

2001 DRAFTING REQUEST

Bill

Received: 02/15/2001

Received By: nelsorp1

Wanted: As time permits

Identical to LRB:

For: Jon Erpenbach (608) 266-6670

By/Representing: Julie Landrie

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Addl. Drafters:

Subject: Courts - miscellaneous

Extra Copies:

Submit via email: NO

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

Individual's ownership of personal identifiers

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>
/P2	nelsorp1 03/06/2001	jdyer 03/06/2001	pgreensl 03/06/2001	_____	lrb_docadmin 03/06/2001		
/1	nelsorp1 04/25/2001	jdyer 04/25/2001	jfrantze 04/27/2001	_____	lrb_docadmin 04/27/2001	lrb_docadmin 05/01/2001	

FE Sent For:

→ At Intro.

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/P2	nelsorp1 03/06/2001	jdye 03/06/2001	pgreensl 03/06/2001	_____	lrb_docadmin 03/06/2001		

FE Sent For: *1/4/25 jld* *7/4/26* *7/6/26*

<END>

2001 DRAFTING REQUEST

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Wanted: As time permits

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By/Representing: Julie Laundrie

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Drafter: nelsorp1

May Contact:

Alt. Drafters:

Subject: Courts - miscellaneous

Extra Copies: RNK

Pre Topic:

No specific pre topic given

Topic:

Individual's ownership of personal identifiers

Instructions:

See Attached

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<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1?	nelsorp1	2 3/6 jld	3/6 pg	3/6			
FE Sent For:		convert from LC to LRB. 3/2 pg		pg 1RS			<END>

Nelson, Robert P.

From: Laundrie, Julie
Sent: Tuesday, February 13, 2001 3:03 PM
To: Nelson, Robert P.
Subject: FW:

Senator Erpenbach would like to request a draft of the attached proposal. Please call me (Julie @6-6670) or Dick Sweet if you have any questions or comments.

-----Original Message-----

From: Sweet, Richard
Sent: Tuesday, February 13, 2001 2:16 PM
To: Laundrie, Julie
Subject:



00521.pdf

1 **AN ACT** to amend 895.85 (2); and to create 895.503 of the statutes; relating to: an
2 individual's ownership of his or her personal identifiers.

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

3 **SECTION 1.** 895.503 of the statutes is created to read:

4 **895.503 Ownership of personal identifiers. (1) DEFINITION.** In this section, "personal
5 identifier" means a name, social security number, telephone number, street address,
6 post-office box number, 9-digit extended zip code or e-mail address.

7 **(2) SALE PROHIBITED.** No person may sell, rent or trade a personal identifier of an
8 individual if the person knows that the recipient of the personal identifier intends to use it for
9 marketing purposes unless the individual has given written permission for the sale, rental or
10 trade. This subsection does not apply to release of records under ss. 19.31 to 19.39.

11 **(3) PURCHASE PROHIBITED.** No person may purchase a personal identifier of an
12 individual or obtain the personal identifier as part of a rental or trade if the person intends to
13 use the personal identifier for marketing purposes unless the person receives a written
14 assurance from the person providing the information that the individual has given written
15 permission for the sale, rental or trade.

16 **(4) PAYMENT TO INDIVIDUAL PERMITTED.** Nothing in this section prohibits the payment
17 of anything of value to an individual to obtain his or her permission to sell, rent or trade the
18 individual's personal identifier for marketing purposes.

2001 ASSEMBLY BILL 88

February 1, 2001 – Introduced by Representatives SCHNEIDER, KREUSER, GRONEMUS, HAHN, WADE, BOYLE and WILLIAMS. Referred to Committee on Personal Privacy.

1 **AN ACT to create** 134.44 of the statutes; **relating to:** the release of personally
2 identifiable information for marketing or advertising purposes and providing
3 a penalty.

Analysis by the Legislative Reference Bureau

Under this bill, a business that requests and receives personally identifiable information from a customer so that the customer may participate in a program offered by the business to provide discounts or other benefits, may not release the information to a third party if the information will be used for marketing or advertising purposes by anyone other than the business that received information. Personally identifiable information includes items such as the customer's name and address.

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

4 **SECTION 1.** 134.44 of the statutes is created to read:
5 **134.44 Disclosure of personally identifiable information by**
6 **businesses. (1) In this section:**

ASSEMBLY BILL 88**SECTION 1**

1 (a) "Business" means a person who is engaged in a business for profit or an
2 employee of the business.

3 (b) "Discount program" means a program that provides customers with
4 discounts on purchases and with other benefits.

5 (c) "Personally identifiable information" means the name of an individual or
6 other information that can be used to identify that individual.

7 (d) "Unaffiliated third party," when used in relation to any business, means a
8 person that does not control, is not controlled by, and is not under common control
9 with the business.

10 (2) Except as provided in sub. (4), if a business requests and receives personally
11 identifiable information from a customer so that the customer may participate in a
12 discount program offered by the business, the business may not release the
13 personally identifiable information to any unaffiliated third party if the release will
14 result in the personally identifiable information being used for marketing or
15 advertising purposes by any person other than the business that receives the
16 personally identifiable information from the customer.

17 (3) Any business that violates sub. (2) is subject to a forfeiture of not more than
18 \$100 for each violation.

19 (4) Subsection (2) does not apply to the release of information to a consumer
20 reporting agency, in accordance with the Fair Credit Reporting Act, 15 USC 1681 to
21 1681u, as amended.

22

(END)



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-2534/P1

RPP...
Jld
2

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-Note

gen

1 AN ACT ...; relating to: an individual's ownership of his or her personal
2 identifiers and providing a penalty

Analysis by the Legislative Reference Bureau

Insert Act

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

3 SECTION 1. 895.503 of the statutes is created to read:
4 **895.503 Ownership of personal identifiers.** (1) DEFINITION. In this section,
5 "personal identifier" means a name, social security number, telephone number,
6 street address, post-office box number, 9-digit extended zip code, or ~~mail~~ ^{electronic} mail address.
7 (2) SALE PROHIBITED. No person may sell, rent, or trade a personal identifier of
8 an individual if the person knows that the recipient of the personal identifier intends
9 to use ~~it~~ ^{the personal identifier} for marketing purposes unless the individual has given written permission
10 for the sale, rental, or trade. This subsection does not apply to release of records under
11 ss. 19.31 to 19.39.

SECTION 1

1 (3) PURCHASE PROHIBITED. No person may purchase a personal identifier of an
 2 individual or obtain the personal identifier as part of a rental or trade if the person
 3 intends to use the personal identifier for marketing purposes unless the person
 4 receives a written assurance from the person providing the information that the
 5 individual has given written permission for the sale, rental, or trade.

6 (4) PAYMENT TO INDIVIDUAL PERMITTED. Nothing in this section prohibits the
 7 payment of anything of value to an individual to obtain his or her permission to sell,
 8 rent, or trade the individual's personal identifier for marketing purposes.

9 (5) PENALTIES AND PRIVATE CAUSE OF ACTION. (a) A person who violates sub. (2)
 10 or (3) is subject to a forfeiture of not more than \$500 for each individual for whom a
 11 personal identifier was transferred in violation of sub. (2) or (3).

12 (b) An individual for whom a personal identifier has been transferred in
 13 violation of sub. (2) or (3) may bring an action ~~to court~~ to recover actual damages,
 14 exemplary damages of \$500, costs, and reasonable attorney fees.

15 SECTION 2. 895.85 (2) of the statutes is amended to read:

16 895.85 (2) SCOPE. This section does not apply to awards of double damages or
 17 treble damages, or to the award of exemplary damages under ss. 46.90 (6) (c), 51.30
 18 (9), 51.61 (7), 103.96 (2), 134.93 (5), 146.84 (1) (b) and (bm), 153.85, 252.14 (4), 252.15
 19 (8) (a), 610.70 (7) (b), 895.503, 943.245 (2) and (3), and 943.51 (2) and (3).

(END)

↑
score
comma

RWF

**2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2534/P2ins
RPN:.....

insert anl:

This is a preliminary draft. An analysis will be provided in a later version.

(end ins anl)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2534/P2dn

RPN: A:....

JLd

I created this ~~draft~~^{bill} as a preliminary draft because I have a number of questions about the ~~draft~~.

The list of personal identifiers in this ~~draft~~^{bill} is smaller than the list in s. 943.201, ^{stats.} which creates a felony for unauthorized use of personal identifying information to obtain anything of value. Do you want to expand the list to be identical with that list?

The term "for marketing purposes" is undefined. Is that OK?

Section 19.69 ^{stats.} allows the state to personal identifiers in match programs if certain criteria are met. Does this bill prohibit such use?

Section ^{stats.} 23.45 prohibits the department of natural resources from disclosing a personal identifier of an individual on any list that it discloses to a person if that individual has made a declaration to the department that he or she does not want personal identifier information disclosed. However, this ~~draft~~^{bill} prohibits the sale, rental, or trade of personal identifiers for marketing purposes unless the individual gives written permission. It appears that s. 23.45 ^{stats.} would violate this draft language if the information would be used for market purposes because s. 23.45 does not require an individual's written permission.

The Fair Credit Reporting Act, 15 USC 1681 to 1681u, allows the release of personal identifiers to a consumer reporting agency under certain circumstances, without the individual's written permission, so this ~~draft~~ will have to allow that practice.

That federal law also allows a business ^{bill} to share personal identifiers with their affiliated businesses, so this ~~draft~~ would have to include language to allow that practice.

^{bill} In a number of places in the statutes, information about an individual may be shared with others only with the individual's "informed consent." The term "informed consent" is sometimes not defined to require written consent, so to be consistent with this ~~draft~~ those statutes need to be reviewed and amended to avoid a conflict. See s. 46.283 (7) (intro.), 46.284 (7) (intro.), and 46.2895 (9) ^{stats.}

As in s. ^A 23.45, ^{stats.} above, there are other statutes that allow an agency to provide personal identifiers of an individual to others if the individual does not prohibit that by signing

a document saying he or she does not want the information released. This bill requires the written consent to release that information, not that the individual may "opt-out". See s. 85.103, 85.105, 341.17 (9), 343.235 (2), 343.24 (4), and 440.14. To the extent that this information is used for "marketing purposes" they would be in conflict with this

~~bill~~
bill

stats

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2534/P2dn
RPN:jld:pg

March 6, 2001

I created this bill as a preliminary draft because I have a number of questions about the bill.

The list of personal identifiers in this bill is smaller than the list in s. 943.201, stats., which creates a felony for unauthorized use of personal identifying information to obtain anything of value. Do you want to expand the list to be identical with that list?

The term "for marketing purposes" is undefined. Is that OK?

Section 19.69, stats., allows the state to personal identifiers in match programs if certain criteria are met. Does this bill prohibit such use?

Section 23.45, stats., prohibits the department of natural resources from disclosing a personal identifier of an individual on any list that it discloses to a person if that individual has made a declaration to the department that he or she does not want personal identifier information disclosed. However, this bill prohibits the sale, rental, or trade of personal identifiers for marketing purposes unless the individual gives written permission. It appears that s. 23.45, stats., would violate this draft language if the information would be used for market purposes because s. 23.45, stats., does not require an individual's written permission.

The Fair Credit Reporting Act, 15 USC 1681 to 1681u, allows the release of personal identifiers to a consumer reporting agency under certain circumstances, without the individual's written permission, so this bill will have to allow that practice.

That federal law also allows a business to share personal identifiers with their affiliated businesses, so this bill would have to include language to allow that practice.

In a number of places in the statutes, information about an individual may be shared with others only with the individual's "informed consent." The term "informed consent" is sometimes not defined to require written consent, so to be consistent with this bill those statutes need to be reviewed and amended to avoid a conflict. See s. 46.283 (7) (intro.), 46.284 (7) (intro.), and 46.2895 (9), stats.

As in s. 23.45, stats., above, there are other statutes that allow an agency to provide personal identifiers of an individual to others if the individual does not prohibit that

by signing a document saying he or she does not want the information released. This bill requires the written consent to release that information, not that the individual may "opt-out." See s. 85.103, 85.105, 341.17 (9), 343.235 (2), 343.24 (4), and 440.14, stats. To the extent that this information is used for "marketing purposes" they would be in conflict with this bill.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948
REFERENCE SECTION: (608) 266-0341
REFERENCE FAX: (608) 266-5648

Apr 25, 2001

MEMORANDUM

To: Julie Landrie, Sen. Erpenbach's office

From: Robert P. Nelson, Senior Legislative Attorney, (608) 267-7511

Subject: Sharing of personal identifiers between business affiliates.

Attached is the pertinent language from the Fair Credit Reporting Act that allows a business to share information with affiliated businesses. Look at (b) (2). That language prohibits states from placing any requirement or prohibition on the exchange of information among affiliated businesses. The language is very broad, so requiring businesses to notify their customers when the information about the customer is shared will an affiliate is prohibited by this act.

I have been told that the proposed rules relating to banks sharing information about customers would require the bank to notify an individual when that information was shared with others. But those rules are only in the proposed stage.

Sec. 1681t. Relation to State laws

- (a) In general
Except as provided in subsections (b) and (c) of this section, this subchapter does not annul, alter, affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.
- (b) General exceptions
No requirement or prohibition may be imposed under the laws of any State -
 - (1) with respect to any subject matter regulated under -
 - (A) subsection (c) or (e) of section 1681b of this title, relating to the prescreening of consumer reports;
 - (B) section 1681i of this title, relating to the time by which a consumer reporting agency must take any action, including the provision of notification to a consumer or other person, in any procedure related to the disputed accuracy of information in a consumer's file, except that this subparagraph shall not apply to any State law in effect on September 30, 1996;
 - (C) subsections (a) and (b) of section 1681m of this title, relating to the duties of a person who takes any adverse action with respect to a consumer;
 - (D) section 1681m(d) of this title, relating to the duties of persons who use a consumer report of a consumer in connection with any credit or insurance transaction that is not initiated by the consumer and that consists of a firm offer of credit or insurance;
 - (E) section 1681c of this title, relating to information contained in consumer reports, except that this subparagraph shall not apply to any State law in effect on September 30, 1996; or
 - (F) section 1681s-2 of this title, relating to the responsibilities of persons who furnish information to consumer reporting agencies, except that this paragraph shall not apply
 - (i) with respect to section 54A(a) of chapter 93 of the Massachusetts Annotated Laws (as in effect on September 30, 1996); or
 - (ii) with respect to section 1785.25(a) of the California Civil Code (as in effect on September 30, 1996);
 - (2) with respect to the exchange of information among persons affiliated by common ownership or common corporate control, except that this paragraph shall not apply with respect to subsection (a) or (c)(1) of section 2480e of title 9, Vermont Statutes Annotated (as in effect on September 30, 1996); or
 - (3) with respect to the form and content of any disclosure required to be made under section 1681g(c) of this title.

(c) "Firm offer of credit or insurance" defined

Notwithstanding any definition of the term "firm offer of credit or insurance" (or any equivalent term) under the laws of any State, the definition of that term contained in section 1681a(l) of this title shall be construed to apply in the enforcement and interpretation of the laws of any State governing consumer reports.

• (d) Limitations

Subsections (b) and (c) of this section -

- (1) do not affect any settlement, agreement, or consent judgment between any State Attorney General and any consumer reporting agency in effect on September 30, 1996; and
- (2) do not apply to any provision of State law (including any provision of a State constitution) that -
 - (A) is enacted after January 1, 2004;
 - (B) states explicitly that the provision is intended to supplement this subchapter; and
 - (C) gives greater protection to consumers than is provided under this subchapter.



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-2534/P2

RPN:jld:pg

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regen

1 AN ACT to amend 895.85 (2); and to create 895.503 of the statutes; relating to:
2 an individual's ownership of his or her personal identifiers and providing a
3 penalty.

Analysis by the Legislative Reference Bureau

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

4 SECTION 1. 895.503 of the statutes is created to read:

5 **895.503 Ownership of personal identifiers.** (1) DEFINITION. In this section,

6 "personal identifier" means ~~name, social security number, telephone number,~~
7 ~~street address,~~ *all of the information listed in s. 943.201(1)(b) 1. to 9.* post-office box number, 9-digit extended zip code, or electronic mail
8 address.

9 (2) SALE PROHIBITED. No person may sell, rent, or trade a personal identifier
10 of an individual if the person knows that the recipient of the personal identifier

✓
insert
and

and the individuals

1 intends to use the personal identifier for marketing purposes unless the individual
2 has given written permission for the sale, rental, or trade. This subsection does not
3 apply to release of records under ss. 19.31 to 19.39.

4 (3) PURCHASE PROHIBITED. No person may purchase ^{plain} personal identifier of an
5 individual or obtain the personal identifier as part of a rental or trade if the person
6 intends to use the personal identifier for marketing purposes unless the person
7 receives a written assurance from the person providing the information that the
8 individual has given written permission for the sale, rental, or trade.

9 (4) PAYMENT TO INDIVIDUAL PERMITTED. Nothing in this section prohibits the
10 payment of anything of value to an individual to obtain his or her permission to sell,
11 rent, or trade the individual's personal identifier for marketing purposes.

12 (5) PENALTIES AND PRIVATE CAUSE OF ACTION. (a) A person who violates sub. (2)
13 or (3) is subject to a forfeiture of not more than \$500 for each individual for whom a
14 personal identifier was transferred in violation of sub. (2) or (3).

15 (b) An individual for whom a personal identifier has been transferred in
16 violation of sub. (2) or (3) may bring an action to recover actual damages, exemplary
17 damages of \$500, costs, and reasonable attorney fees.

18 **SECTION 2.** 895.85 (2) [✓] of the statutes is amended to read:

19 895.85 (2) SCOPE. This section does not apply to awards of double damages or
20 treble damages, or to the award of exemplary damages under ss. 46.90 (6) (c), 51.30
21 (9), 51.61 (7), 103.96 (2), 134.93 (5), 146.84 (1) (b) and (bm), 153.85, 252.14 (4), 252.15
22 (8) (a), 610.70 (7) (b), 895.503, [✓] 943.245 (2) and (3), and 943.51 (2) and (3).

23 (END)

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2534/lins
RPN:jld:pg

insert anl:

Under current law, a person is guilty of a Class D felony if the person intentionally uses or attempts to use the personal identification information of an individual, without the individual's consent, to obtain credit, money, goods, or anything else of value. In current law, personal identification information includes the individual's name, address, telephone number, or social security number. This bill expands the list of personal identification information listed in current law to include the individual's post-office box number, ^{nine} 9-digit extended zip code, and electronic mail address.

The bill also prohibits a person from selling, renting, or trading a personal identifier of an individual if ^{all of the following apply}

1. The person who sells, rents, or trades the personal identifier knows that the recipient of the sale, rental, or trade intends to use the personal identifier for marketing purposes.
2. The individual that the personal identifier identifies has not given written permission for the sale, rental, or trade.

The bill prohibits a person from buying or obtaining by rental or trade an individual's personal identifier for marketing purposes unless the person receives written assurance that the person providing the personal identifier has written permission for the sale, rental, or trade from the individual identified by the personal identifier.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

April 27, 2001

MEMORANDUM

To: Senator Erpenbach

From: Robert P. Nelson, Senior Legislative Attorney

Re: LRB-2534/1 Individual's ownership of personal identifiers

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

_____ JACKET FOR ASSEMBLY P JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 267-7511 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.