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IDENTITY THEFT IN WISCONSIN

Identity theft is widely seen as the fastest growing crime in the United States. With the omnipresence of computers in everyday life and their ability to store and retrieve information with the click of a mouse, there is also increasing concern that personal and private information could get into the wrong hands. Identity theft can not only affect a victim's bank account, it can create problems with a victim's credit that may take years to get cleared. Recent legislation in Wisconsin has recognized the increased threat of identity theft as well as its consequences, and has attempted to give the public more resources to protect themselves from unwarranted incursions into personal data. Several bills have been introduced in the 2005 session which would require certain entities to give notice of unauthorized access to information, restrict e-mail solicitations, and allow consumers to freeze their credit reports.

IDENTITY THEFT LAW

The intentional use of, or possession with intent to use, the personal information or documents of an individual in order to obtain something of value, do harm to person, property, or reputation, or avoid due process, constitutes identity theft and is a felony under Wisconsin law.

Identity theft legislation was first enacted by 1997 Wisconsin Act 101, which created Section 943.201, Wisconsin Statutes, relating to unauthorized use of an individual's personal identifying information or documents. 2003 Wisconsin Act 36 expanded the definition of personal identifying information and documents. This information includes, but is not limited to, a name, address, driver's

license number, social security number, tax number, fingerprint, and DNA profile. 2003 Wisconsin Act 36 also expanded the definition of identity theft to include an "entity" such as corporation or a government. Identity theft, a Class H felony, is punishable by up to 3.5 years in prison and/or a fine not to exceed \$10,000.

Recent federal legislation on identity theft includes the Fair and Accurate Credit Transactions Act (FACT Act), P.L. 108-159, signed December 4, 2003. The FACT Act made permanent the uniform national standards for credit reports, created earlier in the Fair Credit Reporting Act. These standards set rules about what information can be included in individual credit reports. It also made permanent the following tools for consumers to fight identity theft:

- Every consumer has the right to one free credit report annually. These reports can be reviewed for unauthorized activity.
- No more than the last five digits of a credit card number may be printed on store receipts.
- Regulators such as the Federal Trade Commission (FTC) and the National Credit Union Administration were required to create "red flag" guidelines to recognize identity theft patterns and practices. Credit agencies were also required to set up guidelines.
- A nationwide system of fraud alerts was established, to make the notification process less cumbersome for victims. Active duty military personnel deployed overseas were allowed to place special alerts on their files.

A GROWING PROBLEM

According to the FTC, 2,646 people from Wisconsin reported being the victim of

identity theft in 2004. That is up from 2,325 people reporting in 2003, and 1,777 people in 2002. Milwaukee had the most victims at 700; while Madison had 127; Racine, 83; Green Bay, 79; and Kenosha, 59. The Milwaukee, West Allis, and Waukesha major metropolitan area ranked 32nd nationwide in identity theft with 1,182 victims or 78.8 per 100,000 population. Wisconsin currently ranks 37th in identity theft victims by state, per 100,000 population (48.0). Arizona ranked first with 142.5 (8,186 victims total), and South Dakota was 50th with 23.2 (179 victims). California had the most victims reporting with 43,839 (122.1).

Nationwide, identity theft complaints to the FTC totaled 246,570 in 2004. In 2003, the number was 215,093, and in 2002 it was 161,896. That is a rise of 52% over two years.

Reports from the FTC also show that of those who filed identity theft complaints, 32% of victims in Wisconsin were ages 18-29, compared to 29% nationally; 23% of victims in Wisconsin were ages 30-39, compared to 25% nationally; and 21% were ages 40-49, compared to 20% nationally. Ages 50 and over represented 21% percent of Wisconsin complaints, while those under 18 years totaled 3%.

In Wisconsin, the leading misuse of victims' information is for credit card fraud, 27% of the time. Phone or utilities fraud is next at 24%. Bank fraud, including electronic fund transfers, is committed 15% of the time. Wisconsin trends in misuse of personal information are fairly comparable to national trends.

CURRENT LEGISLATION

Thus far in the 2005 session, three bills addressing the increased threat of identity theft have been introduced. There is the promise of more to come from a collaboration with the Attorney General.

2005 Senate Bill 164 was introduced by Senator Ted Kanavas and five others senators,

and cosponsored by 17 representatives of the Assembly. The bill would require that an entity possessing personal information must notify an individual if that individual's data has been accessed by an unauthorized person. The notice must be sent out within 30 days of the discovery. The bill would not penalize businesses that do not comply, but failure to comply could constitute evidence of negligence in a civil action.

2005 Assembly Bill 685 and Senate Bill 320 are companion bills introduced by Representative Brett Davis and Senator Kanavas, as well as seven other senators and 13 other representatives. Both bills target e-mail fraud and would make the practice of "phishing" a felony offense. "Phishing" is an attempt to get personal information by falsely representing oneself as a legitimate business. An example is someone sending an e-mail claiming to be a well-known credit union and asking for users to click on a link and update their personal information (such as a PIN number, social security number, etc.). A fake Web site is set up to steal that information.

Attorney General Peg Lautenschlager and Senator Russell Decker recently announced that they had joined together on draft legislation to combat identity theft by allowing consumers to "freeze" their credit reports. A credit freeze makes credit files unavailable to third parties. Because companies typically will deny credit to consumers without that information, a credit freeze is seen as a way to stop identity thieves from opening accounts or getting loans with other people's information. The un-introduced legislation would also allow consumers to "thaw" their credit later and allow reports to be released.

Twelve states have enacted credit freeze laws, and several more have legislation pending on the issue. However, the laws are not all consistent. Some states allow only victims of identity theft to freeze their credit,

while other states allow anyone to freeze their credit.

The draft legislation would also limit when businesses can collect social security numbers from consumers, and restrict employers from using social security numbers as identification numbers. Penalties for mail theft and identity theft against the elderly would be increased.

FOR MORE INFORMATION

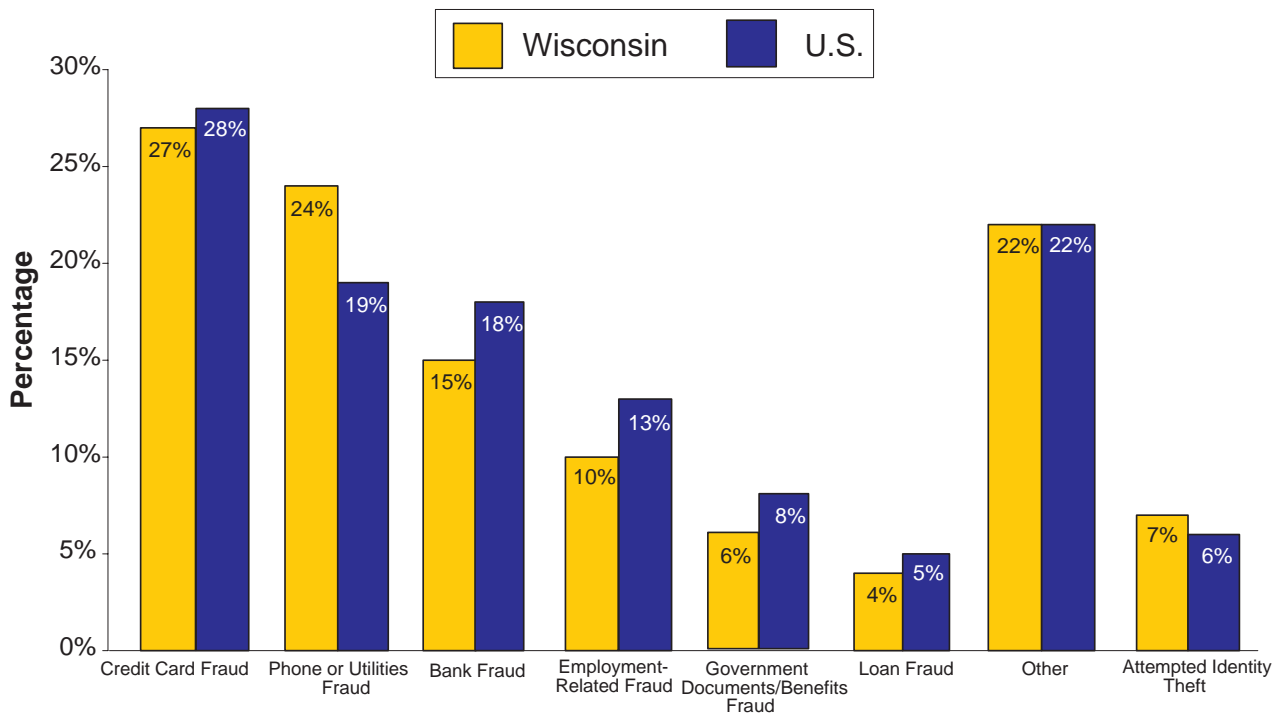
For additional information about identity theft laws in Wisconsin, see Sections 943.201 and 943.203, Wisconsin Statutes. For pending legislation, see 2005 Senate Bill 164 at www.legis.state.wi.us/2005/data/SB-164.pdf, and 2005 Assembly Bill 685 at www.legis.state.wi.us/2005/data/AB-685.pdf

For additional statistics on national and state trends in identity theft, see the FTC's Web site at:

www.consumer.gov/idtheft/id_federal.htm#

How Victims' Information is Misused

January 1 – December 31, 2004



Source: Federal Trade Commission