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(FORM UPDATED: 08/11/2010)

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

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

**Committee on ... Veterans, Homeland Security,
Military Affairs, Small Business and Government
Reform (SC-VHSMASBGR)**

COMMITTEE NOTICES ...

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

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

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

Senate

Record of Committee Proceedings

Committee on Veterans, Homeland Security, Military Affairs, Small Business and Government Reform

Senate Bill 164

Relating to: notice regarding unauthorized acquisition of personal information.

By Senators Kanavas, Stepp, A. Lasee, Darling, Kedzie and Olsen; cosponsored by Representatives J. Fitzgerald, Gundrum, Davis, Nischke, Loeffelholz, Jensen, Bies, Hines, Ott, Vrakas, Ballweg, Kleefisch, Owens, Freese, Hundertmark, McCormick and Cullen.

April 08, 2005 Referred to Committee on Veterans, Homeland Security, Military Affairs, Small Business and Government Reform.

September 21, 2005 **PUBLIC HEARING HELD**

Present: (5) Senators Brown, Zien, Kanavas, Breske and Wirch.
Absent: (0) None.

Appearances For

- Ted Kanavas — State Senator, 33rd State Senate District

Appearances Against

- James Buchen, Madison — Wisconsin Manufacturers and Commerce
- Janet Jenkins, Madison — Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP)
- Steve Baas — Metropolitan Milwaukee Association of Commerce (MMAC)
- John Gerni, Washington, D.C. — American Council of Life Insurers (ACLI)
- Pat Osborne, Madison — Wisconsin Association of Life and Health Insurers (W.A.L.H.I.)

Appearances for Information Only

- Mike Semmann — Wisconsin Bankers Association

Registrations For

- None.

Registrations Against

- Louie Schubert, Madison — American Family Insurance
- Michelle Kussow, Madison — Wisconsin Grocers Association
- Eric Englund, Madison — Wisconsin Insurance Alliance

- Bill Skewes, Madison — Wisconsin Utilities Association
- Kathi Kilgore, Madison — Wisconsin Inn Keepers Association
- Doug Johnson, Madison — Wisconsin Merchants Federation and Midwest Hardware Association
- Jodie Tierney, Madison — Cingular Wireless
- Michael Vaughan, Madison — Cendant Corporation
- Bill Smith, Madison — National Federation of Independent Business
- Chet Gerlach, Madison — Association of Wisconsin Tourism Attractions

November 4, 2005

EXECUTIVE SESSION HELD*

*** - POLLING**

Moved by the Committee on Veterans, Homeland Security, Military Affairs, Small Business and Government Reform that **Senate Substitute Amendment 3 (LRBs02771/1)** be recommended for adoption.

Ayes: (5) Senators Brown, Zien, Kanavas, Breske and Wirch.
Noes: (0) None.

ADOPTION OF SENATE SUBSTITUTE AMENDMENT 3 (LRBS02771/1)
RECOMMENDED, Ayes 5, Noes 0

Moved by the Committee on Veterans, Homeland Security, Military Affairs, Small Business and Government Reform that **Senate Bill 164** be recommended for passage as amended.

Ayes: (5) Senators Brown, Zien, Kanavas, Breske and Wirch.
Noes: (0) None.

PASSAGE AS AMENDED RECOMMENDED, Ayes 5, Noes 0

Daniel Lindstedt
Committee Clerk

SENATE BILL 164 (LRB -2214)

An Act to create 895.507 of the statutes; relating to: notice regarding unauthorized acquisition of personal information.

2005

04-08.	S.	Introduced by Senators Kanavas, Stepp, A. Lasee, Darling, Kedzie and Olsen ; cosponsored by Representatives J. Fitzgerald, Gundrum, Davis, Nischke, Loeffelholz, Jensen, Bies, Hines, Ott, Vrakas, Ballweg, Kleefisch, Owens, Freese, Hundertmark, McCormick and Cullen .	
04-08.	S.	Read first time and referred to committee on Veterans, Homeland Security, Military Affairs, Small Business and Government Reform	158
09-19.	S.	Senate substitute amendment 1 offered by Senator Kanavas (LRB s0206)	353
09-21.	S.	Public hearing held.	
09-30.	S.	Fiscal estimate received.	
10-12.	S.	Senate substitute amendment 2 offered by Senator Kanavas (LRB s0222)	392
11-01.	S.	Senate substitute amendment 3 offered by Senator Kanavas (LRB s0277)	427
11-04.	S.	Executive action taken.	
11-07.	S.	Report adoption of Senate Substitute Amendment 3 recommended by committee on Veterans, Homeland Security, Military Affairs, Small Business and Government Reform, Ayes 5, Noes 0	437
11-07.	S.	Report passage as amended recommended by committee on Veterans, Homeland Security, Military Affairs, Small Business and Government Reform, Ayes 5, Noes 0	437
11-07.	S.	Available for scheduling.	
11-08.	S.	Placed on calendar 11-9-2005 by committee on Senate Organization.	
11-09.	S.	Read a second time	447
11-09.	S.	Senate substitute amendment 3 adopted	447
11-09.	S.	Ordered to a third reading	448
11-09.	S.	Rules suspended	448
11-09.	S.	Read a third time and passed	448
11-09.	S.	Senator Hansen added as a coauthor	445
11-09.	S.	Senator Lassa added as a coauthor	445
11-09.	S.	Senator Miller added as a coauthor to Senate substitute amendment 3	445
11-09.	S.	Ordered immediately messaged	451

2006

02-07.	A.	Received from Senate	795
02-07.	A.	Read first time and referred to committee on State Affairs	796
02-14.	A.	Public hearing held.	
02-21.	A.	Executive action taken.	
02-21.	A.	Assembly substitute amendment 1 offered by committee on State Affairs (LRB s0512)	821
02-21.	A.	Assembly amendment 1 to Assembly substitute amendment 1 offered by committee on State Affairs (LRB a2297)	821
02-21.	A.	Report Assembly Amendment 1 to Assembly Substitute Amendment 1 adoption recommended by committee on State Affairs, Ayes 9, Noes 0	823
02-21.	A.	Report Assembly Substitute Amendment 1 adoption recommended by committee on State Affairs, Ayes 9, Noes 0	823
02-21.	A.	Report concurrence as amended recommended by committee on State Affairs, Ayes 9, Noes 0	823
02-21.	A.	Referred to committee on Rules	823
02-21.	A.	Placed on calendar 2-23-2006 by committee on Rules.	
02-23.	A.	Read a second time	842
02-23.	A.	Assembly amendment 1 to Assembly substitute amendment 1 adopted	842
02-23.	A.	Assembly amendment 2 to Assembly substitute amendment 1 offered by Representative Molepske (LRB a2471)	842
02-23.	A.	Assembly amendment 2 to Assembly substitute amendment 1 laid on table	842
02-23.	A.	Assembly substitute amendment 1 adopted	842
02-23.	A.	Ordered to a third reading	842
02-23.	A.	Rules suspended	843
02-23.	A.	Read a third time and concurred in as amended, Ayes 96, Noes 0	843
02-23.	A.	Ordered immediately messaged	843
02-23.	S.	Received from Assembly amended and concurred in as amended, Assembly substitute amendment 1 as amended by Assembly amendment 1 adopted	621
02-23.	S.	Available for scheduling.	
02-23.	S.	Withdrawn from committee on Senate Organization and taken up	628
02-23.	S.	Assembly substitute amendment 1 concurred in	628
02-23.	S.	Action ordered immediately messaged	628
03-03.	S.	Report correctly enrolled on 3-3-2006	681

03-15.	S.	Presented to the Governor on 3-15-2006	747
03-17.	S.	Report approved by the Governor on 3-16-2006. 2005 Wisconsin Act 138	748
03-21.	S.	Published 3-30-2006	749

MOTION

Recommend Senate Substitute Amendment 3 (LRBs0277/1) to Senate Bill 164, relating to: notice regarding unauthorized acquisition of personal information, for adoption.

Aye X

No ~~R.B.~~

Signature

Roger Breske

Senator Roger Breske

MOTION

Recommend Senate Bill 164 (LRB-2214/1), relating to: notice regarding unauthorized acquisition of personal information, for passage as amended.

Aye X

No

Signature

Roger Breske
Senator Roger Breske

MOTION

Recommend Senate Substitute Amendment 3 (LRBs0277/1) to Senate Bill 164, relating to: notice regarding unauthorized acquisition of personal information, for adoption.

Aye X

No _____

Signature

Robert Wirch
Senator Robert Wirch

MOTION

Recommend Senate Bill 164 (LRB-2214/1), relating to: notice regarding unauthorized acquisition of personal information, for passage as amended.

Aye X

No _____

Signature

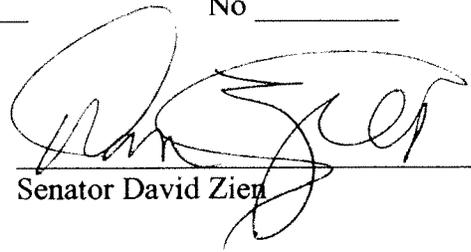
Robert Wirch
Senator Robert Wirch

MOTION

Recommend Senate Substitute Amendment 3 (LRBs0277/1) to Senate Bill 164, relating to: notice regarding unauthorized acquisition of personal information, for adoption.

Aye _____ No _____

Signature

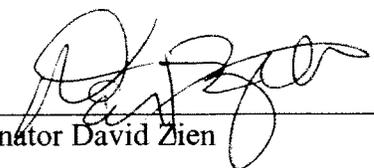


Senator David Zien

MOTION

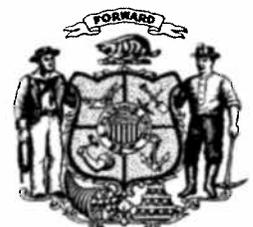
Recommend Senate Bill 164 (LRB-2214/1), relating to: notice regarding unauthorized acquisition of personal information, for passage as amended.

Aye ✓ No

Signature 
Senator David Zien



WISCONSIN STATE LEGISLATURE





SEP 06 2005

August 31, 2005

State Senator Ron Brown
State Capitol
PO Box 7882
Madison, Wisconsin 53707-7882

RE: Data Notification Legislation

Dear Senator Brown:

Thank you for taking time to meet yesterday and discuss the data security/customer notification issue and Senate Bill 164. The Wisconsin Bankers Association would be happy to arrange a meeting with you and one of the country's biggest financial service providers to discuss the level of resources dedicated to security, customer privacy, and the guidelines placed on Wisconsin businesses from Federal Regulators.

From both a reputational and financial perspective, no other sector of the economy has more at stake in protecting personal information than banking. I also argue that no other sector has done more than banking to safeguard data or to notify consumers if a breach in security has occurred.

In fact, federally insured depository institutions are the only businesses I am aware of that are required by federal regulators (Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Office of Thrift Supervision, Federal Reserve) to notify customers if the personal information we maintain is compromised.

Those clear, strict and unique federal requirements are one of the reasons the Wisconsin Bankers Association opposes including banks in a proposed state-level "data security notification" mandate.

Unlike what is proposed at the state level for all other businesses, the current federal bank notification requirement is enforced by bank regulators during regular on-site examinations and non compliance with the requirement can lead to significant penalties and fines. In other words, what is already in place for banks is tougher and more enforceable than what is being proposed at the state level for other businesses.

From our perspective, including banks in a duplicative state notification mandate is like trying to fix a problem that has already been solved.

WBA also opposes including banks in the proposed state-level requirement because it needlessly adds another component of legal liability to what banks already face under the federal rule. Businesses in Wisconsin are rightly concerned about recent Wisconsin

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Supreme Court rulings that may increase the number of frivolous lawsuits. WBA fears that a state-level notification requirement that includes banks will add to that threat.

Financial institutions that operate in multiple states are also concerned about the prospect of complying with a costly and confusing patchwork of notification mandates from state to state. It is much easier and makes more sense for banks and our customers to follow one national notification standard, which is already in place and working.

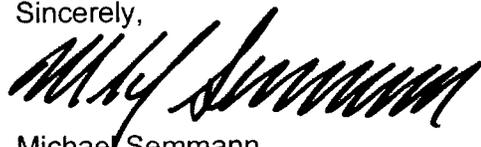
Finally, WBA is concerned that a state-level requirement will apply only to state-chartered institutions. Recently, the Office of the Comptroller of the Currency and Office of Thrift Supervision, which regulates national banks and federal thrifts respectively, have applied their broad preemption authorities over state and local laws that seek to regulate institutions chartered by the federal government. To date, the courts have upheld all legal challenges to OCC's and OTS' preemption powers.

Data Notification Requirement Legislation
September 2, 2005

If preemption over the state notification requirement were granted for national banks and federal thrifts, their state counterparts would be at a disadvantage. Such a regulatory disparity could prompt state chartered institutions to convert to a federal charter, a move that could reduce the Wisconsin Department of Financial Institutions' contribution of examination fees into the state's General Purpose Revenue fund.

For these reasons, WBA strongly believes that banks should be exempted from the proposed state-level notification requirement legislation on the solid public policy grounds that we already have an arguably stronger rule in place.

Sincerely,



Michael Semmann
Director – Government Relations

cc: Senate Majority Leader Dale Schultz
Tom Farrell, Chairman Wisconsin Bankers Association
Kurt R. Bauer, President/CEO Wisconsin Bankers Association



WISCONSIN STATE LEGISLATURE





101 Constitution Ave, NW
Suite 700
Washington, DC 2001-2133

Statement to The Committee on Veterans, Homeland Security, Military Affairs, Small
Business and Government Reform

September 21, 2005

My name is John Gerni of the American Council of Life Insurers. The ACLI consists of 356 member companies who sell and market a large majority of life insurance, annuities, long term care, and disability income products nationwide. Our members include Wisconsin companies such as Northwestern Mutual, Assurant, American Family, and Thrivent among others.

First of all, we would like to commend you for conducting the hearing. Reports of identity theft and breaches of data have increased especially during this past year. Reasonable measures to combat breach of security problems are appropriate in order to maintain consumer confidence so that businesses may continue to provide service to its customers.

At this point in time, eighteen states have adopted laws dealing with breach of security issues and two state bills are pending. While many of the laws are based on the California law, they all have deviations in way or the other. When such deviations occur, the cost of compliance increases. These deviations also results in delays in notifying the consumer if a breach occurs. Therefore, a uniform national standard that would provide both consistent protections for consumers, as well as simplified administration for businesses that must comply with new requirements is preferred. As you may be aware, numerous bills have been introduced in Congress to address this issue. In fact, the Senate Banking, Housing and Urban Affairs Committee will be conducting a hearing tomorrow regarding the protection of identity theft. Other state legislative organizations have also recognized the need to endorse a prudent and uniform approach to this issue. The American Legislative Exchange Council approved a Model Act in August and just this past weekend, the Council of State Governments endorsed the Delaware law which appears to be a reasonable approach to regulating breach of security. The U.S. Congress as well as ALEC and the CSG have all recognized the need to have a more uniformed approach to regulate this problem.

As it concerns the amendment to SB 164, the most significant problem and deviation from other state laws is the language dealing with notification to consumers. More specifically, SB 164 requires notification even when encrypted data has been breached. As you are aware, encrypted data transforms readable information into an indecipherable format so that no one can read the data unless they have access to the appropriate keys and algorithms to decrypt the data back into a readable form. Every state law enacted to date, and virtually every piece of federal legislation under serious consideration limits the scope of the requirement to unencrypted data. This provision may result in unwarranted notifications to Wisconsin consumers as a breach will likely have not occurred and of course will increase the cost of compliance to all businesses.

While we believe a more uniform – based approach to the security breach notification issue is best left to Congress, should the Wisconsin legislature move forward with such legislation, we hope that you will consider proposals recommended by ALEC or the CSG so that consumers and businesses are best served.



W.A.L.H.I.

Wisconsin Association of Life & Health Insurers

Memorandum

DATE: September 21, 2005
TO: Chairman Brown, Members of the Senate Committee on Veterans, Homeland Security, Military Affairs, Small Business and Government Reform
FROM: Pat Osborne, on behalf of the Wisconsin Association of Life & Health Insurers (WALHI)
RE: Opposition to Senate Bill 164

The Health and Life member companies of the Wisconsin Association of Life & Health Insurers recognize the vital importance of maintaining confidential personal information and secure data systems.

However, we are concerned that SB 164 is not in the best interest of Wisconsin based businesses or the customers they serve.

We appreciate the opportunity to comment on the bill and appear today in opposition to both Senate Bill 164, as introduced, and Senate Substitute Amendment 1 to the bill.

Uniform National Standards

WALHI believes that a uniform national standard regarding the breach of personal information offers the most effective regulatory approach in this area. With roughly 18 states having enacted some form of security breach legislation, the nation is already well underway towards developing a confusing and costly patchwork of administrative requirements. A uniform standard would provide more consistent protection for consumers and would simplify administrative burdens on business and state action should give way to national policy in this matter.

We recognize that Senate Substitute Amendment 1 contains a provision that would authorize the Joint Committee on Administrative Rules (JCRAR) to essentially nullify Wisconsin law if "substantially identical" federal legislation is subsequently enacted. While this provision validates concerns regarding overlapping federal and state requirements, it falls short of addressing the issue. To reiterate, Wisconsin should simply not establish new state requirements in advance of federal action.

Data Encryption

Absent policy agreement on promoting a federal solution, a Wisconsin version should at least attempt consistency with applicable laws in other states. The primary issue in this regard relates to the inclusion of encrypted data under the notice requirements in Senate Bill 164. Our understanding is that every state law enacted to date exempts encrypted data from the notice requirements applied to unencrypted data.

While no system can be totally guaranteed against illegal access, encrypted data is inherently more secure than unencrypted data and should be afforded the same treatment in Wisconsin as in other enacting states.

What purpose is served by sending a breach notice in the event an unauthorized person acquires encrypted data he/she has little or no chance of deciphering? Notice for notice sake serves little useful purpose and notice requirements should be reasonably linked to the risk of the data being used or useable for identity theft or other illegal purposes.

In addition, the lack of an encryption exemption unfairly places Wisconsin based businesses engaged in interstate commerce at a competitive disadvantage with out-of-state competitors. Under SB 164, a Wisconsin based company that lost encrypted data pertaining to residents of an encryption exempt state would have to provide a breach notice while a competitor company suffering a loss of similar encrypted data would not be required to provide notice.

If Wisconsin enacts separate state legislation, it should at least be consistent with other states on this critical point and include an exemption for encrypted data.

We appreciate your consideration of these primary points of concern and look forward to working with the Committee on this important matter.





The Hamilton Consulting Group

Legislative, Regulatory & Information Services

Dun & Bradstreet Business Information Services

1. The availability of the business information collected and organized by D&B is essential to our economy¹. Businesses need to be able to evaluate the risks of doing business with businesses they do not know. This need is not new. D&B has been supplying this information to businesses for over 160 years.
2. D&B **does not** collect information about individual consumers such as: social security numbers, medical records, driver's license numbers, or individual bank and credit card information.
3. D&B **does** collect information about businesses such as: addresses; names, education, and work-experience of corporate officers and directors; court filings; corporate domicile; and ownership structure.
4. D&B's business information is obtained from sources such as: state records, court records, other companies' databases, and businesses themselves.
5. D&B provides such business information to other businesses. This information facilitates transactions between these businesses². D&B helps answer questions such as these:
 - a. Should I extend credit to this new business customer?
 - b. What credit limit should I set?
 - c. Will this business customer pay me on time?
6. Businesses also need information about businesses to answer questions to grow their business:
 - a. Who are my best business customers?
 - b. Can I find business prospects that look like my best business customers?
 - c. Can I uncover new opportunities with my existing business customers?
7. In addition to business services, D&B supplies data to federal agencies to assist in regulatory compliance, financial management, law enforcement, homeland security, and supply management.
8. Any regulation of information services must be careful not to harm the US and global economy by inadvertently and unnecessarily restricting the flow of business information among businesses.

¹The D&B database contains information on over 92 million businesses worldwide.

² 98% of business transactions conducted in the US are done on credit. National Association of Credit Management

Jim Hough, May 2005



The
Hamilton Consulting Group
Legislative, Regulatory & Information Services

Dun & Bradstreet
Business Information Services

Statutory Definition of "Personal Information"

"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 Wisconsin 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.

For purposes of this section, "Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

Jim Hough, May 2005