

SB46

Speaking In favor

Senator Epenbeck

Rule - Credit Card Companies
non-banks

Speaking for Information

Jim Temuta

with Credit Union League

concern - ability of smaller credit unions to destroy - wants to work w/ Sen

Speaking Against

- cause of action

submit John Metcalf - WMC

- proof where info comes from
 - cause of action
 - reasonable destruction
- good faith effort

Jim E. Hough

- WI Mortgage Bankers Assn

Michael Vaughan - WI Bankers Association

They want

- Damages pecuniary damages
- Delete or add on for attorney fees
- Present law does not discourage individuals from living

SENATE HEARING SLIP

(Please Print Plainly)

DATE: SB46
BILL NO. SB46
OF
SUBJECT _____

Sen Eperbach
(NAME)

(Street Address or Route Number)

(City and Zip Code)

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
Room 109-LL One East Main
P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 1-23-98
BILL NO. SB46
OF
SUBJECT _____

Jim Tenuta
(NAME)

(Street Address or Route Number)

(City and Zip Code)

WI Credit Union League
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 2/23/99
BILL NO. SB46
OF
SUBJECT Disposal
of Documents

John Metcalf
(NAME)

501 E. Washington Av.
(Street Address or Route Number)

Madison, WI 53703
(City and Zip Code)

WI Mfg. & Comm.
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

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P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP
(Please Print Plainly)

DATE: 2/23/99
BILL NO. SB 46
OF
SUBJECT _____

James E. Hoogh
(NAME)
10 E. Doty St., Suite 500
(Street Address or Route Number)
Madison, WI 53703
(City and Zip Code)
Wis. Mortgage Bankers Assoc
(Representing)

Speaking in Favor:
Speaking Against:
Registering in Favor:
but not speaking:
Registering Against:
but not speaking:
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Madison, WI 53707-7882

SENATE HEARING SLIP
(Please Print Plainly)

DATE: 2/23/99
BILL NO. SB 46
OF
SUBJECT _____

MICHAEL R. VAUGHAN
(NAME)
P.O. BOX 2038
(Street Address or Route Number)
MADISON, WI 53701
(City and Zip Code)
WISCONSIN BANKERS ASSOCIATION
(Representing)

Speaking in Favor:
Speaking Against:
Registering in Favor:
but not speaking:
Registering Against:
but not speaking:
Speaking for information only; Neither for nor against:

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P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP
(Please Print Plainly)

DATE: 2/23
BILL NO. SB-46
OF
SUBJECT _____

Darryl Lund / Paul Hoffman
(NAME)
7818 Big Sky Drive Ste 104
(Street Address or Route Number)
Madison 53719
(City and Zip Code)
Community Bankers of WI
(Representing)

Speaking in Favor:
Speaking Against:
Registering in Favor:
but not speaking:
Registering Against:
but not speaking:
Speaking for information only; Neither for nor against:

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P.O. Box 7882
Madison, WI 53707-7882

Submitted

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 2/23/99
BILL NO. SB 46
OR
SUBJECT _____

Alex Hoffmann
(NAME)
10 E. Doty
(Street Address or Route Number)
Madison Wisc.
(City and Zip Code)
Wisc. Mortgage Bankers
(Representing)

Speaking in Favor:
Speaking Against:
Registering in Favor:
but not speaking:
Registering Against:
but not speaking:
Speaking for information
only; Neither for nor against:

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P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 23 FEB 99
BILL NO. LRP SB 46
OR
SUBJECT _____

MOIRA E. FITZGERALD
(NAME)
777 E. WISCONSIN AVE
(Street Address or Route Number)
MILWAUKEE
(City and Zip Code)
BANC ONE
(Representing)

Speaking in Favor:
Speaking Against:
Registering in Favor:
but not speaking:
Registering Against:
but not speaking:
Speaking for information
only; Neither for nor against:

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P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 2/23/99
BILL NO. SB 46
OR
SUBJECT _____

KARIN M. GALE
(NAME)
446 S. MOORLAND RD, SUITE 400
(Street Address or Route Number)
BROOKFIELD, WI 53005
(City and Zip Code)
INDEPENDENT BUSINESS ASSOCIATION
(Representing) OF WISCONSIN

Speaking in Favor:
Speaking Against:
Registering in Favor:
but not speaking:
Registering Against:
but not speaking:
Speaking for information
only; Neither for nor against:

Please return this slip to a messenger **PROMPTLY**.
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P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 2/23/99
BILL NO. SB 46
OF _____
SUBJECT _____

KARIN M. GALE
(NAME)
446 S. MOORLAND RD, SUITE 400
(Street Address or Route Number)
BROOKFIELD, WI 53005
(City and Zip Code)
WISCONSIN INSTITUTE OF CPAs
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

Speaking for information
only; Neither for nor against:

Please return this slip to a messenger **PROMPTLY.**

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Room 109-LL One East Main
P.O. Box 7882
Madison, WI 53707-7882

Hearing 2-23-99

Roll Call

	<u>Present</u>	<u>Absent</u>
Sen Erpenbach	X	
Sen Fitzgerald	X	
Sen Jauch	X	
Sen Plache	X	
Sen Rude	X	

Call Fitzgerald

Senate Bill 46

Attached:

Bill

We will not exec on this today, hope to have a sub amendment in the next couple of weeks.



1999 BILL

1 AN ACT *to create* 895.505 of the statutes; **relating to:** disposal of documents
2 containing personal information.

Analysis by the Legislative Reference Bureau

This bill prohibits financial institutions, tax preparers and businesses who possess medical records from disposing of records containing certain personal information unless certain requirements are met. These businesses may dispose of records containing personal information if, prior to the disposal of the record, these businesses shred, erase or otherwise modify the record to make the personal information unreadable. Alternatively, these businesses may dispose of records containing personal information if the businesses take actions that they reasonably believe will ensure that no unauthorized person will have access to the records for the period of time between the records' disposal and the records' destruction. The bill defines "record" to include any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of its physical form. It defines "personal information" to mean information about an individual's medical or financial condition that is not generally considered to be public knowledge. The information must be capable of being associated with a particular individual. The businesses that violate the provisions of the bill are liable to any person damaged by the violation for the amount of damages and for reasonable attorney fees.

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

BILL

1 **SECTION 1.** 895.505 of the statutes is created to read:

2 **895.505 Disposal of records containing personal information. (1)**

3 DEFINITIONS. In this section:

4 (a) "Financial institution" means any bank, savings bank, savings and loan
5 association or credit union that is authorized to do business under state or federal
6 laws relating to financial institutions.

7 (b) "Medical business" means any organization or enterprise operated for
8 profit, including a sole proprietorship, partnership, firm, business trust, joint
9 venture, syndicate, corporation, limited liability company or association, that
10 possesses information relating to a person's physical or mental health, medical
11 history or medical treatment.

12 (c) "Personal information" means personally identifiable data about an
13 individual's medical or financial condition that is not generally considered to be
14 public knowledge.

15 (d) "Personally identifiable" means capable of being associated with a
16 particular individual through one or more identifiers or other information or
17 circumstances.

18 (e) "Record" means any material on which written, drawn, printed, spoken,
19 visual or electromagnetic information is recorded or preserved, regardless of
20 physical form or characteristics.

21 (f) "Tax preparation business" means any organization or enterprise operated
22 for profit, including a sole proprietorship, partnership, firm, business trust, joint
23 venture, syndicate, corporation, limited liability company or association, that
24 possesses information relating to a person's federal, state or local tax filings.

1 (2) DISPOSAL OF RECORDS CONTAINING PERSONAL INFORMATION. A financial
2 institution, medical business, or tax preparation business may not dispose of a record
3 containing personal information unless the financial institution, medical business
4 or tax preparation business does all of the following:

5 (a) Shreds, erases or otherwise modifies the record to make the personal
6 information unreadable before the disposal of the record.

7 (b) Takes actions that it reasonably believes will ensure that no unauthorized
8 person will have access to the personal information contained in the record for the
9 period between the record's disposal and the record's destruction.

10 (3) CAUSE OF ACTION. Notwithstanding s. 814.04 (1), a financial institution,
11 medical business or tax preparation business that violates sub. (2) is liable to any
12 person damaged by the violation for the amount of damages and for reasonable
13 attorney fees.

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)

Senate Bill 46

Dumpster Diving Bill

Senator Jauch and members of the committee, thank you for your attention and time.

Once again I will address the committee on issues of personal privacy and protection of an individual's most private information. While Senate Bill 44 dealt with governmental entities, this bill addresses groups who require the releasing of personal information from their customers.

- **Why this legislation – Tell Oregon woman story**
- **When you go to a doctor, a mortgage lender, a tax preparer or insurance agent, you give them information they need to provide for you and your family the services these groups sell.**
- **These relationships are essential for citizens as well as for these businesses but those relationships are put in jeopardy though when one party or the other violates that trust.**
- **If you fail to pay your mortgage, your home can be taken away by the lender, if you commit insurance fraud, you lose your coverage and go to jail.**
- **This bill evens up the sides. If your financial institution, medical provider, insurance agent, or tax preparer jeopardizes your personal information through poor disposal of your personal documents they are held accountable.**
- **You would not know your private records had been disposed of carelessly until you received a credit card bill from someone who stole your financial information, until you received notice you had been dropped from insurance because of credit or confidential medical history, until you were fired because you and your wife went to a marriage counselor, or until you hear your name and tax information read by an investigative reporter on the six o'clock news.**
- **The industries "ignorance is bliss" attitude is careless and this bill will simply address that carelessness through providing remedy for victims.**
- **The real intent of this bill lies in the cause of action for violation of trust and mismanagement of private information simply lent to help secure services.**
- **No one can own your name, your social security number, your credit history, your medical conditions -- so when it is time to throw that information away these groups have the responsibility to securely destroy the information they have borrowed.**

- **Senate Bill 46 before you now, is legislation a few years in the making. Having only recently been elected I can only truly take credit for its modifications and introduction in this session. Representative Schneider brought this important legislation to light last session and the issue received approval in both houses, only to be vetoed by the Governor.**
- **The concerns expressed in opposition to this legislation were for the “ma and pop” shops that have built Wisconsin and I feel this modified legislation addresses those concerns.**

I hope you will join me in supporting this legislation. This bill does not hinder business it only enhances relationships with their customers. Thank you for your time.

NOTE

It has come to my attention that the definitions of financial institution and medical provider are not as clear as I intended them to be, so I will be working with legislative council and drafters in the next few days to clarify the language and repair the bills original intent. Once done, I will introduce a few simple amendments to the bill.



Wisconsin Manufacturers & Commerce

Wisconsin Manufacturers
Association • 1911

Wisconsin Council
of Safety • 1923

Wisconsin State Chamber
of Commerce • 1929

James S. Haney
President

James A. Buchen
Vice President
Government Relations

James R. Morgan
Vice President
Education and Programs

Michael R. Shoys
Vice President
WMC Service Corp.

To: **Members of the Senate Committee on Privacy, Electronic Commerce and
Financial Institutions**

From: **John Metcalf, Director of Human Resources Policy**

Date: **February 23, 1999**

Re: **Opposition to Senate Bill 46—Regulation of Disposal of Certain
Documents**

BACKGROUND

Senate Bill 46 prescribes the methods for the disposal and destruction by certain businesses of certain financial and medical documents, containing personally identifiable information.

WMC POSITION—OPPOSE

The legislation is extremely broad in scope in some ways, and rather in narrow in others. At the same time, it contains many undefined terms that will be subject to litigation, and creates mandates for the destructuion of documents with which covered employers will find it difficult to comply. Finally, the remedies under the bill are extremely broad.

PROBLEMS WITH THE PROPOSED LEGISLATION

Covered Entities

- Exempts all government and nonprofit entities.
The bill exempts all public sector and non-profit entities that may possess personal financial or medical information. It is not clear why these entities are exempt from coverage. Government agencies, in particular, are likely the single largest repository of this information.
- "Medical Business" Covers Most Employers
The definition of "medical business" will likely include a broad range of businesses, in addition to hospitals, medical clinics, and insurers that "possess" medical information. Depending on the definition of "information relating to a person's physical or mental health, medical history or medical treatment" most employers will possess some form of this type of information on their employees at some point, and come under the coverage, and therefore the penalties, of the bill.

Undefined Terms

- "Public Knowledge" The language in Section 895.505(1)(a) "Medical or financial condition that is not generally considered public knowledge" will be subject to litigation. The circumstances that will make such a record the subject of public knowledge, such as the subject of the record discussing personal information publicly, will likely result in litigation
- "Personally Identifiable" Section 895.505(1)(d) defines "personally identifiable" to include "identifiers or other information or circumstances". In particular, it is unclear what would constitute "other information or circumstances" which would result in a businesses' liability under this statute.
- "Record" Section 895.505(1)(e) defines record to include information "regardless of physical form or characteristics". It is unclear what this language means.
- "Unreadable" Section 895.505(2)(a) requires that a record be made "unreadable" when a business disposes of it. The document must be "shredded, erased or otherwise modified." Shedding a paper document does not automatically make the document unreadable. In order to fully meet the requirements of the statute, a business would likely have to "otherwise modify" the document through incineration or other means of total obliteration.

*Most employes
Don't ask
How to
Share info
That medical
Transmit Inst
Don't*



501 East Washington Avenue
Madison, WI 53703-2944
P.O. Box 352
Madison, WI 53701-0352
Phone: (608) 258-3400
Fax: (608) 258-3413
www.wmc.org

- "Ensure That No Unauthorized Person" Section 895.505(2)(b) further requires the business to "ensure that no unauthorized person has access to the record for the period between the document's disposal and its destruction". The bill does not define who is an "unauthorized person", but this section suggests that the only safe course for the disposal of the document is its immediate destruction after disposal.

Problematic Compliance Features of the Bill

As outlined above, the bill seems to envision a multi step process of disposing and destroying documents. Failure at any stage of this process could result in liability for the business. Once a covered business decides to dispose of the document it must:

1. Shred, erase, or otherwise modify the document
2. Assure that the document is unreadable before disposal
3. Act to assure that no unauthorized person will have access to the document between the documents' disposal and its destruction
4. By inference, assure that the document ultimately is destroyed.

It would be difficult for many businesses, particularly smaller businesses covered under the definition of "medical business," to comply with this provision of the bill.

Cause of Action

The cause of action under this bill is extremely broad, extending rights to "any person damaged by the violation of subsection (2)" -- the four-step protocol outlined above. The person need not be the subject of the record that was improperly disposed of under subsection 2 in order to sue for damages.

Further, a broad range of damages, in addition to pecuniary damages, along with attorney's fees, are available. There is no remedy for a fraudulent or frivolous action brought under this section.

Differences between current Section 895.50 Right of Privacy and proposed section 895.505 Disposal of Records Containing Personal Information

- Amend Existing Right of Privacy to Protect Medical and Financial Records
Section 895.50(2) could be amended to protect the subject of the financial or medical record from invasion of privacy. Businesses should have a reasonable expectation of privacy when disposing of documents through traditional means similar to the expectation of privacy in Section 895.50(2)(a). It should be clear that persons who engage in "dumpster diving" are engaging in invasion of privacy, and therefore should be subject to damage suits by those who are harmed both business and the subject of record.
- Right of Privacy Remedies
The remedies in section 895.50(4) are narrower than those in SB 46. Further, section 895.50(6) creates remedies for a frivolous or fraudulent complaint. SB 46 contains no remedy for frivolous litigation.

Incorporating provisions of SB 46 into section 895.50 would create a more balanced approach to concerns over the appropriate disposal of medical and financial records, and focus on the underlying invasion of privacy concerns.

*Personnel
OK IF
you make
the attorney*

895.50 Right of privacy. (1) The right of privacy is recognized in this state. One whose privacy is unreasonably invaded is entitled to the following relief:

(a) Equitable relief to prevent and restrain such invasion, excluding prior restraint against constitutionally protected communication privately and through the public media;

(b) Compensatory damages based either on plaintiff's loss or defendant's unjust enrichment; and

(c) A reasonable amount for attorney fees.

(2) In this section, "invasion of privacy" means any of the following:

(a) Intrusion upon the privacy of another of a nature highly offensive to a reasonable person, in a place that a reasonable person would consider private or in a manner which is actionable for trespass.

(b) The use, for advertising purposes or for purposes of trade, of the name, portrait or picture of any living person, without having first obtained the written consent of the person or, if the person is a minor, of his or her parent or guardian.

(c) Publicity given to a matter concerning the private life of another, of a kind highly offensive to a reasonable person, if the defendant has acted either unreasonably or recklessly as to whether there was a legitimate public interest in the matter involved, or with actual knowledge that none existed. It is not an invasion of privacy to communicate any information available to the public as a matter of public record.

(3) The right of privacy recognized in this section shall be interpreted in accordance with the developing common law of privacy, including defenses of absolute and qualified privilege, with due regard for maintaining freedom of communication, privately and through the public media.

(4) Compensatory damages are not limited to damages for pecuniary loss, but shall not be presumed in the absence of proof.

(6) (a) If judgment is entered in favor of the defendant in an action for invasion of privacy, the court shall determine if the action was frivolous. If the court determines that the action was frivolous, it shall award the defendant reasonable fees and costs relating to the defense of the action.

(b) In order to find an action for invasion of privacy to be frivolous under par. (a), the court must find either of the following:

1. The action was commenced in bad faith or for harassment purposes.

2. The action was devoid of arguable basis in law or equity.

(7) No action for invasion of privacy may be maintained under this section if the claim is based on an act which is permissible under ss. 196.63 or 968.27 to 968.37.

History: 1977 c. 176; 1987 a. 399; 1991 a. 294.

Commercial misappropriation of person's name was prohibited by Wisconsin common law. *Hirsch v. S.C. Johnson & Son, Inc.* 90 W (2d) 379, 280 NW (2d) 129 (1979).

Oral communication among numerous employees and jail inmates is sufficient to constitute publicity under (2) (c). *Hillman v. Columbia County*, 164 W (2d) 376, 474 NW (2d) 913 (Ct. App. 1991).

The exclusivity provision of the Workers Compensation Act does not bar a claim for invasion of privacy under s. 895.50. *Marino v. Arandell Corp.* 1 F Supp. 2d 947 (1998).

See note to 19.21, citing 68 Atty. Gen. 68.

Surveillance of school district employe from public streets and highways by school district employer's agents to determine whether the employe was in violation of the district's residency policy did not violate this section. *Munson v. Milwaukee Bd. of School Directors*, 969 F (2d) 266 (1992).

The absence of false light from the Wisconsin privacy statute. 66 MLR 99 (1982).

The tort of misappropriation of name or likeness under Wisconsin's new privacy law. *Endejan*, 1978 WLR 1029.

Senate Bill 46

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VRAKAS, BLUM & CO., S. C.
DEER CREEK CORPORATE OFFICE
445 SOUTH MOORLAND ROAD, SUITE 400
BROOKFIELD, WISCONSIN 53005
FAX (414) 797-7895
TELEPHONE (414) 797-0400
WWW.V-B.COM FIRM@V-B.COM

February 19, 1999

Chairman Erpenbach
Senator Jauch
Senator Plache
Senator Rude
Senator Fitzgerald

As members of the Senate Committee on Privacy, Electronic Commerce and Financial Institutions I encourage you to oppose Senate Bill 46, relating to disposal of documents containing personal information.

As a partner in a local CPA firm that takes significant measures to ensure personal information is disposed of in locked shred bins and is picked up by a vendor that certifies the information was shredded, I believe it is a good business practice to shred personal information. I do not believe that this business practice should be legislated.

I am particularly concerned about the portion of the bill that allows individuals that are harmed the ability to recover damages and reasonable attorney fees. Is it possible that this will lead to frivolous lawsuits?

In encouraging your opposition of this bill I am speaking on behalf of the Independent Business Association of Wisconsin (IBAW) and the Wisconsin Institute of CPAs.

Sincerely,



Karin M. Gale, CPA