

2001 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-SB55)

Received: 06/29/2001

Received By: kuesejt

Wanted: Soon

Identical to LRB:

For: Spencer Black (608) 266-7521

By/Representing: Susan McMurray

This file may be shown to any legislator: NO

Drafter: kuesejt

May Contact:

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dykmapj
rkite

Subject: State Government - privacy

Extra Copies:

Submit via email: NO

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

AM179, Privacy package

Instructions:

See Attached.

Drafting History:

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For:

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1 cjs 6/29 01 206/29 26/29

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1? / 1 kuesejt
kuesejt 6/29

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<END>

6/28

Susan, Marlin would like these drafted as amendments:

- 173 1) AB 73--smoking and using tobacco products at or near a school and provide a penalty MGG
- 174 2) AB 86--banning smoking in buildings on post-secondary school campuses and provide a penalty -RJM
- 175 3) AB 87--parking on property under jurisdiction of UW system and technical college district boards (but only during the week of finals) -PG
- 176 4) AB 180--relating to extending the State Employment Labor Relations Act to certain legislative employees. -RAL
- 177 5) AB 181--collective bargaining rights for limited term employees under SELRA -RAL
- 178 6) AB 350--warnings for first violations of certain underage drinking prohibitions -ARG
- 179 7) LRB 0997/3--privacy package -JTK
- 180 8) AB77--increasing a school district's revenue limit for debt service incurred to comply with certain orders and for special assessments for public improvements

MSL

2001 BILL

1 **AN ACT** *to repeal* 134.72 (2) (b) (title); *to renumber* 19.37 (4), 36.11 (35) (title),
2 134.72 (1) (c) and 134.72 (2) (a); *to renumber and amend* 36.11 (35), 134.72
3 (2) (b) and 968.31 (2) (c); *to amend* 59.20 (3) (d), 71.05 (6) (a) 15., 71.21 (4), 71.26
4 (2) (a), 71.34 (1) (g), 71.45 (2) (a) 10., 77.92 (4), 100.264 (2) (intro.), 134.72 (title),
5 134.72 (3) (a), 134.72 (3) (b), 134.72 (4), 632.725 (2) (d) and 968.27 (12); and *to*
6 **create** 13.0991, 19.36 (10), 19.37 (4) (b) and (c), 36.32 (1), 36.38, 38.12 (12),
7 39.49, 71.07 (5s), 71.10 (4) (gv), 71.28 (5s), 71.30 (3) (eon), 71.47 (5s), 71.49 (1)
8 (eon), 100.52, 118.39, 134.92, 138.25, 146.833, 175.22, subchapter V of chapter
9 224 [precedes 224.991], 421.301 (13m), 422.422, 610.75, 895.50 (2) (d), 895.50
10 (2m), 968.27 (14m), 968.31 (2) (c) 2. and 971.19 (11) of the statutes; **relating to:**
11 access to certain public records containing social security account numbers of
12 individuals; creating a nonrefundable income tax and franchise tax credit for
13 information technology training; prohibiting certain telephone solicitations;
14 prohibiting the disclosure of information on credit and debit card receipts for

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1 the purchase of motor fuel; use of caller identification blocking services by
2 telephone solicitors; credit card records; disclosure of credit reports; use of
3 social security numbers as medical or health insurance identifiers; preparation
4 of privacy impact statements for bills that would have an impact on personal
5 privacy; place of trial for persons charged with certain crimes; the use of a
6 person's social security number in his or her student identification number at
7 private institutions of higher education; written policies on entering locker
8 rooms being used by athletic teams representing certain schools or by
9 professional athletic teams; interception of oral communications between an
10 employee of a retail business and a customer of the retail business; expanding
11 the right of privacy; tracking of consumer Internet usage by issuers of consumer
12 credit; and providing penalties.

Analysis by the Legislative Reference Bureau

Under current law, a person whose privacy is unreasonably invaded is entitled to equitable relief to prevent and restrain the invasion, compensatory damages, and reasonable attorney fees. Current law defines "invasion of privacy" to mean any of the following:

1. A highly offensive intrusion upon the privacy of another in a place that a reasonable person would consider private or in a manner that is actionable for trespass.

2. The advertising or trade use of the name or picture of a living person without first receiving that person's permission.

3. The publicity given to the private life of another that is highly offensive if the person that publicized the private life had acted unreasonably or recklessly as to whether there was a legitimate public interest in the matter involved or with actual knowledge that there was no legitimate public interest in the matter publicized.

This bill expands the definition of "invasion of privacy" to include publicity given to a matter concerning the person that places that person in a false light if that false light would be highly offensive to another person. If the person placed in the false light is a public person, the person who publicized the matter is liable for an invasion of the person's privacy if the publisher had knowledge of the falsity of the matter or acted with reckless disregard as to the falsity of the matter. If the person

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placed in the false light is a private person, the person who publicized the matter is liable for an invasion of the person's privacy if the publisher did not use reasonable care. The truth of the publicized matter is a defense to an action for invasion of the person's privacy if the publisher acted with good motives and for justifiable ends.

Currently, unless otherwise provided by law, a state or local agency must provide public access to information contained in its records unless the agency demonstrates that the public interest in withholding access to that information outweighs the strong public interest in providing that access. Federal law prohibits state and local governmental units from disclosing social security account numbers under certain conditions.

This bill provides that, if a new record containing the social security account number of an individual, together with information revealing the identity of that individual, is kept by a state or local governmental unit on or after January 1, 2003, or if a record in the custody of a state or local governmental unit is modified to insert the social security account number of an individual on or after January 1, 2003, and the record contains information revealing the identity of that individual, the custodian of the record must delete the social security account number before permitting access to the record, unless the person who requests access to the record is specifically authorized by federal or state law to have access to the social security account number.

The bill, however, permits the requester of a record to have access to the social security account number of an individual if:

1. The requester is an individual and the record pertains to that requester alone, to the marital or parental rights or responsibilities of that requester and his or her spouse or former spouse, to the property of that requester held jointly or in common with one or more other individuals, or to a civil lawsuit in which the requester is a specifically named party, and the requester provides appropriate identification; or
2. The requester is an authorized representative of an insurer or an organization that performs investigations for insurers and the social security account number is relevant to an investigation of suspected, anticipated, or actual insurance fraud.

Moreover, if any person misrepresents his or her identity for the purpose of obtaining access to the social security account number of another individual, the person is subject to a forfeiture (civil penalty) of not more than \$1,000 for each social security account number obtained by means of misrepresentation. In addition, under the bill, if any insurer or other person obtains a social security account number and uses that number for purposes other than an investigation of suspected, anticipated, or actual insurance fraud, the person is subject to a forfeiture of not more than \$1,000 for each social security account number used by the person for unauthorized purposes.

The bill also prohibits a health care provider or a health insurer from using for any patient or insured or enrollee an identification number that is identical to or that incorporates the patient's or the insured's or enrollee's social security number. However, under the bill, a health care provider or health insurer is not prohibited

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from requiring that the patient or insured or enrollee disclose his or her social security number or from using that number if a federal or state agency requires its use in order for the patient or insured or enrollee to participate in a particular program.

This bill makes the following changes regarding telephone solicitations:

1. The bill prohibits a person from using an automatic telephone dialing system in making a telephone solicitation if the system is used in such a way that two or more telephone lines are engaged simultaneously.

2. The bill prohibits a person who makes a telephone solicitation from using a blocking service that withholds the person's name or telephone number from the person who receives the solicitation.

3. The bill requires the department of agriculture, trade and consumer protection (DATCP) to enforce a prohibition under current law against using an electronically prerecorded message in a telephone solicitation without the consent of the person called. Under current law, local district attorneys enforce the prohibition. The bill also requires DATCP to enforce the prohibitions regarding telephone solicitations.

4. The bill allows a residential telephone customer to request his or her local telecommunications utility to include a listing or symbol in its telephone directory that indicates that the customer does not want to receive telephone solicitations. A telecommunications utility may impose a onetime charge for including a listing or symbol in its telephone directory.

5. The bill prohibits a telephone solicitor from making a telephone solicitation to an individual for which there is a listing or symbol described above.

6. Except for the last prohibition described above, the bill provides that a person who violates the foregoing prohibitions is subject to a forfeiture of up to \$500. A telephone solicitor who violates the last prohibition is subject to a forfeiture of up to \$10,000. Under certain circumstances, a person who violates any of the prohibitions may be subject to a supplemental forfeiture of up to \$10,000 if the telephone solicitation was directed against an elderly or disabled person.

Current law is silent regarding a person's authority to sell information about holders of credit cards. Under this bill, a person (which includes a corporation) may not sell information about Wisconsin residents that is obtained from credit card transaction records. The bill provides for certain exceptions from this prohibition. First, the bill excepts disclosures to credit reporting agencies for the purpose of preparing a credit report and disclosures by credit reporting agencies. The bill also contains certain exceptions for disclosing information to affiliates of the person making the disclosure and to contractors or agents of the issuer for the purpose of performing functions for or on behalf of the issuer. Those disclosures are permitted notwithstanding the provisions of the bill that require a person to obtain the consent of the subject of any personally identifiable information before using or disclosing that information for a commercial purpose. Persons violating the disclosure provisions created in the bill are subject to a forfeiture of not more than \$10,000 for each violation. The bill authorizes the department of justice to bring actions in circuit court to enjoin violations of the disclosure provisions.

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Wisconsin law currently does not specifically regulate the disclosure of credit reports to consumers by a credit reporting agency (agency). However, under current federal law, an agency must provide a consumer with five pieces of information upon request: all nonmedical information contained in the agency's files on the consumer, the sources of that information, the recipients of any credit report concerning the consumer, information regarding any checks that form the basis of an adverse characterization of the consumer, and a record of certain inquiries received by the agency that identified the consumer. Generally, unless the consumer's request is pursuant to a denial of credit or to a notice that the consumer's credit may be adversely affected, the agency may charge up to \$8 for this disclosure. In certain circumstances, federal law prohibits an agency from disclosing the sources of information in a consumer's file.

This bill requires an agency, upon request, to provide one free written disclosure report to a consumer per year. In addition to the disclosure required by the federal law, this bill requires the agency to provide the consumer with a current credit report and a clear and concise explanation of the contents of the written disclosure report. This bill prohibits an agency from making certain disclosures prohibited under federal law. A person who violates this bill may be fined up to \$500 for a first offense and may be fined up to \$1,000 or imprisoned for up to six months or both for a subsequent offense within six months.

Under current law, a transaction in which a consumer is granted credit in an amount of \$25,000 or less and which is entered into for personal, family, or household purposes (consumer credit transaction) is generally subject to the Wisconsin Consumer Act. Examples of consumer credit transactions include, among other things, purchases of consumer goods on credit, consumer loans, and open-end consumer credit plans (typically, credit cards). The Wisconsin Consumer Act provides obligations, remedies, and penalties with regard to these transactions that current law generally does not require for other transactions.

Under this bill, a creditor under a consumer credit transaction may not store a "cookie" on a computer that the creditor knows or has reason to know is used by a consumer, or access information obtained from a "cookie" that another person has stored on such a computer. A "cookie" is a file that is created and stored on a computer as a result of that computer accessing and interacting with an Internet Web site and that contains information regarding the Internet Web sites accessed through use of that computer, or information used when that computer accesses an Internet Web site previously accessed through use of that computer, or both.

Under current law, with certain exceptions, no person may intentionally intercept an oral communication made by another person. A person who violates this prohibition may be imprisoned for not more than seven years and six months or fined not more than \$10,000 or both. Under the so-called "one-party consent" exception to this prohibition, a person may intercept an oral communication if he or she is a party to the communication or if one of the parties to the communication has given prior consent to the interception. However, the one-party consent exception does not apply if the communication is intercepted for the purpose of committing any illegal or injurious act.

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This bill provides that the one-party consent exception does not apply to an interception of an oral communication between an employee of a retail business and a customer of the retail business if the communication is uttered while both the employee and the customer are present in or on the store or premises of the retail business and if the communication is intercepted using an electronic, mechanical, or other device that is attached to or in the possession of the employee. Because interception of an oral communication between a retail business employee and a customer of the retail business under these circumstances would not be covered by the one-party consent exception, the person engaged in the interception would be violating the prohibition against interception of an oral communications and, if convicted, would be subject to the current penalties for the violation.

Under current law, a defendant charged with a crime must generally be tried in the county in which the crime is committed. Current law also provides a number of exceptions to this general rule. For example, if a crime entails the commission of two or more acts, the defendant may be tried in any county in which any of the acts occurred.

Under this bill, a defendant charged with any of the following crimes may be tried in the defendant's county of residence, the victim's county of residence, or in any other county where the trial may be held under current law: 1) defamation; 2) giving false information for publication; 3) misappropriation of personal identifying information or personal identification documents; 4) theft of trade secrets; 5) threats to injure or accuse of crime; 6) threats to communicate derogatory information; 7) financial transaction card crimes; 8) computer crimes; 9) tampering with public records and notices; 10) unlawful use of telephone; and 11) unlawful use of computerized communication systems.

Under current law, the University of Wisconsin System, a technical college district board, a school board, and the governing body of a private school are prohibited from assigning to any student an identification number that is identical to or incorporates the student's social security number.

Beginning January 1, 2003, this bill extends this prohibition to private institutions of higher education located in this state.

This bill also requires each school board, private school, technical college district board, institution and two-year collegiate campus of the University of Wisconsin System, private institution of higher education, and professional athletic team that has its home field or arena in this state to adopt a written policy on who may enter and remain in a locker room used by the school or team to interview or seek information from any person. The policy must reflect the privacy interests of the members of the teams representing the school or the professional athletic team.

The bill also provides that whenever a bill is introduced in either house of the legislature that would have an impact upon personal privacy, any standing committee to which the bill is referred must not hold a public hearing on the bill or report the bill until a privacy impact statement is prepared and received. The statement is prepared by one or more state agencies or authorities, as determined by the department of administration. The statement describes the impact upon personal privacy that would result from enactment of the bill and analyzes the

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Date (time) needed

DND 16/1
SOON

LRB b 119 27 / 1

JAK / RM / DX / PK / RN / ML / PD / RK / MK :
gjs

ADC CAUCUS BUDGET AMENDMENT
~~[ONLY FOR CAUCUS]~~

See form **AMENDMENTS — COMPONENTS & ITEMS.**

Assembly
CAUCUS AMENDMENT
TO ASSEMBLY SUBSTITUTE AMENDMENT 1
TO 2001 SENATE BILL 55

~~>>FOR CAUCUS SUPERAMENDMENT — NOT FOR INTRODUCTION<<~~

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

#. Page *7*, line *4*: *after that line insert.*

#. Page , line :

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BILL

desirability of that impact from the standpoint of public policy. The bill also permits either house of the legislature, under rules of that house or joint rules, to request the department of administration to order the preparation of a privacy impact statement with respect to any bill before that house, either in its original form or as affected by one or more amendments.

Under the bill, a bill has an impact on personal privacy if the bill would:

1. Provide for the creation of additional personally identifiable information that is not readily available to the public at the time the bill is introduced;
2. Create an activity that would constitute an intrusion upon the privacy of an individual, or alter an activity in such a way as to create such an intrusion;
3. Use the name, picture, or likeness of an individual without the consent of the individual, or the consent of the individual's parent or guardian if the individual is a minor; or
4. Permit or cause publicity to be given to the private life of an individual.

This bill prohibits a person who sells motor fuel from doing so by the use of a pump that allows a purchaser to insert a credit card or debit if the pump issues a receipt that contains more than the last four digits of the credit card or debit number.

Finally, this bill creates an individual income tax and corporate income tax and franchise tax credit for training related to information technology. The bill requires that the information technology training include training in privacy rights and information policy. The credit is an amount equal to 50% of the amount that a claimant pays for the claimant or the claimant's spouse, dependent, or employee to receive training related to information technology. The credit is nonrefundable. If the amount of the credit exceeds the claimant's tax liability, the state will not issue a refund check, but the claimant may carry forward any remaining credit to subsequent taxable years. A claimant who receives the credit, however, must pay back the amount of the credit if the individual who receives the training is not employed in this state in an occupation related to information technology within one year after the individual completes the training or if the individual is employed in that occupation for less than one year.

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

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

- 1
- 2
- 3
- 4
- 5

SECTION 13.0991 of the statutes is created to read:

13.0991 Privacy impact statements. (1) In this section:

(a) "Authority" means a body created under ch. 231, 232, 233, 234, or 235.

(b) "Impact upon personal privacy" means that a bill would do one or more of

the following:

or 237

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1 1. Provide for the creation of additional personally identifiable information
2 that is not readily available to the public at the time the bill is introduced.

3 2. Create an activity that would constitute an intrusion upon the privacy of an
4 individual, or alter an activity in such a way as to create such an intrusion.

5 3. Use the name, picture, or likeness of an individual without the consent of the
6 individual, or the consent of the individual's parent or guardian if the individual is
7 a minor.

8 4. Permit or cause publicity to be given to the private life of an individual.

9 (c) "Personally identifiable information" has the meaning given under s. 19.62
10 (5).

11 (d) "State agency" means an office, department, independent agency,
12 institution of higher education, association, society, or other body in state
13 government created or authorized to be created by the constitution or any law, which
14 is entitled to expend moneys appropriated by law, including the legislature and the
15 courts, but not including an authority.

16 (2) (a) Whenever a bill is introduced in either house of the legislature that
17 would have an impact upon personal privacy, the legislative reference bureau shall
18 promptly transmit a copy of the bill to the department of administration.

19 (b) Either house of the legislature may, under rules of that house or joint rules
20 of the legislature, request the department of administration to order the preparation
21 of a privacy impact statement with respect to any bill before that house, either in its
22 original form or as affected by one or more amendments. If a house so requests, the
23 chief clerk of that house shall thereupon transmit a copy of that bill and any affected
24 amendments to the department of administration.

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1 (3) Upon receipt of a bill under sub. (2), the department of administration shall
2 direct one or more state agencies or authorities to prepare a privacy impact
3 statement with respect to that bill. Each privacy impact statement shall describe the
4 impact upon personal privacy that would result from enactment of the bill and
5 analyze the desirability of that impact from the standpoint of public policy.

6 (4) Each state agency or authority receiving a bill under sub. (3) shall provide
7 the statement required under sub. (3) to the department of administration within 15
8 days after the department's directive.

9 (5) Upon receiving a privacy impact statement under sub. (4), the department
10 of administration shall provide one copy to the legislative reference bureau, one copy
11 to the principal author of the bill, and one copy to the chief clerk of the house of the
12 legislature in which the bill originated. The chief clerk shall thereupon distribute
13 the statement in the same manner as amendments to the bill are distributed.

14 (6) Whenever a bill requires preparation of a privacy impact statement under
15 this section, the legislative reference bureau shall include a notation to that effect
16 on the jacket of the bill when the jacket is prepared. If the preparation of a privacy
17 impact statement is requested by a house of the legislature, the chief clerk of that
18 house shall include a notation to that effect on the jacket of the bill.

19 (7) Whenever a privacy impact statement is required or requested for any bill
20 under this section, a standing committee to which the bill is referred may not hold
21 a public hearing on the bill or report the bill until the statement is received by the
22 chief clerk of the house in which the bill originated.))

23 " SECTION 2. 19.36 (10) of the statutes is created to read:
24 383m

25 19.36 (10) SOCIAL SECURITY ACCOUNT NUMBERS. (a) Except as provided in par.
(b), if a new record containing a social security account number of an individual,

BILL

SECTION 2

1 together with information revealing the identity of that individual, is kept by an
 2 authority after December 31, 2002, or if a record in the custody of an authority is
 3 modified to insert the social security account number of an individual after December
 4 31, 2002, and the record contains information revealing the identity of that
 5 individual, the authority shall delete the social security account number before
 6 permitting access to the record, unless the requester is specifically authorized by
 7 federal or state law to have access to the social security account number.

8 (b) Unless otherwise provided by federal or state law, including common law
 9 principles, a requester may have access to a record containing the social security
 10 account number of an individual if any of the following applies:

11 1. The requester is an individual and the record pertains to that requester
 12 alone, to the marital or parental rights or responsibilities of that requester and his
 13 or her spouse or former spouse, to property of that requester held jointly or in
 14 common tenancy with one or more other individuals, or to a civil legal action or
 15 proceeding in which the requester is a specifically named party, and the requester
 16 provides appropriate identification to the custodian.

17 2. The requester is an authorized representative of an insurer or an
 18 organization that performs investigations for insurers and the social security
 19 account number is relevant to an investigation of suspected, anticipated, or actual
 20 insurance fraud.

21 **SECTION 3.** 19.37 (4) of the statutes is renumbered 19.37 (4) (a).
 3831

22 **SECTION 4.** 19.37 (4) (b) and (c) of the statutes are created to read:
 3830

23 19.37 (4) (b) If any person misrepresents his or her identity for the purpose of
 24 obtaining access to the social security account number of another individual under
 25 s. 19.36 (10) (b) 1., the person may be required to forfeit not more than \$1,000 for each

BILL

1 social security account number obtained by the person by means of such
2 misrepresentation.

3 (c) If an insurer or other person obtains a social security account number under
4 s. 19.36 (10) (b) 2. and uses that number for purposes other than an investigation as
5 provided in s. 19.36 (10) (b) 2., the person may be required to forfeit not more than
6 \$1,000 for each social security account number used by the person for such
7 unauthorized purposes. ¹¹

8 ¹¹ # Page 514, line 6: after that line insert:
SECTION ~~5~~ 36.11 (35) (title) of the statutes is renumbered 36.32 (title).

9 SECTION ~~6~~ 36.11 (35) of the statutes is renumbered 36.32 (2) and amended to
10 read:

11 36.32 (2) ~~The board~~ An institution of higher education may assign to each
12 student enrolled in the system institution a unique identification number. ~~The board~~
13 An institution of higher education shall not assign to any student an identification
14 number that is identical to or incorporates the student's social security number. This
15 subsection does not prohibit the board an institution of higher education from
16 requiring a student to disclose his or her social security number, nor from using a
17 student's social security number if such use is required by a federal or state agency
18 or private organization in order for the system or the student to participate in a
19 particular program. ¹¹

20 ¹¹ # Page 519, line 12: after that line insert:
SECTION ~~7~~ 36.32 (1) of the statutes is created to read:

21 36.32 (1) In this section, "institution of higher education" means an institution
22 within the system, or a private educational institution located in this state that
23 awards a bachelor's or higher degree or provides a program that is acceptable toward
24 such a degree.

25 SECTION ~~8~~ 36.38 of the statutes is created to read:

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SECTION 8

1 **36.38 Policy on privacy in athletic locker rooms.** Each institution and
 2 college campus shall adopt a written policy on who may enter and remain, to
 3 interview or seek information from any person, in a locker room being used by an
 4 athletic team representing the institution or college campus. The policy shall reflect
 5 the privacy interests of members of athletic teams representing the institution or
 6 college campus.

||
 # Page 520, line 9: after that line insert:
 " SECTION 38.12 (12) of the statutes is created to read:

1370m
 8 **38.12 (12) POLICY ON PRIVACY IN ATHLETIC LOCKER ROOMS.** The district board shall
 9 adopt a written policy on who may enter and remain, to interview or seek information
 10 from any person, in a locker room being used by an athletic team representing the
 11 district. The policy shall reflect the privacy interests of members of athletic teams
 12 representing the district.

||
 # Page 524, line 3: after that line insert:
 " SECTION 39.49 of the statutes is created to read:

39.50
 1384m
 14 **39.49 Policy on privacy in athletic locker rooms.** (1) In this section,
 15 "institution of higher education" means a private educational institution that
 16 awards a bachelor's or higher degree or provides a program that is acceptable for
 17 credit toward such a degree, and that fields an athletic team that represents the
 18 institution.

19 (2) Each institution of higher education shall adopt a written policy on who
 20 may enter and remain, to interview or seek information from any person, in a locker
 21 room being used by an athletic team representing the institution. The policy shall
 22 reflect the privacy interests of members of athletic teams representing the
 23 institution.

||
 # Page 660, line 5: after that line insert:
 " SECTION 59.20 (3) (d) of the statutes is amended to read:

1994m

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1 59.20 (3) (d) Any register of deeds who in good faith makes an erroneous
2 determination as to the accessibility of a portion of a record, to members of the public
3 under s. 19.36 (6), is not subject to any penalty for denial of access to the record under
4 s. 19.37 (4) (a).¹¹

5 ~~SECTION 12. 71.05 (6) (a) 15. of the statutes is amended to read:~~ ¹¹

6 ~~71.05 (6) (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
7 (2di), (2dj), (2dl), (2dr), (2ds), (2dx) and (3s), and (5s) and not passed through by a
8 partnership, limited liability company or tax-option corporation that has added that
9 amount to the partnership's, company's or tax-option corporation's income under s.~~

10 ~~71.21 (4) or 71.34 (1) (g).~~

11 ~~SECTION 13. 71.07 (5s) of the statutes is created to read:~~ ¹¹
Page 735, line 20: after last line insert.
2148M

12 71.07 (5s) INFORMATION TECHNOLOGY TRAINING CREDIT. (a) In this subsection:

13 1. "Claimant" means an individual, a sole proprietor, a partner, a member of
14 a limited liability company, or a shareholder of a tax-option corporation who files a
15 claim under this subsection.

16 2. "Information technology" has the meaning given in s. 16.97 (6).

17 3. "Information technology training" means training in information technology
18 that also includes training in privacy rights and information policy.

19 4. "Qualified institution" means any university, college, technical college, or
20 school approved under s. 45.54.

21 (b) Subject to the limitations provided in this subsection, a claimant may claim
22 as a credit against the tax imposed under s. 71.02, up to the amount of those taxes,
23 an amount equal to 50% of the amount that the claimant paid during the taxable year
24 for the claimant or the claimant's spouse, dependent, or employee to receive
25 information technology training at a qualified institution.

BILL**SECTION 13**

1 (c) The amount of the credit for each claimant under this subsection shall not
2 exceed \$2,500 in a taxable year for each individual for whom the claimant pays an
3 amount as provided in par. (b).

4 (d) A claimant who receives a credit under par. (b) shall add to the claimant's
5 liability for taxes imposed under s. 71.02 an amount that is equal to the total amount
6 of the credits received under par. (b), if any of the following occur:

7 1. The individual who received the training as specified under par. (b) is not
8 employed in this state in an occupation related to information technology within one
9 year after the individual completes the training.

10 2. The individual who received the training as specified under par. (b) is
11 employed in this state in an occupation related to information technology for less
12 than one year.

13 (e) A claimant may not claim the credit under par. (b) for any amounts that the
14 claimant excluded under s. 71.05 (6) (b) 28. or under section 127 of the Internal
15 Revenue Code.

16 (f) The carry-over provisions of s. 71.28 (4) (e) and (f), as they apply to the credit
17 under s. 71.28 (4), apply to the credit under this subsection.

18 (g) Partnerships, limited liability companies, and tax-option corporations may
19 not claim the credit under this subsection, but the eligibility for, and the amount of,
20 the credit are based on their payment of the amount under par. (b). A partnership,
21 limited liability company, or tax-option corporation shall compute the amount of
22 credit that each of its partners, members, or shareholders may claim and shall
23 provide that information to each of them. Partners, members of limited liability
24 companies, and shareholders of tax-option corporations may claim the credit in
25 proportion to their ownership interest.

BILL

1 (h) Section 71.28 (4) (g) and (h), as it applies to the credit under s. 71.28 (4),
2 applies to the credit under this subsection.)

3 # Page 738, line 6: after that line insert:
" SECTION 14. 71.10 (4) (gv) of the statutes is created to read:

4 2153d
71.10 (4) (gv) Information technology training credit under s. 71.07 (5s).)

5 # Page 741, line 22: delete "and (3s)" and substitute X
SECTION 15. 71.21 (4) of the statutes is amended to read:

6 ~~71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),~~
7 ~~(2dj), (2dL), (2ds), (2dx) and (3s), and (5s) and passed through to partners shall be~~
8 ~~added to the partnership's income.~~

9 # Page 769, line 1: delete "and (3g) (1dx)" and substitute
SECTION 16. 71.26 (2) (a) of the statutes is amended to read: "(1dx), (3g), and (5s)".

10 71.26 (2) (a) Corporations in general. The "net income" of a corporation means
11 the gross income as computed under the ~~internal revenue code~~ Internal Revenue
12 Code as modified under sub. (3) minus the amount of recapture under s. 71.28 (1di)
13 plus the amount of credit computed under s. 71.28 (1) and (3) to (5) plus the amount
14 of the credit computed under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds) and (1dx),
15 and (5s) and not passed through by a partnership, limited liability company or
16 tax-option corporation that has added that amount to the partnership's, limited
17 liability company's or tax-option corporation's income under s. 71.21 (4) or 71.34 (1)
18 (g) plus the amount of losses from the sale or other disposition of assets the gain from
19 which would be wholly exempt income, as defined in sub. (3) (L), if the assets were
20 sold or otherwise disposed of at a gain and minus deductions, as computed, under the
21 ~~internal revenue code~~ Internal Revenue Code as modified under sub. (3), plus or
22 minus, as appropriate, an amount equal to the difference between the federal basis
23 and Wisconsin basis of any asset sold, exchanged, abandoned or otherwise disposed
24 of in a taxable transaction during the taxable year, except as provided in par. (b) and
25 s. 71.45 (2) and (5).

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Page 798, line 22: after that line insert:

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SECTION ~~17~~^{2179M}. 71.28 (5s) of the statutes is created to read:

71.28 (5s) INFORMATION TECHNOLOGY TRAINING CREDIT. (a) In this subsection:

1. "Claimant" means a corporation that files a claim under this subsection.
2. "Information technology" has the meaning given in s. 16.97 (6).
3. "Information technology training" means training in information technology that also includes training in privacy rights and information policy.
4. "Qualified institution" means any university, college, technical college, or school approved under s. 45.54.

(b) Subject to the limitations provided in this subsection, a claimant may claim as a credit against the tax imposed under s. 71.23 an amount equal to 50% of the amount that the claimant paid during the taxable year for an employee to receive information technology training at a qualified institution.

(c) The amount of the credit for each claimant under this subsection shall not exceed \$2,500 in a taxable year for each employee for whom the claimant pays an amount as provided in par. (b).

(d) A claimant who receives a credit under par. (b) shall add to the claimant's liability for taxes imposed under s. 71.23 an amount that is equal to the total amount of the credits received under par. (b), if any of the following occur:

1. The employee who received the training as specified under par. (b) is not employed in this state in an occupation related to information technology within one year after the employee completes the training.
2. The employee who received the training as specified under par. (b) is employed in this state in an occupation related to information technology for less than one year.

BILL

1 (e) A claimant may not claim the credit under par. (b) for any amounts that the
2 claimant has excluded under section 127 of the Internal Revenue Code.

3 (f) The carry-over provisions of sub. (4) (e) and (f), as they apply to the credit
4 under sub. (4), apply to the credit under this subsection.

5 (g) Partnerships, limited liability companies, and tax-option corporations may
6 not claim the credit under this subsection, but the eligibility for, and the amount of,
7 the credit are based on their payment of the amount under par. (b). A partnership,
8 limited liability company, or tax-option corporation shall compute the amount of
9 credit that each of its partners, members, or shareholders may claim and shall
10 provide that information to each of them. Partners, members of limited liability
11 companies, and shareholders of tax-option corporations may claim the credit in
12 proportion to their ownership interest.

13 (h) Subsection (4) (g) and (h), as it applies to the credit under sub. (4), applies
14 to the credit under this subsection. "

15 #page 719, line 2: ^{cop} SECTION 18. 71.30 (3) (cop) of the statutes is created to read:

16 71.30 (3) (cop) Information technology training credit under s. 71.28 (5s). "

17 #page 719, line 6: delete "and (3g)" and substitute "(3g) and (5s)"

18 SECTION 19. 71.34 (1) (g) of the statutes is amended to read:

19 71.34 (1) (g) An addition shall be made for credits computed by a tax-option
20 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx) and (3), and
21 (5s) and passed through to shareholders.

22 #page 821, line 17: after that line insert:
23 SECTION 20. 71.45 (2) (a) 10. of the statutes is amended to read:

24 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
25 computed under s. 71.47 (1dd) to (1dx) and (5s) and not passed through by a
partnership, limited liability company or tax-option corporation that has added that
amount to the partnership's, limited liability company's or tax-option corporation's

2181m

2184g

BILL**SECTION 20**

1 income under s. 71.21 (4) or 71.34 (1) (g) and the amount of credit computed under
2 s. 71.47 (1), (3), (4) and (5).)

3 *# Page 831, line 18: after that line insert:*
4 *2193m*
5 SECTION 21. 71.47 (5s) of the statutes is created to read:

6 71.47 (5s) INFORMATION TECHNOLOGY TRAINING CREDIT. (a) In this subsection:

7 1. "Claimant" means a corporation that files a claim under this subsection.

8 2. "Information technology" has the meaning given in s. 16.97 (6).

9 3. "Information technology training" means training in information technology
10 that also includes training in privacy rights and information policy.

11 4. "Qualified institution" means any university, college, technical college, or
12 school approved under s. 45.54.

13 (b) Subject to the limitations provided in this subsection, a claimant may claim
14 as a credit against the tax imposed under s. 71.43 an amount equal to 50% of the
15 amount that the claimant paid during the taxable year for an employee to receive
16 information technology training at a qualified institution.

17 (c) The amount of the credit for each claimant under this subsection shall not
18 exceed \$2,500 in a taxable year for each employee for whom the claimant pays an
19 amount as provided in par. (b).

20 (d) A claimant who receives a credit under par. (b) shall add to the claimant's
21 liability for taxes imposed under s. 71.43 an amount that is equal to the total amount
22 of the credits received under par. (b), if any of the following occur:

23 1. The employee who received the training as specified under par. (b) is not
employed in this state in an occupation related to information technology within one
year after the employee completes the training.

BILL

1 2. The employee who received the training as specified under par. (b) is
2 employed in this state in an occupation related to information technology for less
3 than one year.

4 (e) A claimant may not claim the credit under par. (b) for any amounts that the
5 claimant has excluded under section 127 of the Internal Revenue Code.

6 (f) The carry-over provisions of s. 71.28 (4) (e) and (f), as they apply to the credit
7 under s. 71.28 (4), apply to the credit under this subsection.

8 (g) Partnerships, limited liability companies, and tax-option corporations may
9 not claim the credit under this subsection, but the eligibility for, and the amount of,
10 the credit are based on their payment of the amount under par. (b). A partnership,
11 limited liability company, or tax-option corporation shall compute the amount of
12 credit that each of its partners, members, or shareholders may claim and shall
13 provide that information to each of them. Partners, members of limited liability
14 companies, and shareholders of tax-option corporations may claim the credit in
15 proportion to their ownership interest.

16 (h) Section 71.28 (4) (g) and (h), as it applies to the credit under s. 71.28 (4),
17 applies to the credit under this subsection.

A page 831, line 23: after that line insert:
18 ~~SECTION 22. 71.49 (1) (con)~~ of the statutes is created to read:

19 ~~71.49 (1) (con)~~ Information technology training credit under s. 71.47 (5s). *)*

20 ~~SECTION 23. 77.92 (4) of the statutes is amended to read:~~

21 77.92 (4) "Net business income", with respect to a partnership, means taxable
22 income as calculated under section 703 of the Internal Revenue Code; plus the items
23 of income and gain under section 702 of the Internal Revenue Code, including taxable
24 state and municipal bond interest and excluding nontaxable interest income or
25 dividend income from federal government obligations; minus the items of loss and

BILL

SECTION 23

Page 849, line 13: delete "and (3g), and (3s)" and substitute "(3g) and (5s)"

1 deduction under section 702 of the Internal Revenue Code, except items that are not
2 deductible under s. 71.21; plus guaranteed payments to partners under section 707
3 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
4 (2di), (2dj), (2dL), (2dr), (2ds), (2dx) ~~and, (3s), and (5s)~~ and plus or minus, as
5 appropriate, transitional adjustments, depreciation differences and basis
6 differences under s. 71.05 (13), (15), (16), (17) and (19); but excluding income, gain,
7 loss and deductions from farming. "Net business income", with respect to a natural
8 person, estate or trust, means profit from a trade or business for federal income tax
9 purposes and includes net income derived as an employe as defined in section 3121

10 ~~(d) (3) of the Internal Revenue Code.~~

*# Page 890, line 16: alter that line insert:
" SECTION 24. 100.264 (2) (intro.) of the statutes is amended to read:
(2429c)*

12 100.264 (2) SUPPLEMENTAL FORFEITURE. (intro.) If a fine or a forfeiture is
13 imposed on a person for a violation under s. 100.16, 100.17, 100.18, 100.182, 100.183,
14 100.20, 100.205, 100.207, 100.21, 100.30 (3), 100.35, 100.44 ~~or~~, 100.46, or 100.52 or
15 a rule promulgated under one of those sections, the person shall be subject to a
16 supplemental forfeiture not to exceed \$10,000 for that violation if the conduct by the
17 defendant, for which the violation was imposed, was perpetrated against an elderly
18 person or disabled person and if the court finds that any of the following factors is
19 present: "

*# Page 890, line 25: alter that line insert:
" SECTION 25. 100.52 of the statutes is created to read:
2446m*

20 100.52 Telephone solicitations. (1) DEFINITIONS. In this section:

21 (a) "Automatic telephone dialing system" means equipment that has the
22 capacity to store or produce telephone numbers that are called using a random or
23 sequential number generator and to call such telephone numbers.
24

25 (b) "Basic local exchange service" has the meaning in s. 196.01 (1g).

BILL

1 (c) “Blocking service” means a service that allows a person who makes a
2 telephone call to withhold his or her telephone number or name from a person who
3 receives the telephone call and who uses a caller identification service.

4 (d) “Caller identification service” means a service that allows a person who
5 receives a telephone call to identify the telephone number or name of the person
6 making the telephone call.

7 (e) “Residential customer” means an individual who is furnished with basic
8 local exchange service by a telecommunications utility.

9 (f) “Telecommunications utility” has the meaning given in s. 196.01 (10).

10 (g) “Telephone directory” means the telephone directory distributed to the
11 general public by a telecommunications utility that furnishes basic local exchange
12 service to a residential customer.

13 (2) DIRECTORY LISTING. (a) Upon a request by a residential customer, a
14 telecommunications utility furnishing basic local exchange service to the residential
15 customer shall include in its telephone directory a listing or symbol indicating that
16 the residential customer does not want to receive any telephone solicitation.

17 (b) A telecommunications utility may impose a onetime charge applicable to a
18 change in a telephone directory for a listing or symbol requested under par. (a). A
19 charge under this paragraph may not exceed the cost incurred by a
20 telecommunications utility in making a change to a telephone directory. Upon a
21 complaint filed by residential customer, the department may investigate whether a
22 charge by a telecommunications utility violates this paragraph and may order a
23 telecommunications utility to impose a charge that complies with this paragraph.

24 (c) A person may not make a telephone solicitation to a residential customer
25 if a telephone directory in effect at the time of the telephone solicitation includes a

BILL

SECTION 25

1 listing or symbol indicating that the residential customer does not want to receive
2 any telephone solicitation.

3 (3) **AUTOMATIC DIALING.** No person may, in making a telephone solicitation, use
4 an automatic telephone dialing system in such a way that 2 or more telephone lines
5 are engaged simultaneously.

6 (4) **BLOCKING SERVICES.** No person may use a blocking service when making a
7 telephone solicitation.

8 (6) **ENFORCEMENT.** The department shall investigate violations of this section
9 and may bring an action for temporary or permanent injunctive or other relief for any
10 violation of this section.

11 (7) **PENALTIES.** (a) Except as provided in par. (b), a person who violates this
12 section may be required to forfeit not more than \$500.

13 (b) A person who violates sub. (2) (c) may be required to forfeit not more than
14 \$10,000.

15 (8) **TERRITORIAL APPLICATION.** This section applies to any interstate telephone
16 solicitation received by a person in this state and any intrastate telephone
17 solicitation.

18 *# Page 920, line 19: after that line insert,*
19 *118.395* *118.395*
20 **SECTION 26. 118.395 of the statutes is created to read:**
21 **118.395 Policy on privacy in athletic locker rooms.** Each school board, and
22 the governing body of each private school that fields an athletic team representing
23 the school, shall adopt a written policy on who may enter and remain, to interview
24 or seek information from any person, in a locker room being used by an athletic team
25 representing the private school or representing a public school in the school district.
The policy shall reflect the privacy interests of members of athletic teams
representing the school.))

BILL

page 940, line 4: after that line, insert,

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SECTION 27. 134.72 (title) of the statutes is amended to read:
134.72 (title) Prohibition of certain unsolicited messages by telephone or facsimile machine.

SECTION 28. 134.72 (1) (c) of the statutes is renumbered 100.52 (1) (h).

SECTION 29. 134.72 (2) (a) of the statutes is renumbered 100.52 (5).

SECTION 30. 134.72 (2) (b) (title) of the statutes is repealed.

SECTION 31. 134.72 (2) (b) of the statutes is renumbered 134.72 (2), and 134.72 (2) (b), as renumbered, is amended to read:

134.72 (2) (b) Notwithstanding ~~subd. 1.~~ par. (a), a person may not make a facsimile solicitation to a person who has notified the facsimile solicitor in writing or by facsimile transmission that the person does not want to receive facsimile solicitation.

SECTION 32. 134.72 (3) (a) of the statutes is amended to read:

134.72 (3) (a) *Intrastate*. This section applies to any ~~intrastate telephone solicitation or intrastate facsimile solicitation.~~

SECTION 33. 134.72 (3) (b) of the statutes is amended to read:

134.72 (3) (b) *Interstate*. This section applies to any ~~interstate telephone solicitation, or interstate facsimile solicitation,~~ received by a person in this state.

SECTION 34. 134.72 (4) of the statutes is amended to read:

134.72 (4) PENALTY. A person who violates this section may be required to forfeit ~~up to~~ not more than \$500.

SECTION 35. 134.92 of the statutes is created to read:

134.92 Motor fuel purchases with the use of a credit or debit card. No person may sell motor fuel dispensed at a pump at which the purchaser may make payment for the motor fuel by the insertion of a credit or debit card unless no more

BILL

SECTION 35

1 than the last 4 digits of the credit or debit card number are displayed on any receipt
2 issued automatically from the pump.)

3 " *Age 942, line 9: after that line insert:*
4 *2841m* SECTION 36. 138.25 of the statutes is created to read:

138.25 Credit card records. (1) DEFINITIONS. In this section:

5 (a) "Affiliate," when used in relation to any person, means a company that
6 controls, is controlled by, or is under common control with the person.

7 (b) "Cardholder" has the meaning given in s. 943.41 (1) (b).

8 (c) "Consumer report" has the meaning given in 15 USC 1681a (d).

9 (d) "Consumer reporting agency" has the meaning given in 15 USC 1681a (f).

10 (e) "Fair Credit Reporting Act" means 15 USC 1681 to 1681u, as amended.

11 (f) "Financial transaction card" has the meaning given in s. 943.41 (1) (em).

12 **(2) DISCLOSURE PROHIBITED.** Except as provided in sub. (3), a person may not
13 disclose to another person, for money or anything else of value, any information or
14 data about a cardholder who is a resident of this state that is obtained by the person
15 from financial transaction card transaction records.

16 **(3) EXCEPTIONS.** A person may disclose information about a cardholder if any
17 of the following apply:

18 (a) The disclosure is made to a consumer reporting agency for purposes of a
19 consumer report or by a consumer reporting agency as authorized under the Fair
20 Credit Reporting Act.

21 (b) The disclosure is made to an affiliate of the person making the disclosure.
22 The affiliate may not disclose any information received pursuant to this paragraph
23 to a person other than the person who initially disclosed the information to the
24 affiliate, unless the person who initially disclosed the information to the affiliate is
25 permitted to make the disclosure under this subsection.

BILL

1 (c) If the issuer of the financial transaction card is a retailer, the disclosure is
2 made to or by contractors or agents of the issuer for the purposes of performing
3 functions for or on behalf of the issuer. The contractor or agent may not disclose any
4 information received pursuant to this paragraph to a person other than the issuer,
5 unless the issuer is permitted to make the disclosure under this subsection.

6 (4) FORFEITURE. A person who violates sub. (2) may be required to forfeit not
7 more than \$10,000 for each violation. Each disclosure of information or data about
8 one cardholder constitutes a separate violation.

9 (5) INJUNCTION. The department of justice may commence an action in circuit
10 court in the name of the state to restrain by temporary or permanent injunction any
11 act or practice constituting a violation of sub. (2).))

11 *# page 946, line 13: after that line insert:*
12 *SECTION 37. 146.833 of the statutes is created to read:*
13 *(28506m)*

13 **146.833 Use of social security numbers prohibited.** A health care
14 provider may not use for any patient an identification number that is identical to or
15 incorporates the patient's social security number. This section does not prohibit the
16 health care provider from requiring a patient to disclose his or her social security
17 number, or from using a patient's social security number if that use is required by
18 a federal or state agency in order for the patient to participate in a particular
19 program.))

19 *# page 972, line 7: after that line insert:*
20 *SECTION 38. 175.22 of the statutes is created to read:*
21 *(28819)*

21 **175.22 Policy on privacy for professional athletic teams.** Any
22 professional athletic team that has its home field or arena in this state shall adopt
23 a written policy on who may enter and remain, to interview or seek information from
24 any person, in a locker room used by the professional athletic team. The policy shall
25 reflect the privacy interests of members of the professional athletic team.))

BILL *A case 1003, line 12: after that line insert:* **SECTION 39**

3029m

SECTION 39. Subchapter V of chapter 224 [precedes 224.991] of the statutes is created to read:

CHAPTER 224

SUBCHAPTER V

CONSUMER REPORTING AGENCIES

224.991 Definitions. In this subchapter:

- (1) "Consumer report" has the meaning given in 15 USC 1681a (d).
- (2) "Consumer reporting agency" has the meaning given in 15 USC 1681a (f).
- (3) "File" has the meaning given in 15 USC 1681a (g).
- (4) "Investigative consumer report" has the meaning given in 15 USC 1681a (e).
- (5) "Summary of rights" means the information a consumer reporting agency is required to provide under 15 USC 1681g (c).

224.993 Disclosure to individual. (1) **IN GENERAL.** A consumer reporting agency shall, upon the written request of an individual, provide the individual with a written disclosure report within 5 business days after receiving the written request.

(2) **CONTENTS.** Except as provided in sub. (4), the written disclosure report provided under sub. (1) shall contain all of the following:

- (a) A current consumer report pertaining to the individual.
- (b) The date of each request for credit information pertaining to the individual received by the consumer reporting agency during the 12 months before the date that the consumer reporting agency provides the written disclosure report.

BILL

1 (c) The name of each person requesting credit information pertaining to the
2 individual during the 12 months before the date that the consumer reporting agency
3 provides the written disclosure report.

4 (d) The dates, original payees, and amounts of any checks upon which any
5 adverse characterization of the consumer is based.

6 (e) Any other information contained in the individual's file.

7 (f) A clear and concise explanation of the contents of the written disclosure
8 report.

9 (g) A summary of rights.

10 (3) COST. A consumer reporting agency shall provide the written disclosure
11 report required under sub. (1) free of charge, unless the individual has requested a
12 written disclosure report from the consumer reporting agency during the preceding
13 12 months.

14 (4) EXCEPTIONS. A consumer reporting agency may not disclose to an individual
15 making a request under sub. (1) any of the following:

16 (a) The sources of any information that was both acquired solely for use in
17 preparing an investigative consumer report and used for no other purpose.

18 (b) Any credit score or other risk score or predictor relating to the consumer.

19 (5) PENALTY. Any person who violates this section may be fined not more than
20 \$500 for the first offense and may be fined not more than \$1,000 or imprisoned for
21 not more than 6 months or both for each subsequent offense occurring within 6
22 months.

23 (1) ¹¹ # page 1143, line 6: after that line insert:
SECTION 40. 421.301 (13m) of the statutes is created to read:

24 3492M
421.301 (13m) "Cookie" means a file that is created and stored on a computer
25 as a result of that computer accessing and interacting with an Internet web site and

BILL

SECTION 40

1 that contains information regarding the Internet web sites accessed through use of
2 that computer, or information used when that computer accesses an Internet web
3 site previously accessed through use of that computer, or both.

4 ^{3492P} SECTION 41. 422.422 of the statutes is created to read:

5 **422.422 Tracking consumer Internet usage prohibited.** (1) No creditor
6 under an open-end credit plan or merchant may store a cookie on a computer that
7 the creditor knows or has reason to know is used by a customer to whom the creditor
8 or merchant extends credit, or access information obtained from a cookie that
9 another person has stored on such a computer.

10 (2) A violation of this section is subject to s. 425.304.))

11 # page 1180, line 21: after that line insert:
12 SECTION 42. 610.75 of the statutes is created to read:

13 ^{3741M} **610.75 Use of social security numbers prohibited.** (1) In this section,
"health care plan" has the meaning given in s. 628.36 (2) (a) 1.

14 (2) An insurer that provides coverage under a health care plan may not use for
15 any insured or enrollee under the health care plan an identification number that is
16 identical with or that incorporates the insured's or enrollee's social security number.
17 This section does not prohibit such an insurer from requiring an insured or enrollee
18 to disclose his or her social security number, or from using an insured's or enrollee's
19 social security number if that use is required by a federal or state agency in order for
20 the insured or enrollee to participate in a particular program.))

21 # page 1181, line 3: after that line insert:
22 SECTION 48. 632.725 (2) (d) of the statutes is amended to read:

23 ^{3759M} 632.725 (2) (d) Establish In conformity with the requirements under ss.
24 146.833 and 610.75, establish a uniform statewide patient identification system in
25 which each individual who receives health care services in this state is assigned an
identification number. The standardized billing format established under par. (a)

BILL

1 and the standardized claim format established under par. (b) shall provide for the
2 designation of an individual's patient identification number.))

3 *At page 1219, line 4: after that line insert;*
4 **SECTION 44.** 895.50 (2) (d) of the statutes is created to read:
3866m

5 895.50 (2) (d) Publicity given to a matter concerning another person that places
6 the other person before the public in a false light if the false light in which the other
7 person was placed would be highly offensive to a reasonable person.

8 **SECTION 45.** *3866n* 895.50 (2m) of the statutes is created to read:

9 895.50 (2m) (a) In this subsection:

10 1. "Private person" means a person who is not a public person.

11 2. "Public person" means that the person has general fame or notoriety in the
12 community and pervasive involvement in the affairs of society; the person has put
13 himself or herself in the public eye with respect to the issues or events reported; or
14 the person has deliberately engaged the public's attention to influence the issues or
15 events reported.

16 3. "Publisher" means any person who gives publicity to a matter, including a
17 person who communicates the matter in a newspaper or magazine, on radio or
18 television, or by electronic means.

19 (b) If the person who is the subject of the publicity under sub. (2) (d) is a public
20 person, the publisher is liable under this section only if the publisher had knowledge
21 of or acted with reckless disregard as to the falsity of the publicized matter.

22 (c) If the person who is the subject of the publicity under sub. (2) (d) is a private
23 person, the publisher is liable under this section only if the publisher did not use
24 reasonable care to determine if the matter was false.

25 (d) Truth of the publicized matter is an absolute defense to an action for the
violation of a person's privacy under sub. (2) (d).))

BILL

SECTION 46

page 1256, line 4: after that line insert
3998M
SECTION 46. 968.27 (12) of the statutes is amended to read:

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968.27 (12) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying the expectation. "Oral communication" includes any oral communication between an employee of a retail business and a customer of that retail business. "Oral communication" does not include any electronic communication.

8

3998N
SECTION 47. 968.27 (14m) of the statutes is created to read:

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968.27 (14m) "Retail business" means any business primarily engaged in the retail sale of goods or services from a store or other premises owned or leased by the business.

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3998O
SECTION 48. 968.31 (2) (c) of the statutes is renumbered 968.31 (2) (c) (intro.)

13

and amended to read:

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968.31 (2) (c) (intro.) For a person not acting under color of law to intercept a wire, electronic or oral communication where the person is a party to the communication or where one of the parties to the communication has given prior consent to the interception, unless the one of the following applies:

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19

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1. The communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or of any state or for the purpose of committing any other injurious act.

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3998P
SECTION 49. 968.31 (2) (c) 2. of the statutes is created to read:

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968.31 (2) (c) 2. The communication is an oral communication between an employee of a retail business and a customer of the retail business that is uttered while both the employee and the customer are present in or on the store or premises

BILL

1 of the retail business and that is intercepted using an electronic, mechanical, or other
2 device that is attached to or in the possession of the employee..))

3 # Page 1258, line 7: after that line insert:
4 SECTION 90. 971.19 (11) of the statutes is created to read:
5 C4002M

6 971.19 (11) In an action under s. 942.01, 942.03, 943.201, 943.205, 943.30,
7 943.31, 943.41, 943.70, 946.72, 947.012, or 947.0125, the defendant may be tried in
8 the defendant's county of residence, in the victim's county of residence, or in any
9 other county in which the trial may be conducted under this section.))

10 # Page 1378, line 9: after that line insert:
11 SECTION 9159. Nonstatutory provisions, other.

12 (43) (A) CREDIT CARD RECORDS. If a person is affected by a contract that is in effect
13 on the effective date of this subsection and that contains provisions that are
14 inconsistent with section 138.25 (2) of the statutes, as created by this act, then,
15 notwithstanding section 138.25 (2) of the statutes, as created by this act, the person
16 may perform its obligations, and exercise its rights, under those provisions of the
17 contract until the contract expires or is extended, modified, or renewed, whichever
18 first occurs.

19 (40) (2) INTERNET COOKIES. If a person is affected by a contract that is in effect on
20 the effective date of this subsection and that contains provisions that are
21 inconsistent with section 422.422 (1) of the statutes, as created by this act, then,
22 notwithstanding section 422.422 (1) of the statutes, as created by this act, the person
23 may perform its obligations, and exercise its rights, under those provisions of the
24 contract until the contract expires or is extended, modified, or renewed, whichever
25 occurs first. ,

26 SECTION 9309. Initial applicability; circuit courts.
27 # Page 1396, line 6: after that line insert:

NON
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7a

(6) (1) RIGHT OF PRIVACY. The treatment of section 895.50 (2) (d) and (2m) of the statutes first applies to publicity given to a matter concerning another person on the effective date of this subsection.

INIT APP

(6) (2) VENUE OF CRIMINAL TRIAL. The treatment of section 971.19 (11) of the statutes first applies to criminal actions commenced on the effective date of this subsection.

~~SECTION 9332. Initial applicability; legislature.~~

Page 1400, line 5; after that line insert:

(1) (a) PRIVACY IMPACT STATEMENTS. The treatment of section 13.0991 of the statutes first applies with respect to bills introduced in the 2001-03 legislative session and jacketed by the legislative reference bureau after the effective date of this subsection.

INIT APP

Page 1408, line 9; after that line insert:

~~SECTION 9344. Initial applicability; revenue.~~

(30) (a) INFORMATION TECHNOLOGY TRAINING CREDIT. The treatment of sections 71.05 (6) (a) 15., 71.07 (5s), 71.10 (4) (gv), 71.21 (4), 71.26 (2) (a), 71.28 (5s), 71.30 (3) (eon), 71.34 (1) (g), 71.45 (2) (a) 10., 71.47 (5s), 71.49 (1) (eon), and 77.92 (4) of the statutes first applies to taxable years beginning on January 1 of the year in which this subsection takes effect, except that if this subsection takes effect after July 31 the treatment of sections 71.05 (6) (a) 15., 71.07 (5s), 71.10 (4) (gv), 71.21 (4), 71.26 (2) (a), 71.28 (5s), 71.30 (3) (eon), 71.34 (1) (g), 71.45 (2) (a) 10., 71.47 (5s), 71.49 (1) (eon), and 77.92 (4) of the statutes first applies to taxable years beginning on January 1 of the year after the year in which this subsection takes effect.

INIT APP

Page 416, line 6; after that line insert:

~~SECTION 9359. Initial applicability; other.~~

(14) (a) RETAIL BUSINESS ORAL COMMUNICATIONS. The renumbering and amendment of section 968.31 (2) (c) of the statutes and the creation of section 968.31 (2) (c) 2. of the statutes first apply to oral communications intercepted on the effective date of this subsection.

INIT APP

BILL

1 **SECTION 9400. Effective dates; general.** Except as otherwise provided in
2 SECTIONS 9401 to 9459 of this act, this act takes effect on the day after publication.

3 ~~**SECTION 9423. Effective dates; health and family services.**~~
4 *" # page 1420, line 19: after that line insert:*
5 *(159)* **USE OF SOCIAL SECURITY NUMBERS BY HEALTH CARE PROVIDERS.** The treatment
6 of section 146.833 of the statutes takes effect on the first day of the 7th month
7 beginning after publication. *"*

8 ~~**SECTION 9427. Effective dates; insurance.**~~
9 *" # page 1421, line 4: after that line insert:*
10 *(49)* **USE OF SOCIAL SECURITY NUMBERS BY INSURERS.** The treatment of sections
11 610.75 and 632.725 (2) (d) of the statutes takes effect on the first day of the 7th month
12 beginning after publication. *"*

13 ~~**SECTION 9459. Effective dates; other.**~~
14 *" # page 1429, line 3: after that line insert:*
15 *(69)* ~~**STUDENT IDENTIFICATION NUMBERS.**~~ The treatment of section 36.32 (1) of the
16 statutes, the renumbering of section 36.11 (35) (title) of the statutes, and the
17 renumbering and amendment of section 36.11 (35) of the statutes take effect on
18 January 1, 2003. *(6r)*

19 ~~**PRIVACY IN ATHLETIC LOCKER ROOMS.**~~ The treatment of sections 36.38, 38.12
20 (12), 39.49, 118.39, and 175.22 of the statutes takes effect on the first day of the 6th
21 month beginning after publication. *(6s)*

22 ~~**INTERNET COOKIES.**~~ The treatment of sections 421.301 (13m) and 422.422 of
the statutes and SECTION 9159 (9) of this act takes effect on the first day of the 7th
month beginning after publication. *"*

(END)

4r

EFF
DATES

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

61927/1dn
LRB-0007/1dn

GM/RM/BHT/KMM/ML/PD:cjs:pg
2

April 19, 2001

Black:
Representative ~~Schneider~~:

In reviewing this bill you will note that it makes certain changes to 1997 AB-796, which the bill incorporates, to bolster the constitutionality of the draft in the face of a likely challenge that the bill, if enacted, unconstitutionally impairs the freedom of commercial speech of a person who wishes to disclose or receive personally identifiable information for commercial purposes without the consent of the individual who is the subject of the information.

Commercial speech, that is, "expression related solely to the economic interests of the speaker and its audience," *Central Hudson Gas v. Public Service Commission of N.Y.*, 100 S. Ct. 2343 (1980), is protected under the First Amendment to the U.S. Constitution because 1) the fact that the speaker's interest is purely economic does not disqualify the speaker from protection under the First Amendment; and 2) both the particular recipient of the commercial communication and society in general have a strong interest in the free flow of commercial information. *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 96 S. Ct. 1817, 1826-27 (1976).

The U.S. Supreme Court has devised the following four-part analysis to determine whether a state action abridges a person's freedom of commercial speech:

"At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we must ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest."

Central Hudson at p. 2351.

The first two parts of that analysis do not appear to be particularly troublesome. The disclosure of truthful information about an individual is a lawful activity; therefore, that disclosure appears to be protected by the First Amendment. On the other hand, the state appears to have a substantial interest in protecting the privacy of its citizens.

The third part of the *Central Hudson* analysis, that is, whether the regulation directly advances the governmental interest asserted, poses a problem for certain provisions of 1997 AB-796 that the bill incorporates, especially when read in light of a recent U.S.

Court of Appeals case, *United Reporting Publishing Corp. v. California Highway Patrol*, 146 F. 3d 1133 (9th Cir. 1998), which was recently reversed and remanded on other grounds by the U.S. Supreme Court in *Los Angeles Police Department v. United Reporting Publishing Corp.*, 120 S. Ct. 483 (1999). In *United Reporting*, the 9th Circuit held that a California law that prohibited law enforcement agencies from releasing the addresses of arrestees to entities with a commercial purpose, but which provided for numerous exceptions, including private investigators and entities with a scholarly, journalistic, political, or governmental purpose, did not directly advance the state's purported privacy interest and, therefore, violated the First Amendment. The 9th Circuit found that the numerous exceptions so undermined the state's purported privacy interest that the law did not rationally advance that interest.

Similarly, the definition of "commercial purpose" in this bill contains such broad exceptions that arguably the bill does not advance the state's privacy interest. Specifically, that definition excludes the gathering and reporting of news and the communication of information for any political, lobbying, charitable, or religious purpose. Given such broad exceptions, it does not advance the state's privacy interest to prohibit the disclosure without consent of personally identifiable information about a person for a commercial purpose, yet to allow that information to be disclosed without consent for those other broad purposes. Accordingly, this draft deletes the exceptions for the gathering and reporting of news and for the communication of information for political, lobbying, charitable, or religious purposes.

Moreover, the bill arguably does not directly advance the state's privacy interest due to the bill's anomalous dual system with respect to the disclosure of public records. Specifically, the state is prohibited from selling personally identifiable information for a commercial purpose without consent, yet is not prohibited from disclosing the very same information for the very same purpose under the open records law. Instead, the bill places the burden of obtaining consent for the commercial use or disclosure of personally identifiable information obtained under the open records law on the person obtaining the information. Given this anomaly, it does not advance the state's privacy interest to permit a requester to whom the state is prohibited from selling information for a commercial purpose to turn around and obtain the same information for the same purpose under the open records law. Accordingly, this draft permits the state to disclose personally identifiable information, whether under the open records law or a provision permitting the sale of information, but places the burden of obtaining permission for the commercial use or disclosure of that information on the person obtaining the information.

The bill arguably passes the fourth part of the *Central Hudson* analysis, that is, whether the regulation is not more extensive than necessary to serve the state's interest, because the regulation applies only to commercial speech and not to noncommercial speech, so long as there is a logical privacy-based reason for making that distinction. Specifically, in a previous drafter's note, 1997 LRB-3711/P1dn, I advised that in light of *Rowan v. U.S. Post Office Department*, 90 S. Ct. 1484 (1970), the bill might be found not to infringe on a commercial user's freedom of speech because under the bill it is not the state, but rather the individual, who is determining whether the information may be used or disclosed for a commercial purpose and, therefore, the

state is not infringing on the commercial user's freedom of speech. In *Rowan* the U.S. Supreme Court upheld the constitutionality of a statute that requires the U.S. Postal Service, on the request of an addressee who has received material that the addressee believes to be erotically arousing or sexually provocative, to order the sender to delete the addressee from the sender's mailing list. The Court so held on the grounds that under the statute it is the addressee, not the government, who is making the determination and, therefore, the government is not infringing the sender's freedom of speech.

In light of a recent U.S. Court of Appeals decision, *Pearson v. Edgar*, 153 F. 3d 397 (7th Cir. 1998), I now must advise that, notwithstanding *Rowan* and the fact that under the bill it is the individual and not the state who is determining what commercial uses are permissible, a court might hold that the bill, if enacted, infringes on a commercial user's freedom of speech if the court were to find no logical privacy-based reason for distinguishing in the draft between commercial and noncommercial use. Specifically, in *Pearson*, the 7th Circuit held that an Illinois statute barring real estate agents from soliciting homeowners who have given notice that they do not want to sell their homes is an invalid regulation of commercial speech in part because the statute distinguished between real estate solicitations and other solicitations without a logical privacy-based reason for making that distinction. In so holding, the 7th Circuit distinguished *Pearson* from *Rowan* in that in *Rowan* the addressee made the distinction between offensive and acceptable materials while in *Pearson* the government in the statute made the distinction between real estate solicitation and other solicitation. Similarly, in this bill, although it is the individual who determines what commercial uses are permissible, it is the state that is distinguishing between commercial uses, which the individual may prohibit, and noncommercial uses, which the individual may not prohibit. Accordingly, for this bill to pass muster in light of *Pearson* there must be a logical privacy-based reason for making that distinction between commercial and noncommercial use.

If you have any questions or would like to discuss this drafter's note, please do not hesitate to contact me directly at the e-mail address or telephone number listed below.

Gordon M. Malaise
Senior Legislative Attorney
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The "invasion of privacy" provisions of this bill that are derived from 1997 AB-796 place burdens on commercial transactions that you may not intend. In many situations, it may be desirable for businesses to disclose personal information about an individual. For example, under current law, a financial institution often may sell portions of its loan portfolio to another financial institution. This type of transaction involves the transfer of numerous pieces of personal information regarding the various borrowers and guarantors and is definitely for a commercial purpose. This draft would

DRAFT
DWS 9/25

likely make this type of transaction an invasion of privacy, unless the financial institution obtained the consent of each borrower.

In addition, under current law, when a person with an account at financial institution A makes a withdrawal at an ATM operated by financial institution B, financial institution B transfers the transaction information to financial institution A to complete the transaction. This transfer of personal information is for a commercial purpose and may be an invasion of privacy under this draft.

These are only two examples of the burden this draft places on commercial transactions. If you do not intend to create this burden, please call so that I can get a better idea of your intent. Once I clarify what type of disclosure you intend to cover, I will be able to tailor the definition of "invasion of privacy" or "commercial purpose" accordingly.

As previously drafted, the "invasion of privacy" provisions likely would have prohibited certain disclosures by credit reporting agencies and disclosures to affiliates. This bill includes exceptions to permit these types of disclosures, to avoid preemption under the federal Fair Credit Reporting Act. This treatment is consistent with the treatment of the provisions on credit card disclosures derived from 1999 AB-101 (see discussion below). Please let me know if you do not intend to include these additional exceptions.

The "invasion of privacy" provisions raise two additional preemption issues. First, to the extent that they apply to financial institutions, the provisions may be preempted by the federal Gramm-Leach-Bliley Act. See 15 USC 6807 (a). Although this federal law permits states to regulate financial privacy of financial institution records, certain state regulations may be preempted to the extent that they improperly conflict with the federal law. A provision that affords any person greater protection than that provided under the federal law is not preempted. See 15 USC 6807 (b). This determination is made by the federal trade commission (FTC). ~~It is unclear what standards the FTC will apply in making this determination.~~

Second, even if these provisions are not preempted, individuals may be prevented from enforcing them against federally chartered financial institutions. It is possible that the appropriate federal regulator of a federally chartered financial institution may have the sole authority to enforce these provisions against that institution. See *The National State Bank, Elizabeth, N.J. v. Long*, 630 F.2d 981 (3rd Cir. 1980) (although the state anti-redlining law applied to national banks, the federal comptroller of the currency had sole authority to enforce the state law against national banks).

- Move to next page

The department of justice

This bill contains a redraft of 1999 AB-101 (disclosures from credit card records), except that this bill permits disclosures by credit reporting agencies and disclosures to affiliates. ~~These exceptions are necessary to avoid an argument that the provisions of this bill are preempted by the federal Fair Credit Reporting Act. Please let me know if you do not intend to include these additional exceptions. You may also want to include exceptions permitting disclosures to a law enforcement agency or governmental agency and disclosures pursuant to a court order.~~

Not

To the extent that ~~the~~ ^{these} provisions derived from 1999 AB-101 apply to banking institutions that issue credit cards, they may be preempted by the federal

Insert text from previous page

Gramm-Leach-Bliley Act. See the discussion of 15 USC 6807 (a) above. Also, even if these provisions are not preempted, the department of justice may be prevented from enforcing them against federally chartered financial institutions. See the discussion of *The National State Bank, Elizabeth, N.J. v. Long*, 630 F.2d 981 (3rd Cir. 1980) above.

Please feel free to call if you have any suggested changes to the bill or would like to discuss any of these issues.

Robert J. Marchant
Legislative Attorney
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Representative Schneider:

We have delayed the effective date for ss. 146.833, 610.75, and 632.75 (2) (d) (which prohibit the use by health care providers and insurers of social security numbers as patient identifiers) for six months, in order to provide time for health care providers and insurers such as health maintenance organizations to comply.

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Pamela J. Kahler
Senior Legislative Attorney
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Please note that the prohibition in this draft as it relates to receipts printed for credit card purchases made at a motor fuel pump also applies to debit card purchases. If this is not consistent with your intent, please let me know and I will redraft as required. Also, there is no penalty specified for a violation of s. 134.92, as created in this bill. Consequently, the general penalty provisions under s. 939.61, stats., will apply to a violation of s. 134.92. Under s. 939.61, stats., a person who violates s. 134.92, as created in this bill, will be subject to a forfeiture of up to \$200. If you would like to create a different penalty or if you would like to create a private right of action, please contact me and I will redraft accordingly.

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
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Under this bill, the policy adopted by the educational institution follows the team. In other words, the institution's policy applies to its athletic teams regardless of whether they are playing at home or away. Please note, however, that if teams from different schools need to share a locker room, there may be conflicting policies, and the bill does not indicate which policy would be controlling.

If you wish, the bill could be reworked so that an institution's policy would apply to any locker room at the institution being used by a team representing the institution or by a team engaged in competition with that team. However, this may result in the absence of any policy being in effect under certain circumstances, such as when a high school team uses a university's facilities.

If you have questions or need more information, please let me know.

Madelon J. Lief
Legislative Attorney
Phone: (608) 267-7380

~~This bill contains 1999 AB-23 updated. Does the initial applicability section meet your intent? 1999 AB-23 provided that the act first applied to bills introduced in the 2001-03 legislative session.~~

The language of proposed s. 13.0991 (7) to the effect that a bill for which a privacy impact statement is required or requested may not be heard or reported by a standing committee to which the bill is referred until the statement is received creates a rule of procedure under article IV, section 8, of the constitution. The supreme court has held that the remedy for noncompliance with this type of provision lies exclusively within the legislative branch. See *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 363-369 (1983). In other words, while this type of provision may be effective to govern internal legislative procedure, the courts will not enforce this type of provision and it does not affect the validity of any enactment resulting from a procedure that may be viewed as contravening the provision.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb1927/1dn
RM/PJD:ejj:jf

June 29, 2001

Representative Black:

This bill contains a redraft of 1999 AB-101 (disclosures from credit card records), except that this bill permits disclosures by credit reporting agencies and disclosures to affiliates. To the extent that these provisions apply to banking institutions that issue credit cards, they may be preempted by the federal Gramm-Leach-Bliley Act. See 15 USC 6807 (a). Although this federal law permits states to regulate financial privacy of financial institution records, certain state regulations may be preempted to the extent that they improperly conflict with the federal law. A provision that affords any person greater protection than that provided under the federal law is not preempted. See 15 USC 6807 (b). This determination is made by the federal trade commission (FTC).

Second, even if these provisions are not preempted, the department of justice may be prevented from enforcing them against federally chartered financial institutions. It is possible that the appropriate federal regulator of a federally chartered financial institution may have the sole authority to enforce these provisions against that institution. See *The National State Bank, Elizabeth, N.J. v. Long*, 630 F.2d 981 (3rd Cir. 1980) (although the state anti-redlining law applied to national banks, the federal comptroller of the currency had sole authority to enforce the state law against national banks).

Please feel free to call if you have any suggested changes to the bill or would like to discuss any of these issues.

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

The language of proposed s. 13.0991 (7) to the effect that a bill for which a privacy impact statement is required or requested may not be heard or reported by a standing committee to which the bill is referred until the statement is received creates a rule of

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