

1999 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-AB133)

Received: **07/08/1999**

Received By: **rmarchan**

Wanted: **Soon**

Identical to LRB:

For: **Legislative Fiscal Bureau**

By/Representing: **Russell**

This file may be shown to any legislator: **NO**

Drafter: **rmarchan**

May Contact:

Alt. Drafters:

Subject: **Fin. Inst. - miscellaneous**

Extra Copies:

Pre Topic:

LFB:.....Russell -

Topic:

Disposal of documents containing personal information

Instructions:

See Attached

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>
/?	rmarchan 07/09/1999	chanaman 07/09/1999		_____			
/1	rmarchan 09/27/1999	chanaman 09/27/1999	martykr 07/12/1999	_____	lrb_docadmin 07/12/1999		
/2			jfrantze 09/27/1999	_____	lrb_docadmin 09/27/1999		

09/27/1999 11:09:12 AM

Page 2

FE Sent For:

<END>

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/?	rmarchan 07/9/99	chanaman 07/9/99		_____			
/1		<i>cmr</i> 9/27 <i>lg</i>	martykr 07/12/99 <i>Jb 9/27</i>	_____	lrb_docadmin 07/12/99		
FE Sent For:				<i>Jb 9/27</i> <END>			

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Legislative Fiscal Bureau:.....Rus

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1?	rmarchan	cmh 7/9	km7 12	km7 12			
FE Sent For:		11					

<END>



State of Wisconsin
1999 - 2000 LEGISLATURE

1
LRBb1674
RJM:..... cmj
RmWR

SOON

Legislative Fiscal Bureau:.....Rus Disposal of documents containing personal information

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

DNOTE

AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

INSERT 1-1

1

At the locations indicated, amend the substitute amendment as follows:

2

(END)



INSERT 1-1

SDC.....Walter - # 3816, Disposal of documents containing personal information

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

(am) "Dispose" does not include a sale of a record or the transfer of a record for value.

① At the locations indicated, amend the substitute amendment as follows:

2 1. Page 1431, line 11: after that line insert:

3 "SECTION 3113m. 895.505 of the statutes is created to read:

4 895.505 Disposal of records containing personal information. (1)

5 DEFINITIONS. In this section:

6 (a) "Credit card" has the meaning given in s. 421.301 (15).

7 (b) "Financial institution" means any bank, savings bank, savings and loan
8 association or credit union that is authorized to do business under state or federal
9 laws relating to financial institutions, any issuer of a credit card or any investment
10 company.

1 (c) "Investment company" has the meaning given in s. 180.0103 (11e).

2 (d) "Medical business" means any organization or enterprise operated for profit
3 or not for profit, including a sole proprietorship, partnership, firm, business trust,
4 joint venture, syndicate, corporation, limited liability company or association, that
5 possesses information, other than personnel records, relating to a person's physical
6 or mental health, medical history or medical treatment.

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

8 1. Personally identifiable data about an individual's medical condition, if the
9 data are not generally considered to be public knowledge.

10 2. Personally identifiable data that contain an individual's account or customer
11 number, account balance, balance owing, credit balance or credit limit, if the data
12 relate to an individual's account or transaction with a financial institution.

13 3. Personally identifiable data provided by an individual to a financial
14 institution upon opening an account or applying for a loan or credit.

15 4. Personally identifiable data about an individual's insurance, if the insurance
16 is related to a transaction with a financial institution.

17 4. Personally identifiable data about an individual's federal, state or local tax
18 ~~returns~~ returns.

19 (f) "Personally identifiable" means capable of being associated with a particular
20 individual through one or more identifiers or other information or circumstances.

21 (g) "Record" means any material on which written, drawn, printed, spoken,
22 visual or electromagnetic information is recorded or preserved, regardless of
23 physical form or characteristics.

24 (h) "Tax preparation business" means any organization or enterprise operated
25 for profit, including a sole proprietorship, partnership, firm, business trust, joint

an individual's

returns

an individual

for a fee

1 venture, syndicate, corporation, limited liability company or association, that
 2 prepares ~~persons~~ federal, state or local tax ~~returns~~ or counsels ~~persons~~ regarding
 3 the ~~persons~~ federal, state or local tax ~~returns~~

4 (2) DISPOSAL OF RECORDS CONTAINING PERSONAL INFORMATION. A financial
 5 institution, medical business or tax preparation business may not dispose of a record
 6 containing personal information unless the financial institution, medical business,
 7 tax preparation business or other person under contract with the financial
 8 institution, medical business or tax preparation business does any of the following:

- 9 (a) Shreds the record before the disposal of the record.
- 10 (b) Erases the personal information contained in the record before the disposal
- 11 of the record.
- 12 (c) Modifies the record to make the personal information unreadable before the
- 13 disposal of the record.
- 14 (d) Takes actions that it reasonably believes will ensure that no unauthorized
- 15 person will have access to the personal information contained in the record for the
- 16 period between the record's disposal and the record's destruction.

INSERT
3-16

17 (3) CAUSE OF ACTION. A financial institution, medical business or tax
 18 preparation business is liable to a person whose personal information is improperly
 19 disposed of in violation of sub. (2) for the amount of damages resulting from the
 20 violation."

21 2. Page 1617, line 16: after that line insert:

INSERT 3-14

1 venture, syndicate, corporation, limited liability company or association, that for a
2 fee prepares an individual's federal, state or local tax returns or counsels an
3 individual regarding the individual's federal, state or local tax returns.

4 (2) DISPOSAL OF RECORDS CONTAINING PERSONAL INFORMATION. A financial
5 institution, medical business or tax preparation business may not dispose of a record
6 containing personal information unless the financial institution, medical business,
7 tax preparation business or other person under contract with the financial
8 institution, medical business or tax preparation business does any of the following:

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10 (b) Erases the personal information contained in the record before the disposal
11 of the record.

12 (c) Modifies the record to make the personal information unreadable before the
13 disposal of the record.

14 (d) Takes actions that it reasonably believes will ensure that no unauthorized
15 person will have access to the personal information contained in the record for the
16 period between the record's disposal and the record's destruction.

17 (3) CIVIL LIABILITY; DISPOSAL AND USE. (a) A financial institution, medical
18 business or tax preparation business is liable to a person whose personal information
19 is disposed of in violation of sub. [✓](2) for the amount of damages resulting from the
20 violation.

21 (b) Any person who, for any purpose, uses personal information contained in
22 a record that was disposed of by a financial institution, medical business or tax
23 preparation business is liable to an individual who is the subject of the information
24 and to the financial institution, medical business or tax preparation business that
25 disposed of the record for the amount of damages resulting from the person's use of



1 the information. This paragraph does not apply to a person who uses personal
2 information with the authorization or consent of the individual who is the subject of
3 the information.

4 (4) PENALTIES; DISPOSAL AND USE. (a) A financial institution, medical business
5 or tax preparation business that violates sub. (2) may be required to forfeit not more
6 than \$1,000. Acts arising out of the same incident or occurrence shall be a single
7 violation.

8 (b) Any person who possesses a record that was disposed of by a financial
9 institution, medical business or tax preparation business and who intends to use, for
10 any purpose, personal information contained in the record may be fined not more
11 than \$10,000 or imprisoned for not more than 2 years or both. This paragraph does
12 not apply to a person who possesses a record with the authorization or consent of the
13 individual whose personal information is contained in the record.

14 **SECTION 2. Effective date.**

15 (1) This act takes effect on the first day of the 4th month beginning after
16 publication.

17 (END)

(END OF INSERT)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb1674/1dn

RJM:.....

cmj

Faith Russell:

1. Attached is the amendment regarding disposal of records containing personal information. It is my understanding that this amendment should be identical to LRBs0066/2 (the un-introduced assembly substitute amendment to 1999 SB⁴⁶). Please let me know if the amendment does not satisfy the intent of the committee. The differences between this amendment and the relevant provisions of the senate budget proposal are as follows:

- a. "Dispose" is defined to exclude the sale of a record or transfer of a record for value.
- b. The reference to insurance data is deleted from the definition of "personal information."
- c. Both the definition of "personal information" and "tax preparation business" refer to tax returns rather than tax filings.
- d. The definition of "tax preparation business" is changed to apply only to businesses that prepare tax returns for or provide counsel to individuals, rather than persons.
- e. The definition of "tax preparation business" is changed to apply only to businesses that provide services for a fee.
- f. The word "improperly" in proposed s. 895.505 (3) is ~~is~~ deleted. The word implies that there is a proper method of violating proposed s. 895.505 (2).
- g. The liability and penalty provisions are expanded to provide personal liability for use of information in a disposed record, a civil forfeiture for improper disposal of a record and a criminal penalty for possession of a disposed record with intent to use the record.

2. This proposed statute may be unconstitutionally vague if applied in a criminal prosecution. Although the definition of "personal information" was sufficient when the proposed statute only provided a civil remedy, the definition may not be constitutionally sufficient to delineate a crime. See *State v. Popanz*, 112 Wis. 2d 166 (1983). For example, it may not be sufficiently clear what type of medical data is not generally considered to be public knowledge or what type of information qualifies as data about an individual's tax returns.

3. By penalizing possession of a record with intent to use, for any purpose, the information contained in the record, proposed s. 895.505 (4) (b) may be broader than

the committee intended. For example, this statute may penalize a journalist who investigates a business's trash to determine how well the business destroys its records. Another option would be to penalize the improper use, rather than the possession, of the information. This approach is used in the current identity theft statute. See s. 943.201, stats.

Please let me know if you have any questions or if the committee desires any changes to this draft.

Robert J. Marchant
Legislative Attorney
Phone: (608) 261-4454
E-mail: Robert.Marchant@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb1674/1dn
RJM:cmh:km

July 12, 1999

Faith Russell:

1. Attached is the amendment regarding disposal of records containing personal information. It is my understanding that this amendment should be identical to LRBs0066/2 (the un-introduced assembly substitute amendment to 1999 SB 46). Please let me know if the amendment does not satisfy the intent of the committee. The differences between this amendment and the relevant provisions of the senate budget proposal are as follows:

- a. "Dispose" is defined to exclude the sale of a record or transfer of a record for value.
- b. The reference to insurance data is deleted from the definition of "personal information."
- c. Both the definition of "personal information" and "tax preparation business" refer to tax returns rather than tax filings.
- d. The definition of "tax preparation business" is changed to apply only to businesses that prepare tax returns for or provide counsel to individuals, rather than persons.
- e. The definition of "tax preparation business" is changed to apply only to businesses that provide services for a fee.
- f. The word "improperly" in proposed s. 895.505 (3) is deleted. The word implies that there is a proper method of violating proposed s. 895.505 (2).
- g. The liability and penalty provisions are expanded to provide personal liability for use of information in a disposed record, a civil forfeiture for improper disposal of a record and a criminal penalty for possession of a disposed record with intent to use the record.

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Please let me know if you have any questions or if the committee desires any changes to this draft.

Robert J. Marchant
Legislative Attorney
Phone: (608) 261-4454
E-mail: Robert.Marchant@legis.state.wi.us

Tef Jere Baver at
LFB.

b1674 should be
identical to ASA 1 to
SB 46.

b1674/1 is same as
12 version of ASA 1 but
introduced version 13 / 13.
Need to change penalty in
b1674.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb1674/2
RJM:cmh:km

LFB:.....Russell – Disposal of documents containing personal information

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

RMWR

DATE

TODAY

- 1 At the locations indicated, amend the substitute amendment as follows:
- 2 1. Page 1431, line 11: after that line insert:
- 3 "SECTION 3113m. 895.505 of the statutes is created to read:
- 4 895.505 Disposal of records containing personal information. (1)
- 5 DEFINITIONS. In this section:
- 6 (a) "Credit card" has the meaning given in s. 421.301 (15).
- 7 (am) "Dispose" does not include a sale of a record or the transfer of a record for
- 8 value.
- 9 (b) "Financial institution" means any bank, savings bank, savings and loan
- 10 association or credit union that is authorized to do business under state or federal

1 laws relating to financial institutions, any issuer of a credit card or any investment
2 company.

3 (c) "Investment company" has the meaning given in s. 180.0103 (11e).

4 (d) "Medical business" means any organization or enterprise operated for profit
5 or not for profit, including a sole proprietorship, partnership, firm, business trust,
6 joint venture, syndicate, corporation, limited liability company or association, that
7 possesses information, other than personnel records, relating to a person's physical
8 or mental health, medical history or medical treatment.

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

10 1. Personally identifiable data about an individual's medical condition, if the
11 data are not generally considered to be public knowledge.

12 2. Personally identifiable data that contain an individual's account or customer
13 number, account balance, balance owing, credit balance or credit limit, if the data
14 relate to an individual's account or transaction with a financial institution.

15 3. Personally identifiable data provided by an individual to a financial
16 institution upon opening an account or applying for a loan or credit.

17 4. Personally identifiable data about an individual's federal, state or local tax
18 returns.

19 (f) "Personally identifiable" means capable of being associated with a particular
20 individual through one or more identifiers or other information or circumstances.

21 (g) "Record" means any material on which written, drawn, printed, spoken,
22 visual or electromagnetic information is recorded or preserved, regardless of
23 physical form or characteristics.

24 (h) "Tax preparation business" means any organization or enterprise operated
25 for profit, including a sole proprietorship, partnership, firm, business trust, joint

1 venture, syndicate, corporation, limited liability company or association, that for a
2 fee prepares an individual's federal, state or local tax returns or counsels an
3 individual regarding the individual's federal, state or local tax returns.

4 (2) DISPOSAL OF RECORDS CONTAINING PERSONAL INFORMATION. A financial
5 institution, medical business or tax preparation business may not dispose of a record
6 containing personal information unless the financial institution, medical business,
7 tax preparation business or other person under contract with the financial
8 institution, medical business or tax preparation business does any of the following:

9 (a) Shreds the record before the disposal of the record.

10 (b) Erases the personal information contained in the record before the disposal
11 of the record.

12 (c) Modifies the record to make the personal information unreadable before the
13 disposal of the record.

14 (d) Takes actions that it reasonably believes will ensure that no unauthorized
15 person will have access to the personal information contained in the record for the
16 period between the record's disposal and the record's destruction.

17 (3) CIVIL LIABILITY; DISPOSAL AND USE. (a) A financial institution, medical
18 business or tax preparation business is liable to a person whose personal information
19 is disposed of in violation of sub. (2) for the amount of damages resulting from the
20 violation.

21 (b) Any person who, for any purpose, uses personal information contained in
22 a record that was disposed of by a financial institution, medical business or tax
23 preparation business is liable to an individual who is the subject of the information
24 and to the financial institution, medical business or tax preparation business that
25 disposed of the record for the amount of damages resulting from the person's use of

1 the information. This paragraph does not apply to a person who uses personal
2 information with the authorization or consent of the individual who is the subject of
3 the information.

4 (4) PENALTIES; DISPOSAL AND USE. (a) A financial institution, medical business
5 or tax preparation business that violates sub. (2) may be required to forfeit not more
6 than \$1,000. Acts arising out of the same incident or occurrence shall be a single
7 violation.

8 (b) Any person who possesses a record that was disposed of by a financial
9 institution, medical business or tax preparation business and who intends to use, for
10 any purpose, personal information contained in the record may be fined not more
11 than ~~\$20,000~~ ^{\$1,000} or imprisoned for not more than ~~20 years~~ ^{90 days} or both. This paragraph does
12 not apply to a person who possesses a record with the authorization or consent of the
13 individual whose personal information is contained in the record.”.

14 **2.** Page 1617, line 16: after that line insert:

15 “(5g) DISPOSAL OF RECORDS CONTAINING PERSONAL INFORMATION. The creation of
16 section 895.505 of the statutes takes effect on the first day of the 4th month beginning
17 after publication.”.

18 (END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBb1674/2dn

RJM:.....

cmj

DATE

*add
hyphens*

This redraft contains a new penalty provision that makes this draft identical to the most current version of ASA 1 to 1999 SB 46. Please call if you have any questions.

Robert J. Marchant
Legislative Attorney
Phone: (608) 261-4454
E-mail: Robert.Marchant@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBb1674/2dn
RJM:cmh:jf

September 27, 1999

This redraft contains a new penalty provision that makes this draft identical to the most current version of ASA-1 to 1999 SB-46. Please call if you have any questions.

Robert J. Marchant
Legislative Attorney
Phone: (608) 261-4454
E-mail: Robert.Marchant@legis.state.wi.us



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb1674/2
RJM:cmh:jf

LFB:.....Russell – Disposal of documents containing personal information
FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT ,
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1999 ASSEMBLY BILL 133

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 1431, line 11: after that line insert:

3 **“SECTION 3113m.** 895.505 of the statutes is created to read:

4 **895.505 Disposal of records containing personal information. (1)**

5 DEFINITIONS. In this section:

6 (a) “Credit card” has the meaning given in s. 421.301 (15).

7 (am) “Dispose” does not include a sale of a record or the transfer of a record for
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18 business or tax preparation business is liable to a person whose personal information
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20 violation.

21 (b) Any person who, for any purpose, uses personal information contained in
22 a record that was disposed of by a financial institution, medical business or tax
23 preparation business is liable to an individual who is the subject of the information
24 and to the financial institution, medical business or tax preparation business that
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9 institution, medical business or tax preparation business and who intends to use, for
10 any purpose, personal information contained in the record may be fined not more
11 than \$1,000 or imprisoned for not more than 90 days or both. This paragraph does
12 not apply to a person who possesses a record with the authorization or consent of the
13 individual whose personal information is contained in the record.”.

14 **2.** Page 1617, line 16: after that line insert:

15 “(5g) DISPOSAL OF RECORDS CONTAINING PERSONAL INFORMATION. The creation of
16 section 895.505 of the statutes takes effect on the first day of the 4th month beginning
17 after publication.”.

18 (END)