

2005 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB164)

Received: **09/22/2005**

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **Ted Kanavas (608) 266-9174**

By/Representing: **Mike Richards**

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

Drafter: **csundber**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Kanavas@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Disclosing the unauthorized acquisition of personal information

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	csundber 09/27/2005	csicilia 09/29/2005		_____			
/P1	csundber 10/12/2005	kfollett 10/12/2005	pgreensl 09/29/2005	_____	mbarman 09/29/2005		
/1			rschluet 10/12/2005	_____	lnorthro 10/12/2005	lnorthro 10/12/2005	

FE Sent For:

<END>

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/?	csundber 09/27/2005	csicilia 09/29/2005		_____			
/P1		11/gf 10/12	pgreensl 09/29/2005	_____	mbarman 09/29/2005		

FE Sent For:

10/25 <END>

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/?	csundber						
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Handwritten notes in drafting history table:
Under Reviewed: P1 gjs 9/28/05
Under Typed: 9/28/05
Under Proofed: 9/28/05
Under Submitted: P8
Under Jacketed: P8/15

FE Sent For:

<END>

* Do a P-draft

To: Christopher Sundberg, Legislative Reference Bureau
From: Michael Richards, Aide to Senator Ted Kanavas
Date: September 22, 2005
Re: Changes to Senate Substitute 1 to Senate Bill 164 (LRBs0206/1)

I want to thank you for your work on this bill. Over the course of this drafting experience, we have asked a lot of you and we thank you for all the work that you have done on this bill.

This memo is to provide some notes for you to work off of in drafting changes to Senate Substitute 1 to Senate Bill 164 (LRBs0206/1). If you have any questions regarding the proposed drafting changes, please do not hesitate to contact me.

Proposed Drafting Changes

✓ Pg. 2, lines 8-11. Please change to read something to the effect of:

(am) "Name" means an individual's first name or first initial combined with the individual's last name.

✓ Pg. 2, lines 12-14. Please change to read something to the effect of:

(b) "Personal information" means any of the information specified in s. 943.201 (1) (b) 4., 5., 9., 11., 12. a. and c., and 13., **which is not encrypted**, and is accompanied by the name of the individual to whom the information pertains and is not publicly available.

Pg. 3, line 24. Please change to read something to the effect of:

...shall provide notice by a method reasonably calculated, **which could include the usage of statewide media** outlets, to provide actual notice to the subject of the personal information.

Pg. 3, add (c) in section (3) Timing and manner of notice, to read something to the effect of:

(c) Notification under this section is not required if after reasonable investigation the entity or law enforcement determines that there is no reasonable likelihood of harm to the customer

1. If the entity determines that the acquisition of personal information is not reasonably likely to cause harm to the consumer, the entity must maintain documentation regarding their findings.

Pg. 4, line 7—~~Strike the date~~ *MR will provide citations to other FR publications*

✓ Pg. 4, line 11-13, rewrite the line to read something to the effect of:

Compliance with this section in itself does not give rise to a civil proceeding.

✓
CA
Law

agency can otherwise comply with the requirements of this section.

1798.28. Each agency, after July 1, 1978, shall inform any person or agency to whom a record containing personal information has been disclosed during the preceding three years of any correction of an error or notation of dispute made pursuant to Sections 1798.35 and 1798.36 if (1) an accounting of the disclosure is required by Section 1798.25 or 1798.26, and the accounting has not been destroyed pursuant to Section 1798.27, or (2) the information provides the name of the person or agency to whom the disclosure was made, or (3) the person who is the subject of the disclosed record provides the name of the person or agency to whom the information was disclosed.

Cal. Civil Code:

1798.29. (a) Any agency that owns or licenses computerized data that includes personal information shall disclose any **breach** of the **security** of the **system** following discovery or notification of the **breach** in the **security** of the data to any resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subdivision (c), or any measures necessary to determine the scope of the **breach** and restore the reasonable integrity of the data **system**.

(b) Any agency that maintains computerized data that includes personal information that the agency does not own shall notify the owner or licensee of the information of any **breach** of the **security** of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(c) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(d) For purposes of this section, "**breach** of the **security** of the **system**" means unauthorized acquisition of computerized data that compromises the **security**, confidentiality, or integrity of personal information maintained by the agency. Good faith acquisition of personal information by an employee or agent of the agency for the purposes of the agency is not a **breach** of the **security** of the **system**, provided that the personal information is not used or subject to further unauthorized disclosure.

(e) For purposes of this section, "personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(1) Social **security** number.

(2) Driver's license number or California Identification Card number.

(3) Account number, credit or debit card number, in combination with any required **security code**, access **code**, or password that would permit access to an individual's financial account.

(f) For purposes of this section, "personal information" does not include publicly available information that is lawfully made

Sundberg, Christopher

From: Richards, Mike
Sent: Monday, September 26, 2005 9:55 AM
To: Sundberg, Christopher
Subject: RE: Credit union exemption

End of the month if at all possible. Thanks

From: Sundberg, Christopher
Sent: Monday, September 26, 2005 9:55 AM
To: Richards, Mike
Subject: RE: Credit union exemption

Got it. Do you have a deadline for this draft?

From: Richards, Mike
Sent: Monday, September 26, 2005 9:36 AM
To: Sundberg, Christopher
Subject: Credit union exemption

Chris,

The Credit Union exemption is:

Guidance on Response Programs for
Unauthorized Access to Member Information and Member Notice ---May 2, 2005

Michael D. Richards

Michael D. Richards
Office of State Senator Ted Kanavas
State Capitol, Room 10 South
Madison, WI 53707-7882
608-266-9174

lu: 9/27/05
Dnc: 9/30/05

2005 - 2006 LEGISLATURE

50222/P1
LRB 0206/t
CTS:all:pg
J
stays

SENATE SUBSTITUTE AMENDMENT A,
TO 2005 SENATE BILL 164

intentional
fill cat ✓
SK ✓

September 19, 2005 - Offered by Senator KANAVAS.

~~Gen cat.~~ Gen cat.

1 AN ACT *to create* 895.507 of the statutes; **relating to:** notice regarding
2 unauthorized acquisition of personal information.

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

3 SECTION 1. 895.507 of the statutes is created to read:

4 **895.507 Notice of unauthorized acquisition of personal information.**

5 (1) DEFINITIONS. In this section:

6 (a) 1. "Entity" means a person, other than an individual, that does any of the
7 following:

8 a. Conducts business in this state and maintains personal information in the
9 ordinary course of business.

10 b. Stores personal information in this state.

11 c. Maintains for a resident of this state a depository account as defined in s.

12 815.18 (2) (e).

1 d. Lends money to a resident of this state.

2 2. "Entity" includes all of the following:

3 a. The state and any office, department, independent agency, authority,
4 institution, association, society, or other body in state government created or
5 authorized to be created by the constitution or any law, including the legislature and
6 the courts.

7 b. A city, village, town, or county.

8 (am) "Name" includes all of the following:

9 1. An individual's first name.

10 2. The first letter of an individual's first name combined with the individual's
11 last name.

Handwritten notes:
⑨ First
⑩ or first initial
⑪ means
⑫ last

12 (b) "Personal information" means any of the information specified in s. 943.201

13 (1) (b) 4., 5., 9., 11., 12. a. and c., and 13. if the information is accompanied by the name
14 of the individual to whom the information pertains and is not publicly available.

Handwritten notes:
all of the following apply: P 1.
P 2. The information

15 (c) "Publicly available information" means any information that an entity
16 reasonably believes is one of the following:

17 1. Information that is lawfully made widely available through any media.

18 2. Information that is lawfully made available to the general public from
19 federal, state, or local government records or disclosures to the general public that
20 are required to be made by federal, state, or local law.

21 (2) NOTICE REQUIRED. (a) If an entity whose principal place of business is
22 located in this state or an entity that stores personal information in this state knows
23 that personal information in the entity's possession has been acquired by a person
24 whom the entity has not authorized to acquire the personal information, the entity
25 shall make reasonable efforts to notify each subject of the personal information. The

⑨ 3. The information is not encrypted.

1 notice shall indicate that the entity knows of the unauthorized acquisition of
2 personal information pertaining to the subject of the personal information.

3 (b) If an entity whose principal place of business is not located in this state
4 knows that personal information pertaining to a resident of this state has been
5 acquired by a person whom the entity has not authorized to acquire the personal
6 information, the entity shall make reasonable efforts to notify each resident of this
7 state who is the subject of the personal information. The notice shall indicate that
8 the entity knows of the unauthorized acquisition of personal information pertaining
9 to the resident of this state who is the subject of the personal information.

10 (cm) Notwithstanding pars. (a) and (b), an entity is not required to provide
11 notice of the acquisition of personal information in good faith by an employee or agent
12 of the entity, if the personal information is used for a lawful purpose of the entity.

13 **(3) TIMING AND MANNER OF NOTICE.** (a) Subject to sub. (5), an entity shall provide
14 the notice required under sub. (2) within a reasonable time, not to exceed 30 business
15 days after the entity learns of the acquisition of personal information. A
16 determination as to reasonableness under this paragraph shall include
17 consideration of the number of notices that an entity must provide and the methods
18 of communication available to the entity.

19 (b) An entity shall provide the notice required under sub. (2) by mail or by a
20 method the entity has previously employed to communicate with the subject of the
21 personal information. If an entity cannot with reasonable diligence determine the
22 mailing address of the subject of the personal information, and if the entity has not
23 previously communicated with the subject of the personal information, the entity
24 shall provide notice by a method reasonably calculated to provide actual notice to the
25 subject of the personal information.

NS
3-11

1 **(3m)** REGULATED ENTITIES EXEMPT. This section does not apply to any of the
2 following:

3 (a) An entity that is a financial institution, or any person under contract with
4 such an entity, ~~that is all of the following:~~

5 1. ~~Subject to the interagency guidance on response programs for unauthorized~~
6 ~~access to customer information and customer notice as published in the federal~~
7 ~~register on March 29, 2005.~~ *INS 4-8*

8 2. ~~In compliance with the interagency guidance specified in subd. 1.~~
9 (b) An entity that is described in 45 CFR 164.104 (a), if the entity complies with
10 the requirements of 45 CFR part 164.

11 **(4)** EFFECT ON CIVIL CLAIMS. An entity that complies with this section is not
12 liable for damages caused by the acquisition of personal information by a person
13 whom the entity has not authorized to acquire the personal information. Failure to
14 comply with this section is not negligence or a breach of any duty, but may be evidence
15 of negligence or a breach of a legal duty.

16 **(5)** REQUEST BY LAW ENFORCEMENT NOT TO NOTIFY. A law enforcement agency
17 may, in order to protect an investigation or homeland security, ask an entity not to
18 provide a notice that is otherwise required under sub. (2) for any period of time and
19 the notification process required under sub. (2) shall begin at the end of that time
20 period. Notwithstanding subs. (2) and (3), if an entity receives such a request, the
21 entity may not provide notice of or publicize an unauthorized acquisition of personal
22 information, except as authorized by the law enforcement agency that made the
23 request.

**2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0222/Plins
CTS:.....

1 **Insert 3-11:**

2 if any of the following apply:

3 1. The acquisition of personal information does not compromise the security,
4 confidentiality, or integrity of personal information in the entity's possession.

5 2. The personal information was acquired

6 **Insert 4-8:**

7 The entity is subject to, and in compliance with, the guidance on response programs
8 for unauthorized access to member information and member notice as published in
9 the federal register on May 2, 2005 (6)

10/12/05

053 0222

Per Mike Richards, redraft as
11, no changes



State of Wisconsin
2005 - 2006 LEGISLATURE

LRBs0222/P1

CTS:all:pg

lw: 10/12/05
Due: today

stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SENATE SUBSTITUTE AMENDMENT ,

TO 2005 SENATE BILL 164

Regen

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2 unauthorized acquisition of personal information.

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3 SECTION 1. 895.507 of the statutes is created to read:

4 **895.507 Notice of unauthorized acquisition of personal information.**

5 (1) DEFINITIONS. In this section:

6 (a) 1. "Entity" means a person, other than an individual, that does any of the
7 following:

8 a. Conducts business in this state and maintains personal information in the
9 ordinary course of business.

10 b. Stores personal information in this state.

1 c. Maintains for a resident of this state a depository account as defined in s.
2 815.18 (2) (e).

3 d. Lends money to a resident of this state.

4 2. “Entity” includes all of the following:

5 a. The state and any office, department, independent agency, authority,
6 institution, association, society, or other body in state government created or
7 authorized to be created by the constitution or any law, including the legislature and
8 the courts.

9 b. A city, village, town, or county.

10 (am) “Name” means an individual’s last name combined with the individual’s
11 first name or first initial.

12 (b) “Personal information” means any of the information specified in s. 943.201
13 (1) (b) 4., 5., 9., 11., 12. a. and c., and 13. if all of the following apply:

14 1. The information is accompanied by the name of the individual to whom the
15 information pertains.

16 2. The information is not publicly available.

17 3. The information is not encrypted.

18 (c) “Publicly available information” means any information that an entity
19 reasonably believes is one of the following:

20 1. Lawfully made widely available through any media.

21 2. Lawfully made available to the general public from federal, state, or local
22 government records or disclosures to the general public that are required to be made
23 by federal, state, or local law.

24 (2) NOTICE REQUIRED. (a) If an entity whose principal place of business is
25 located in this state or an entity that stores personal information in this state knows

1 that personal information in the entity's possession has been acquired by a person
2 whom the entity has not authorized to acquire the personal information, the entity
3 shall make reasonable efforts to notify each subject of the personal information. The
4 notice shall indicate that the entity knows of the unauthorized acquisition of
5 personal information pertaining to the subject of the personal information.

6 (b) If an entity whose principal place of business is not located in this state
7 knows that personal information pertaining to a resident of this state has been
8 acquired by a person whom the entity has not authorized to acquire the personal
9 information, the entity shall make reasonable efforts to notify each resident of this
10 state who is the subject of the personal information. The notice shall indicate that
11 the entity knows of the unauthorized acquisition of personal information pertaining
12 to the resident of this state who is the subject of the personal information.

13 (cm) Notwithstanding pars. (a) and (b), an entity is not required to provide
14 notice of the acquisition of personal information if any of the following apply:

15 1. The acquisition of personal information does not compromise the security,
16 confidentiality, or integrity of personal information in the entity's possession.

17 2. The personal information was acquired in good faith by an employee or agent
18 of the entity, if the personal information is used for a lawful purpose of the entity.

19 (3) TIMING AND MANNER OF NOTICE. (a) Subject to sub. (5), an entity shall provide
20 the notice required under sub. (2) within a reasonable time, not to exceed 30 business
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24 of communication available to the entity.

1 (b) An entity shall provide the notice required under sub. (2) by mail or by a
2 method the entity has previously employed to communicate with the subject of the
3 personal information. If an entity cannot with reasonable diligence determine the
4 mailing address of the subject of the personal information, and if the entity has not
5 previously communicated with the subject of the personal information, the entity
6 shall provide notice by a method reasonably calculated to provide actual notice to the
7 subject of the personal information.

8 **(3m) REGULATED ENTITIES EXEMPT.** This section does not apply to any of the
9 following:

10 (a) An entity that is a financial institution, or any person under contract with
11 such an entity, if either of the following apply:

12 1. The entity is subject to, and in compliance with, the interagency guidance
13 on response programs for unauthorized access to customer information and
14 customer notice as published in the federal register on March 29, 2005.

15 2. The entity is subject to, and in compliance with, the guidance on response
16 programs for unauthorized access to member information and member notice as
17 published in the federal register on May 2, 2005.

18 (b) An entity that is described in 45 CFR 164.104 (a), if the entity complies with
19 the requirements of 45 CFR part 164.

20 **(4) EFFECT ON CIVIL CLAIMS.** Failure to comply with this section is not negligence
21 or a breach of any duty, but may be evidence of negligence or a breach of a legal duty.

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1 period. Notwithstanding subs. (2) and (3), if an entity receives such a request, the
2 entity may not provide notice of or publicize an unauthorized acquisition of personal
3 information, except as authorized by the law enforcement agency that made the
4 request.

5 (6m) LOCAL ORDINANCES OR REGULATIONS PROHIBITED. No city, village, town, or
6 county may enact or enforce an ordinance or regulation that relates to notice or
7 disclosure of the unauthorized acquisition of personal information.

8 (7m) EFFECT OF FEDERAL LEGISLATION. If the joint committee on administrative
9 rules determines that the federal government has enacted legislation that imposes
10 notice requirements substantially similar to the requirements of this section and
11 determines that the legislation does not preempt this section, the joint committee on
12 administrative rules shall submit to the revisor of statutes for publication in the
13 Wisconsin administrative register a notice of its determination. This section does not
14 apply after publication of a notice under this subsection.

15

(END)