

1 **AN ACT** *to amend* 943.201 (1) (a), 943.201 (2) and 970.03 (11); and *to create*
 2 895.507, 943.201 (1) (b) 10. and 11., 943.201 (4), 946.79, 970.03 (13m), 971.19 (11)
 3 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: 0267/P1) at its October 1, 2002 meeting. See COMMENTS to individual provisions of the draft for additional information.

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

5 **895.507 Notice of unauthorized use of personal information. (1) DEFINITIONS.** In
 6 this section:

7 (a) “Governmental body” means a state or local officer, agency, board, commission,
 8 committee, council, department, or public body corporate and politic created by constitution,
 9 statute, ordinance, rule, or order.

10 (b) “Person” means a corporation organized under ch. 180 or 181 or a foreign
 11 corporation similarly organized, a limited liability company, a cooperative, a partnership or
 12 limited partnership, a sole proprietorship, a commercial enterprise, however organized, or a
 13 governmental body.

14 (c) “Personal information” means a social security number, the identifying number of
 15 a financial account, [other?].

16 (2) **REQUIRED NOTICE.** A person who in the ordinary course of business maintains
 17 personal information and knows of the unauthorized use or attempted use of that information
 18 shall notify each person who is the subject of the information of the use or attempted use.

1 Notice shall be given in writing or by electronic mail or other computerized communication
2 system to the address of the person indicated in the records of the person required to send
3 notice. If sent by mail, notice shall be mailed no later than 5 days after the unauthorized
4 attempted use or use was discovered. If sent by electronic mail or other computerized
5 communication system, notice shall be sent no later than 5 days after the unauthorized
6 attempted use or use was discovered.

COMMENT: 1. Replaces SECS. 1, 2, and 3 of the previous draft (WLC: 0267/P1). The previous draft generally amended current s. 895.505, stats., to require financial institutions, medical businesses, and tax preparation businesses that know or reasonably should know that a person has gained unauthorized access to a record containing personal information in the custody of the institution or business to notify each individual who is the subject of the information.

2. The primary differences between SEC. 1 of this draft and SECS. 1, 2, and 3 of the previous draft are:

a. This draft applies the notice requirement to any “person” as that term is broadly defined, rather than solely to financial institutions, medical businesses, or tax preparation businesses as provided in the previous draft and as currently defined in s. 895.505 (1), stats.

b. This draft requires notice only if a person is aware of the unauthorized attempted use or use of personal information. The previous draft required notice when a covered entity or business knows or reasonably should know that a person has gained unauthorized access to a record containing personal information.

c. This draft significantly narrows the definition of “personal information” (although the Task Force’s discussion of this issue is incomplete). See the definition of “personal information” in sub. (1) (c), above; compare the definition of “personal information” in current s. 895.505 (1) (e), stats.

d. This draft deletes the penalty provided in the previous draft for violation of the notice requirement (\$1,000 forfeiture; failure to timely mail or send notice to each individual entitled to notice a separate violation).

3. Should consideration be given to defining “unauthorized use”?

4. The Task Force discussed a number of issues related to this provision, some but not all of which are reflected in the draft language. Issues discussed but not reflected in the draft include:

- a. Providing a statutory, private cause of action for civil damages for violations of the notice requirement.
- b. Requiring notice to law enforcement.
- c. If a private cause of action is provided, providing some protection from civil liability if notice is given to law enforcement.

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

2 943.201 (1) (a) “Personal identification document” means a birth certificate or a
3 financial transaction card, as defined in s. 943.41 (1) (em), or any document that, when
4 completed or partially completed with information concerning a particular individual, is of a
5 type intended or commonly accepted for the purpose of identification of individuals.

COMMENT: Expands the definition of “personal identification document” for purposes of the identity theft statute. The new, underscored language is identical to that in the previous draft with the exception of the addition of “or partially completed”.

6 **SECTION 3.** 943.201 (1) (b) 10. and 11. of the statutes are created to read:

7 943.201 (1) (b) 10. An individual’s deoxyribonucleic acid profile, as defined in s.
8 939.74 (2d) (a).

9 11. A device issued to an individual containing a unique electronic identification
10 number, address, description, or code that permits or facilitates entry into a facility or
11 computer data base or provides access to the financial resources of the person to whom the
12 device is issued.

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

15 13. Any other information that can be associated with a particular individual through
16 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. Subdivisions 10. and 11. are new; subds. 12. and 13. are carried over from the previous draft.

2. Subdivision 10. reflects concerns that deoxyribonucleic acid (DNA) may not be included in subd. 12. as “unique biometric data” or “other unique physical representation”. The definition of DNA profile is “an individual’s patterned chemical structure of genetic information identified by analyzing biological material that contains the individual’s deoxyribonucleic acid”.

3. Subdivision 11. reflects interest by the Task Force in including an “access device” within the coverage of the identity theft statute.

4. Can subd. 13. be made more specific?

1 **SECTION 4.** 943.201 (2) of the statutes is amended to read:

2 943.201 (2) ~~Whoever~~ Except as otherwise authorized by law, whoever intentionally
 3 possesses with intent to use, uses, or attempts to use any personal identifying information or
 4 personal identification document of an individual a person, including a deceased individual,
 5 to obtain credit, money, goods, services, employment or anything else of value or benefit or
 6 to harm the reputation or property of the person, or the person or estate of the individual,
 7 without the authorization or consent of the ~~individual~~ person and by representing that he or
 8 she is the ~~individual~~ person or is acting with the authorization or consent of the ~~individual~~
 9 person is guilty of a Class H felony.

COMMENT: 1. Revises the crime of identity theft by:

- a. Adding “possession with intent to use”.
- b. Replacing “individual” with “person”, a broader term. Section 990.01, stats., defines “person” as including “all partnerships, associations, and bodies political or corporate”.
- c. Including unauthorized use of documents or information of deceased individuals.
- d. Adding obtaining anything of “benefit”.

- e. Adding use of information or documents to “harm the reputation or property of the person, or the person or estate of the individual”.
 - f. Creating the exception “as otherwise authorized by law”.
2. The language in this draft differs from the language in the previous draft in the following respects:
- a. “Individual” is replaced by “person”.
 - b. “Employment” is added to the list of items comprising value or benefit.
 - c. The current requirement that the perpetrator represent that he or she is the person or is acting with the authorization or consent of the person is retained (it was stricken in the previous draft).
 - d. The presumption regarding possession with intent to use personal identifying information or a personal identification document in SEC. 7 of the previous draft is deleted.

1 **SECTION 5.** 943.201 (4) of the statutes is created to read:

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

COMMENT: Expands jurisdiction over identity theft violations. Reference to a “person, other than an individual, located in this state” is added to the language in the previous draft to reflect the expansion of the identity theft statute from individuals to persons.

7 **SECTION 6.** 946.79 of the statutes is created to read:

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

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

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

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

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

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

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

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

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

COMMENT: Differs from the previous draft by changing the penalty from
a class E felony to a class H felony.

13 **SECTION 7.** 970.03 (11) of the statutes is amended to read:

14 970.03 (11) The court may admit a statement which is hearsay and which is not excluded
15 from the hearsay rule under ss. 908.02 to 908.045 to prove ownership of property or lack of
16 consent to entry to or possession or destruction of property or to prove any element under s.
17 943.201 (2).

COMMENT: Permits a court to admit a hearsay statement in a preliminary
examination to prove any element under the identity theft statute. In the
previous draft, use of hearsay in this regard was limited, as presented in
2 alternatives, to: (1) proving lack of authorization or consent; or (2)
proving possession with intent to use, use, or attempted use of personal
identifying information or documents.

18 **SECTION 8.** 970.03 (13m) of the statutes is created to read:

1 970.03 (13m) Testimony may be received into the record of a preliminary examination
2 by telephone or live audio visual means to prove any element under s. 943.201 (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. Unchanged from previous draft.

3 **SECTION 9.** 971.19 (11) of the statutes is created to read:

4 971.19 (11) In an action under s. 943.201, the defendant may be tried in the county
5 where the person who was the victim or intended victim resides or is located or in any other
6 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). The language in the previous draft has been revised to reflect the expansion of victims under the identity theft statute from “individuals” to “persons”.

7 **SECTION 10.** 971.367 of the statutes is created to read:

8 **971.367 Use of another’s personal identifying information: charges.** In any case
9 under s. 943.201 involving more than one violation, all violations may be prosecuted as a
10 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. Replaces SEC. 9 of the previous draft, which authorized (but did not require) identity theft violations to be charged as a continuing crime. Based on s. 971.365, stats.

11 **SECTION 11. Initial applicability.**

12 (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)