
7 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 intent and design.

8           **SECTION 14. Initial applicability.**

9           (1) This act first applies to offenses committed on the effective date of this subsection.

**COMMENT:** A standard initial applicability provision for legislation that creates or revises criminal laws. Once the Task Force agrees on substantive provisions of the draft, this provision should be reviewed to determine if it should apply to all provisions of the draft or to selected provisions only.

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(END)