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(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

1999-00

(session year)

Assembly

(Assembly, Senate or Joint)

**Committee on ... Judiciary and Personal Privacy
(AC-JPP)**

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (May/2012)

Assembly

Record of Committee Proceedings

Committee on Judiciary and Personal Privacy

Senate Bill 46

Relating to: disposal of documents containing personal information.

By Senators Erpenbach, Plache, Jauch, Wirch, Rosenzweig, Darling and A. Lasee; cosponsored by Representatives Foti, Schneider, Pocan, Schooff, Hahn, Freese, Bock, Steinbrink, La Fave, Kreuser, J. Lehman, Musser, Turner, Hebl, Powers, Travis, Plouff and Boyle.

April 22, 1999 Referred to committee on Judiciary and Personal Privacy.

May 11, 1999 **PUBLIC HEARING HELD**

Present: (9) Representatives Huebsch, Gundrum, Walker, Suder, Grothman, Sherman, Colon, Hebl and Staskunas.

Absent: (0) None.

Appearances for

- Senator Jon Erpenbach, 27th Senate District
- Representative Steve Foti, 38th Assembly District

Appearances against

- None.

Appearances for Information Only

- John Metcalf, Wisconsin Manufacturers and Commerce
- Michael Vaughn, WI Bankers Association

Registrations for

- Joanne Ricca, WI State AFL-CIO
- Eric Jensen, State Medical Society

Registrations against

- None.

September 14, 1999 **EXECUTIVE SESSION**

Present: (9) Representatives Huebsch, Gundrum, Walker, Suder, Grothman, Sherman, Colon, Hebl and Staskunas.

Absent: (0) None.

Moved by Representative Walker, seconded by Representative Gundrum, that **Assembly Substitute Amendment 1 (LRB-0066/3)** be recommended for introduction and adoption.


Ayes: (7) Representatives Huebsch, Walker, Suder, Grothman, Sherman, Hebl and Staskunas.
Noes: (2) Representatives Gundrum and Colon.
Absent: (0) None.

INTRODUCTION AND ADOPTION RECOMMENDED, Ayes 7,
Noes 2, Absent 0

Moved by Representative Walker, seconded by Representative Staskunas, that **Senate Bill 46** be recommended for concurrence as amended.

Ayes: (7) Representatives Huebsch, Walker, Suder, Sherman, Colon, Hebl and Staskunas.
Noes: (2) Representatives Gundrum and Grothman.
Absent: (0) None.

CONCURRENCE AS AMENDED RECOMMENDED, Ayes 7,
Noes 2, Absent 0



Robert Delaporte
Committee Clerk

Vote Record

Assembly Committee on Judiciary and Personal Privacy

Date: 9-14-99
 Moved by: Walker Seconded by: Gundrum
 AB: _____ Clearinghouse Rule: _____
 AB: _____ SB: 46 Appointment: _____
 AJR: _____ SJR: _____ Other: _____
 A: _____ SR: _____

A/S Amdt: 1 (LRB 0066/3)
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

Be recommended for:

- Passage
- Introduction (UNAN)
- Adoption
- Rejection

- Indefinite Postponement
- Tabling
- Concurrence
- Nonconcurrence
- Confirmation

Committee Member	Aye	No	Absent	Not Voting
Rep. Michael Huebsch, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Mark Gundrum	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Walker	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Suder	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Glenn Grothman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Gary Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Pedro Colon	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tom Hebl	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tony Staskunas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	7	2		

Vote Record

Assembly Committee on Judiciary and Personal Privacy

Date: 9-14-99
 Moved by: Walker Seconded by: Staskunas
 AB: _____ Clearinghouse Rule: _____
 AB: _____ SB: 46 Appointment: _____
 AJR: _____ SJR: _____ Other: _____
 A: _____ SR: _____

A/S Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

Be recommended for:

- Passage
- Introduction
- Adoption
- Rejection

- Indefinite Postponement
- Tabling
- Concurrence *as amend*
- Nonconcurrence
- Confirmation

Committee Member

Rep. Michael Huebsch, Chair
 Rep. Mark Gundrum
 Rep. Scott Walker
 Rep. Scott Suder
 Rep. Glenn Grothman
 Rep. Gary Sherman
 Rep. Pedro Colon
 Rep. Tom Hebl
 Rep. Tony Staskunas

Aye	No	Absent	Not Voting
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<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Totals:

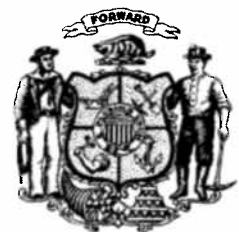
~~8~~ ~~2~~
7 2

Motion Carried

Motion Failed



WISCONSIN STATE LEGISLATURE





**TO: Representative Michael Huebsch, Chair
Members, Assembly Committee on Judiciary & Personal Privacy**

**FROM: Eric Jensen, JD, Associate Director
Government Relations**

DATE: May 11, 1999

RE: Senate Substitute Amendment 1, to SB 46

The State Medical Society of Wisconsin appreciates the opportunity to provide testimony on SB 46, commonly referred to as the "dumpster diving" bill. We strongly urge your support for this important piece of legislation.

Privacy of information - especially information such as personal medical information, and whether capable of being directly or indirectly linked to an individual - is an issue of paramount importance to patients and physicians alike. The patient-physician relationship is one based on a patient's absolute trust that what s/he tells the physician or what the physician tells the patient will be kept confidential, except where a patient consents or under other extraordinary circumstances. Without that trust, patients may withhold sensitive information, thereby potentially compromising the quality of care a physician is able provide.

It is our understanding that most, if not all, physician offices, clinics and hospitals already destroy records containing private patient information prior to disposal to protect this relationship. SSA 1-SB 46, however, is designed to ensure that this protection extends to all "medical businesses," and closes any potential gaps in protecting a patient's right of confidentiality.

SMS strongly urges your support for Senate Substitute Amendment 1, to Senate Bill 46.





WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536

Telephone: (608) 266-1304

Fax: (608) 266-3830

Email: leg.council@legis.state.wi.us

DATE: September 13, 1999

TO: REPRESENTATIVE MICHAEL HUEBSCH, CHAIRPERSON, ASSEMBLY COMMITTEE ON JUDICIARY

FROM: Don Dyke, Senior Staff Attorney

SUBJECT: Assembly Substitute Amendment __ (LRBs0066/3), to 1999 Senate Bill 46, Relating to Disposal of Documents Containing Personal Information and Use of Information in Disposed Records

This memorandum, prepared at your request, describes the provisions of the above-captioned proposal. The memorandum also summarizes the changes made by the Assembly substitute amendment to the Senate version of Senate Bill 46, as shown by Senate Substitute Amendment 1 and Senate Amendment 1 to the substitute amendment. The Senate Committee on Privacy, Elections, Commerce and Financial Institutions recommended passage of Senate Bill 46, as amended by Senate Substitute Amendment 1, by a vote of Ayes, 4; and Noes, 1. The Senate, on a voice vote, adopted Senate Substitute Amendment 1 and the amendment to the substitute. The Senate passed the proposal on a voice vote on March 18, 1999. The Assembly Committee on Judiciary held a public hearing on the proposal on May 11, 1999.

The Assembly substitute amendment:

1. Prohibits the disposal of records containing personal information by specified entities unless the entity takes specified action to prevent unauthorized access to the information;
2. Provides a civil forfeiture for violation of the disposal requirement and civil liability for damages resulting from a violation;
3. Provides a criminal penalty (misdemeanor) for possessing with intent to use any personal information contained in a record covered by the proposal after the record is disposed; and
4. Provides a civil cause of action for damages resulting from the use of personal information contained in a record covered by the proposal after the record is disposed.

Specific provisions of the substitute amendment are described below.

A. ASSEMBLY SUBSTITUTE AMENDMENT — (LRBs0066/3)

1. Entities Covered by the Proposal

The substitute amendment applies to financial institutions, medical businesses and tax preparation businesses, as defined under the proposal.

“Financial institution” is defined as “any bank, savings bank, savings and loan association or credit union that is authorized to do business under state or federal laws relating to financial institutions, any issuer of a credit card or any investment company.” (“Credit card” and “investment company” are also defined terms under the proposal.)

“Medical business” is defined as “any organization or enterprise operated for profit or not for profit, including a sole proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, limited liability company or association, that possesses information, other than personnel records, relating to a person’s physical or mental health, medical history or medical treatment.”

“Tax preparation business” is defined as “any organization or enterprise operated for profit, including a sole proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, limited liability company or association, that for a fee prepares an individual’s federal, state or local tax returns or counsels a person regarding the person’s federal, state or local tax returns.”

2. Records to Which the Proposal Applies

The substitute amendment applies to “records” containing “personal information.” Under the proposal, “record” is defined as “any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics.”

“Personal information” is defined as specified types of “personally identifiable” data. “Personally identifiable” is defined as “capable of being associated with a particular individual through one or more identifiers or other information or circumstances.” “Personal information” is defined as:

1. Personally identifiable data about an individual’s medical condition, if the data is not generally considered to be public knowledge.
2. Personally identifiable data that contains an individual’s account or customer number, account balance, balance owing, credit balance or credit limit, if the data relates to an individual’s account or transaction with a financial institution.

3. Personally identifiable data provided by an individual to a financial institution upon opening an account or applying for a loan or credit.
4. Personally identifiable data about an individual's federal, state or local tax returns.

3. Record Disposal Prohibition; Penalty; Civil Liability

The substitute amendment prohibits a financial institution, medical business or tax preparation business from disposing* a record containing personal information unless the financial institution, medical business, tax preparation business or other person under contract with the entity: (a) shreds the record before disposal of the record; (b) erases the personal information contained in the record before disposal of the record; (c) modifies the record to make the personal information unreadable before disposal of the record; or (d) takes actions that it reasonably believes will ensure that no unauthorized person will have access to the personal information contained in the record for the period between the record's disposal and the record's destruction.

A financial institution, medical business or tax preparation business that violates the above record disposal prohibition is subject to a maximum forfeiture of \$1,000. Under the proposal, acts arising out of the same incident or occurrence constitute a single violation.

The substitute amendment also provides that a financial institution, medical business or tax preparation business is liable to a person whose personal information is disposed of in violation of the proposal for the amount of damages resulting from the violation.

4. Possession and Use of Personal Information in Disposed Records; Penalty and Civil Liability

The substitute amendment provides that any person who possesses a record that was disposed of by a financial institution, medical business or tax preparation business and who intends to use, for any purpose, personal information contained in the record may be fined not more than \$1,000, imprisoned not more than 90 days, or both. The crime does not apply to a person who possesses a record with the authorization or consent of the individual whose personal information is contained in the record.

The substitute amendment also provides that a person who, for any purpose, uses personal information contained in a record that was disposed of by a financial institution, medical business or tax preparation business is liable to an individual who is the subject of the information and to the financial institution, medical business or tax preparation business that disposed of the record for the amount of damages resulting from the person's use of the information. The

*Under the substitute amendment, disposal does not include a sale of a record or the transfer of a record for value.

liability does not apply to a person who uses personal information with the authorization or consent of the individual who is the subject of the information.

5. Delayed Effective Date

The substitute amendment would take effect on the first day of the fourth month beginning after publication.

B. CHANGES MADE BY ASSEMBLY SUBSTITUTE AMENDMENT TO THE SENATE VERSION

Assembly Substitute Amendment ___ (LRBs0066/3) makes the following changes to the Senate version of the proposal (Senate Substitute Amendment 1, as amended by Senate Amendment 1 to the substitute amendment):

1. Provides a civil forfeiture for violation by a financial institution, medical business or tax preparation business of the record disposal prohibition under the proposal.

2. Provides a criminal penalty for possession of a record with intent to use personal information contained in the record, that was disposed of by a financial institution, medical business or tax preparation business.

3. Provides that a person who uses personal information contained in a record that was disposed of by a financial institution, medical business or tax preparation business is liable to an individual who is the subject of the information and to the financial institution, medical business or tax preparation business that disposed of the record for the amount of damages resulting from the person's use of the information.

4. Expressly provides that disposal of a record does not include a sale of a record or the transfer of a record for value. (See the definition of "dispose.")

5. Deletes from the definition of "personal information" personally identifiable data about an individual's insurance, if the insurance is related to a transaction with a financial institution.

6. Narrows the definition of "tax preparation business" by:

- a. Providing that the individual or entity that prepares tax returns does so for a "fee";
- b. Providing that the individual or entity that prepares tax returns prepares returns for "individuals" rather than, as in the Senate version, for "persons" (a broader term; see s. 990.01 (26), Stats.); and
- c. Changing reference to federal, state or local tax "filings" to tax "returns" (a narrower term). (See also the definition of "personal information," item 4., where the same change is made.)

7. Deletes, in the provision imposing civil liability on a financial institution, medical business or tax preparation business for violating the record disposal requirements under the proposal, reference to "improperly" disposing of a record in violation of the requirement. In the context of that provision, reference to "improper" disposal is redundant.

If you have any questions or need additional information, please contact me directly at the Legislative Council Staff offices.

DD:rv:tlujal