



## 1999 ASSEMBLY BILL 428

August 17, 1999 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to  
Committee on Health.

1     **AN ACT** *to renumber* 146.84 (2) (a) to (c); *to renumber and amend* 51.30 (10),  
2           146.84 (2) (intro.) and 610.70 (7); *to amend* 51.30 (9) (a) and (b), 146.84 (1) (a),  
3           146.84 (1) (b), 252.15 (8) (a), 252.15 (9) and 895.85 (2); and *to create* 51.30 (9)  
4           (title), 51.30 (10) (b), 146.84 (1) (bm), 146.84 (2) (b), 252.15 (10) and 610.70 (7)  
5           (b) of the statutes; **relating to:** penalties and damages for violations of  
6           confidentiality laws for patient health care records, mental health court and  
7           treatment records, human immunodeficiency virus test results and insurer  
8           personal medical information.

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### *Analysis by the Legislative Reference Bureau*

This bill is explained in the NOTES provided by the joint legislative council in  
the bill.

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

PREFATORY NOTE: This bill was prepared for the joint legislative council's special  
committee on telemedicine issues. The bill modifies statutory provisions that provide

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penalties and damages for violations of statutes that relate to mental health records, general patient health care records, human immunodeficiency virus (HIV) test results and medical information held by insurers.

*Mental Health Records*

Current s. 51.30, stats., provides for confidentiality of, and access to, mental health records. Current sub. (9) provides that a person violating the statutes is liable to any person damaged by a result of the violation for such damages as may be proved, together with exemplary damages of not less than \$200 for each violation and such costs and reasonable actual attorney fees as may be incurred. The custodian incurs no liability for release of records in accordance with this section while acting in good faith. In addition, if the violator acted in a manner that is knowing and wilful, the violator is liable for exemplary damages of not less than \$1,000 for each violation. This bill modifies the provision that allows for exemplary damages of not less than \$200 to provide instead for exemplary damages of not more than \$10,000. In addition, the provision that allows for exemplary damages of not less than \$1,000 for knowing and wilful violations is modified to state that the exemplary damages may not be more than \$25,000.

Current sub. (10) provides criminal penalties for a person who: (1) requests or obtains confidential information under false pretenses; (2) discloses confidential information with the knowledge that the disclosure is unlawful and is not reasonably necessary to protect another from harm; or (3) violates the provision regarding intentionally falsifying a record, concealing or withholding a record or intentionally destroying or damaging records. The current penalty for a person who does so is a fine of not more than \$1,000, imprisonment for not more than 6 months, or both. This bill modifies the penalties to be a fine of not more than \$25,000, imprisonment for not more than 9 months, or both. The bill also creates a new provision that states that whoever negligently discloses confidential information is subject to a forfeiture of not more than \$1,000.

*Patient Health Care Records*

Current ss. 146.81 to 146.84, stats., set forth general provisions related to confidentiality of, and access to, patient health care records. Current s. 146.84, stats., relates to damages and penalties for violations of those statutes. A custodian of records incurs no liability for release of records in accordance with the statutes while acting in good faith. Current sub. (1) (b) provides that any person who violates the statutes in a manner that is knowing and wilful is liable to the person injured as a result of the violation for actual damages and exemplary damages of \$1,000. This bill modifies the statutory provision to state that the person is liable for actual damages, exemplary damages of not more than \$25,000 and costs and reasonable actual attorney fees. The bill also creates a new provision that states that any person who negligently violates those statutes is liable for actual damages, exemplary damages of not more than \$10,000 and costs and reasonable attorney fees.

Current sub. (2) provides criminal penalties for a person who: (1) requests or obtains confidential information under false pretenses; (2) discloses confidential information with the knowledge that the disclosure is unlawful and is not reasonably necessary to protect another from harm; or (3) violates the provision regarding intentionally falsifying a patient health care record, concealing or withholding a patient health care record or intentionally destroying or damaging health care records. The current penalty for a person who does so is a fine of not more than \$1,000, imprisonment for not more than 6 months, or both. The bill modifies the penalties to be a fine of not more than \$25,000, imprisonment for not more 9 months, or both. The bill also creates a new provision that states that whoever negligently discloses confidential information is subject to a forfeiture of not more than \$1,000.

*HIV Test Results*

Current s. 252.15, stats., sets forth provisions regarding informed consent for HIV tests and confidentiality of, and access to, test results.

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Current sub. (8) states that whoever violates those provisions is liable to the subject of the test for actual damages and costs, plus exemplary damages of up to \$1,000 for a negligent violation and up to \$5,000 for an intentional violation. The bill modifies the statutory provision to state that the person is liable to the test subject for actual damages, costs and reasonable actual attorney fees, plus exemplary damages of up to \$10,000 for a negligent violation and up to \$25,000 for an intentional violation.

Current sub. (9) states that whoever intentionally discloses HIV test results in violation of the statutes and thereby causes bodily harm or psychological harm to the test subject may be fined not more than \$10,000, imprisoned for not more than 9 months, or both. This bill modifies the amount of the fine to be not more than \$25,000. In addition, the bill provides that whoever negligently discloses the results of an HIV test in violation of the statute is subject to a forfeiture of not more than \$1,000. The bill also creates a provision, similar to provisions in current law regarding mental health records and general patient health care records, that states that an employe of the state or a political subdivision of the state who violates s. 252.15, stats., may be discharged or suspended without pay.

*Insurer Records*

Current s. 610.70, stats., relates to disclosure of personal medical information by insurers. Current sub. (7) states that any person who knowingly and wilfully obtains information about an individual from an insurer or insurance support organization under false pretenses may be fined not more than \$10,000, imprisoned for not more than one year in the county jail, or both. This bill modifies the penalty to provide that such a person may not be fined more than \$25,000, imprisoned for not more than 9 months, or both. In addition, the bill creates a provision that states that such a person is liable to the individual for actual damages, exemplary damages of not more than \$25,000 and costs and reasonable actual attorney fees.

1           **SECTION 1.** 51.30 (9) (title) of the statutes is created to read:

2           51.30 (9) (title) ACTIONS FOR VIOLATIONS; DAMAGES; INJUNCTION.

3           **SECTION 2.** 51.30 (9) (a) and (b) of the statutes are amended to read:

4           51.30 (9) (a) Any person, including the state or any political subdivision of the  
5           state, violating this section shall be liable to any person damaged as a result of the  
6           violation for such damages as may be proved, together with exemplary damages of  
7           not less more than ~~\$200~~ \$10,000 for each violation and such costs and reasonable  
8           actual attorney fees as may be incurred by the person damaged. A custodian of  
9           records incurs no liability under this paragraph for the release of records in  
10          accordance with this section while acting in good faith.

11          (b) In any action brought under par. (a) in which the court determines that the  
12          violator acted in a manner that was knowing and wilful, the violator shall be liable  
13          for such damages as may be proved together with exemplary damages of not less

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1 more than \$1,000 \$25,000 for each violation, together with costs and reasonable  
2 actual attorney fees as may be incurred. It is not a prerequisite to an action under  
3 this subsection that the plaintiff suffer or be threatened with actual damages.

4 **SECTION 3.** 51.30 (10) of the statutes is renumbered 51.30 (10) (a), and 51.30  
5 (10) (a) (intro.), as renumbered, is amended to read:

6 51.30 (10) (a) (intro.) Whoever does any of the following may be fined not more  
7 than ~~\$1,000~~ \$25,000 or imprisoned for not more than ~~6~~ 9 months or both:

8 **SECTION 4.** 51.30 (10) (b) of the statutes is created to read:

9 51.30 (10) (b) Whoever negligently discloses confidential information under  
10 this section is subject to a forfeiture of not more than \$1,000 for each violation.

11 **SECTION 5.** 146.84 (1) (a) of the statutes is amended to read:

12 146.84 (1) (a) A custodian of records incurs no liability under ~~this paragraph~~  
13 par. (bm) for the release of records in accordance with s. 146.82 or 146.83 while acting  
14 in good faith.

15 **SECTION 6.** 146.84 (1) (b) of the statutes is amended to read:

16 146.84 (1) (b) Any person, including the state or any political subdivision of the  
17 state, who violates s. 146.82 or 146.83 in a manner that is knowing and wilful shall  
18 be liable to any person injured as a result of the violation for actual damages to that  
19 person; ~~exemplary damages of \$1,000 in an action under this paragraph~~ not more  
20 than \$25,000 and costs and reasonable actual attorney fees.

21 **SECTION 7.** 146.84 (1) (bm) of the statutes is created to read:

22 146.84 (1) (bm) Any person, including the state or any political subdivision of  
23 the state, who negligently violates s. 146.82 or 146.83 shall be liable to any person  
24 injured as a result of the violation for actual damages to that person, exemplary  
25 damages of not more than \$10,000 and costs and reasonable actual attorney fees.

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1           **SECTION 8.** 146.84 (2) (intro.) of the statutes is renumbered 146.84 (2) (a)  
2 (intro.) and amended to read:

3           146.84 (2) (a) (intro.) Whoever does any of the following may be fined not more  
4 than ~~\$1,000~~ \$25,000 or imprisoned for not more than ~~6~~ 9 months or both:

5           **SECTION 9.** 146.84 (2) (a) to (c) of the statutes are renumbered 146.84 (2) (a) 1.  
6 to 3.

7           **SECTION 10.** 146.84 (2) (b) of the statutes is created to read:

8           146.84 (2) (b) Whoever negligently discloses confidential information in  
9 violation of s. 146.82 is subject to a forfeiture of not more than \$1,000 for each  
10 violation.

11           **SECTION 11.** 252.15 (8) (a) of the statutes is amended to read:

12           252.15 (8) (a) Any person violating sub. (2), (5) (a), (5m), (6) or (7) (c) is liable  
13 to the subject of the test for actual damages and, costs and reasonable actual attorney  
14 fees, plus exemplary damages of up to ~~\$1,000~~ \$10,000 for a negligent violation and  
15 up to ~~\$5,000~~ \$25,000 for an intentional violation.

16           **SECTION 12.** 252.15 (9) of the statutes is amended to read:

17           252.15 (9) ~~CRIMINAL PENALTY~~ PENALTIES. Whoever intentionally discloses the  
18 results of a blood test in violation of sub. (2) (a) 7m., (5) (a) or (5m) and thereby causes  
19 bodily harm or psychological harm to the subject of the test may be fined not more  
20 than ~~\$10,000~~ \$25,000 or imprisoned not more than 9 months or both. Whoever  
21 negligently discloses the results of a blood test in violation of sub. (2) (a) 7m., (5) (a)  
22 or (5m) is subject to a forfeiture of not more than \$1,000 for each violation.

23           **SECTION 13.** 252.15 (10) of the statutes is created to read:

