

1999 DRAFTING REQUEST

Assembly Amendment (AA-AB101)

Received: 11/24/1999

Received By: **rmarchan**

Wanted: **As time permits**

Identical to LRB:

For: **Marlin Schneider (608) 266-0215**

By/Representing: **judy**

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

Drafter: **rmarchan**

May Contact:

Alt. Drafters:

Subject: **Fin. Inst. - banking inst.
Trade Regulation**

Extra Copies: **RNK
MGG**

Pre Topic:

No specific pre topic given

Topic:

Prohibit financial institution from selling 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>
/1	rmarchan 12/14/1999	chanaman 12/14/1999	jfrantze 12/15/1999	_____	lrb_docadmin 12/15/1999	lrb_docadmin 12/15/1999	

FE Sent For:

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FE Sent For:

W/M

<END>

22 October 1999

Steve:

This is a bill Marlin would like introduced. Also, he would like an amendment to AB 101. The reason for both is that he is not certain that the amendment would be germane to A101. Anyway, the crux of the legislation is to prohibit the banking industry from selling personal identifying information to anyone, including telemarketers.

It is not my belief that he wants this limited to telemarketers--he just would like banks to not sell information to anyone.

I am enclosing the article we talked about last week.

IF you have any questions, I will be gone until November 1, 1999. Otherwise you can call MDS at 6-0215.

Thanks
Judy

Data knows best

Marketers don't need much to track you down.

By KEVIN J. UPTON

They know what you did last summer. They know what you did last spring. They even know what you did the summer before last. They know things you did that even your closest friend doesn't know.

They are America's marketers. What you did is buy stuff. What they intend to do is make it easier for you to buy more of their stuff by figuring out what drives your consumer behavior.

One of the evolutionary events of our recent history is the transition away from mass marketing to one-to-one marketing. Mass marketing meant advertising products to as many people as one could afford to reach, hoping one or two percent of the audience would purchase the advertised product. Very risky. Very expensive.

The next phase in the transition was lifestyle marketing. Marketers took advantage of publicly available information—neighborhood data collected from the U.S. Census Bureau, television, radio and magazine audience demographics, recent purchases that triggered public records like car buying and home buying—to target a smaller segment of the population, one more likely to be interested in a specific product.

Today it's one-to-one marketing. It's about mining the data consumers leave. About figuring out future consumer patterns by reading buying records. It's about using mathematical models to predict future behavior from previous behavior.

For example, once upon a time, General Motors Cadillac Division bought television advertising time on the most popular shows. That meant telling the Caddy story to millions of people who were not potential buyers. The accuracy of this method was roughly 2% on target. A slightly refined "lifestyle" approach involved putting Cadillac ads on television golf shows because research showed a correlation between owning expensive American cars and playing golf. This tactic reduced the proportion of non-buyers in the audience, but it was far short of perfection.

Using today's data mining tools, an automobile company can examine in rich detail the behaviors of its current customers to predict who its future buyers might be. Used carefully, data mining may even suggest the motivations and unmet needs of potential buyers, making it easier to tailor an advertising message. The data may show that current Caddy owners not only like golf, but also live in certain zip codes, use American Express Gold Cards, read the *Wall Street Journal*, and own certain kinds of stock. That information constitutes six data points (CADDY, GOLF, ZIP CODE, GOLD CARD, WALL STREET JOURNAL, STOCK). Let the computer search out other people meeting these criteria, and it will yield a precisely targeted list. Now the conversion rate (that is, successfully reaching the consumer) might reach as high as 20%, very high for advertising.

At grocery stores that use electronic frequent-buyer programs, specific purchases will trigger specially targeted coupons. In most cases the coupons are part of a buyer loyalty program. Buy Crest toothpaste, get a coupon on your next Crest purchase. Sometimes the effort is designed to encourage brand switching. Buy Crest, get a coupon for Gleem. One national electronic coupon firm claims a conversion rate near 30%, versus 1% for those coupons in the Sunday paper.

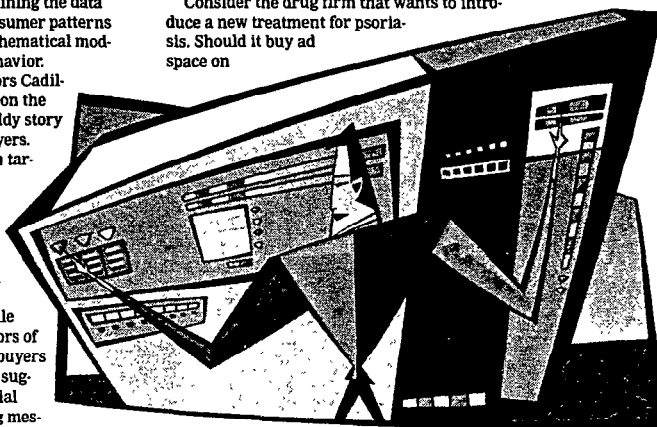
Buy a few books from the online bookstore Amazon.com. The next time you sign on, Amazon.com will suggest a few new books based on previous purchases. It can be eerie, and it is certainly not foolproof. A few months ago I bought multiple

copies of several novels for my wife and her book club friends—the price was too good to pass up. Now Amazon.com thinks I'm an African American woman.

Where does all this data come from? It comes directly from us. Every transaction we make using a traceable medium—check, credit card, frequent buyer card, ID—has the potential to get drawn into the database.

Marketers have been collecting information from us for decades. Until recently, however, the compute cost of making sense out of that data has been prohibitive. Rapid increases in computer processing power and speed, coupled with the swift decline in computer pricing, have put mainframe number-crunching power on the average desktop.

Consider the drug firm that wants to introduce a new treatment for psoriasis. Should it buy ad space on

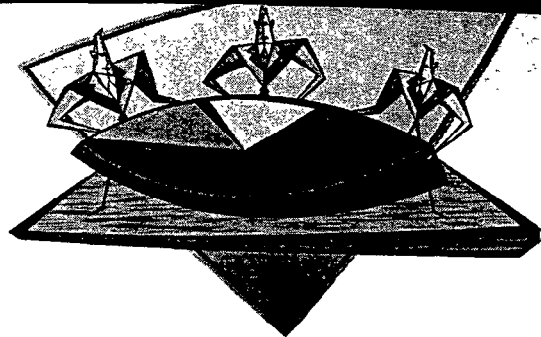


"Sixty Minutes," or should it rent a mailing list from a pharmacy chain that offers a customer list based on previous purchases of psoriasis treatments? One costs millions of dollars and reaches millions of uninterested consumers; the other costs a few thousand dollars and reaches a major chunk of the target audience. You pick.

Marketers are gaining access to formerly private data files in their search for the elusive key to consumer behavior. That key, once found, exposes consumers to persistent marketing intrusions that play upon their most private needs and vulnerabilities.

Far-fetched? The attorney general of Minnesota recently fined US Bank—the nation's 13th largest bank corporation—\$3 million for selling access to customer banking records.

The scheme involved an outside marketing firm that used the information to target specific consumer behaviors revealed by analysis of personal accounts. Imagine a telemarketer who not only knows your name, address



m personal finance

and phone number, but also your account balance and credit limit!

Does this scream invasion of privacy or what? Interestingly, in the US Bank case, the offense was described as selling confidential information to an outside firm. The case did not address the use of such information by the bank itself.

One-to-one marketing means that consumers who have multiple credit card accounts might be targeted for additional credit card offers. And if one's multiple accounts are maxed out, additional credit might be the moral equivalent of offering more whisky to a drunk driver.

In short, it means that any single consumer transaction might be used to sell more of the same thing, some of a complementary good or any of a competing product. It means that junk mail will be getting more personal.

Can it be stopped? There are consumer groups trying to improve privacy laws. There are marketers who advocate asking permission from consumers before using data in this manner.

Consumers can take steps to limit their exposure to the data miners. Using cash, for example, reduces the traceable nature of transactions. One can seek out banks or credit unions that promise not to sell data, though this will not stop insiders from cross-selling the information. One can work for privacy laws, but only at the federal level; state-level efforts are likely to be hollow because commerce no longer ends at state borders. Always ask telemarketers to remove your name from their lists. Never fill out a warranty card. (It doesn't affect your warranty.) Refuse to give information such as Social Security numbers, phone numbers or zip codes when making any transaction. And when you buy online or from catalogs, request that your data not be resold or used beyond the specific transaction.

But the genie may be out of the bottle. Take care that what you buy doesn't become a definition of who you are. And it never hurts to use cash for the naughty bits. Unless you want to read about your bad habits in the *National Enquirer*. (E)

WHEN NOT TRYING TO BALANCE HIS CHECKBOOK, KEVIN UPTON TEACHES AT THE UNIVERSITY OF MINNESOTA CARLSON SCHOOL OF MANAGEMENT.

12-14-99

Tel Judy in Rep. Schroeder's office

Turn LRB 3997 into AM to AB101

1999 ASSEMBLY BILL 101

February 9, 1999 – Introduced by Representatives SCHNEIDER, TRAVIS, STASKUNAS, MUSSER, POCAN, AINSWORTH, J. LEHMAN, BOCK, MILLER, BLACK, KREUSER, GOETSCH, RYBA, KRUG, GRONEMUS, GUNDERSON and BOYLE, cosponsored by Senators ERPENBACH, FARROW and DARLING. Referred to Committee on Judiciary and Personal Privacy.

1 **AN ACT to create** 138.25 of the statutes; **relating to:** credit card records and
2 providing a penalty.

Analysis by the Legislative Reference Bureau

Current law is silent regarding a person's authority to sell information about credit cardholders. 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. The bill also contains certain exceptions for disclosing information to affiliates of the issuer and to contractors or agents of the issuer for the purpose of performing functions for or on behalf of the issuer. 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 also authorizes the department of justice to bring actions in circuit court to enjoin violations of the disclosure provisions.

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

3 **SECTION 1.** 138.25 of the statutes is created to read:
4 **138.25 Credit card records.** (1) **DEFINITIONS.** In this section:
5 (a) "Cardholder" has the meaning given in s. 943.41 (1) (b).

ASSEMBLY BILL 101

1 (b) “Consumer report” has the meaning given in 15 USC 1681a (d).

2 (c) “Consumer reporting agency” has the meaning given in 15 USC 1681a (f).

3 (d) “Financial transaction card” has the meaning given in s. 943.41 (1) (em).

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

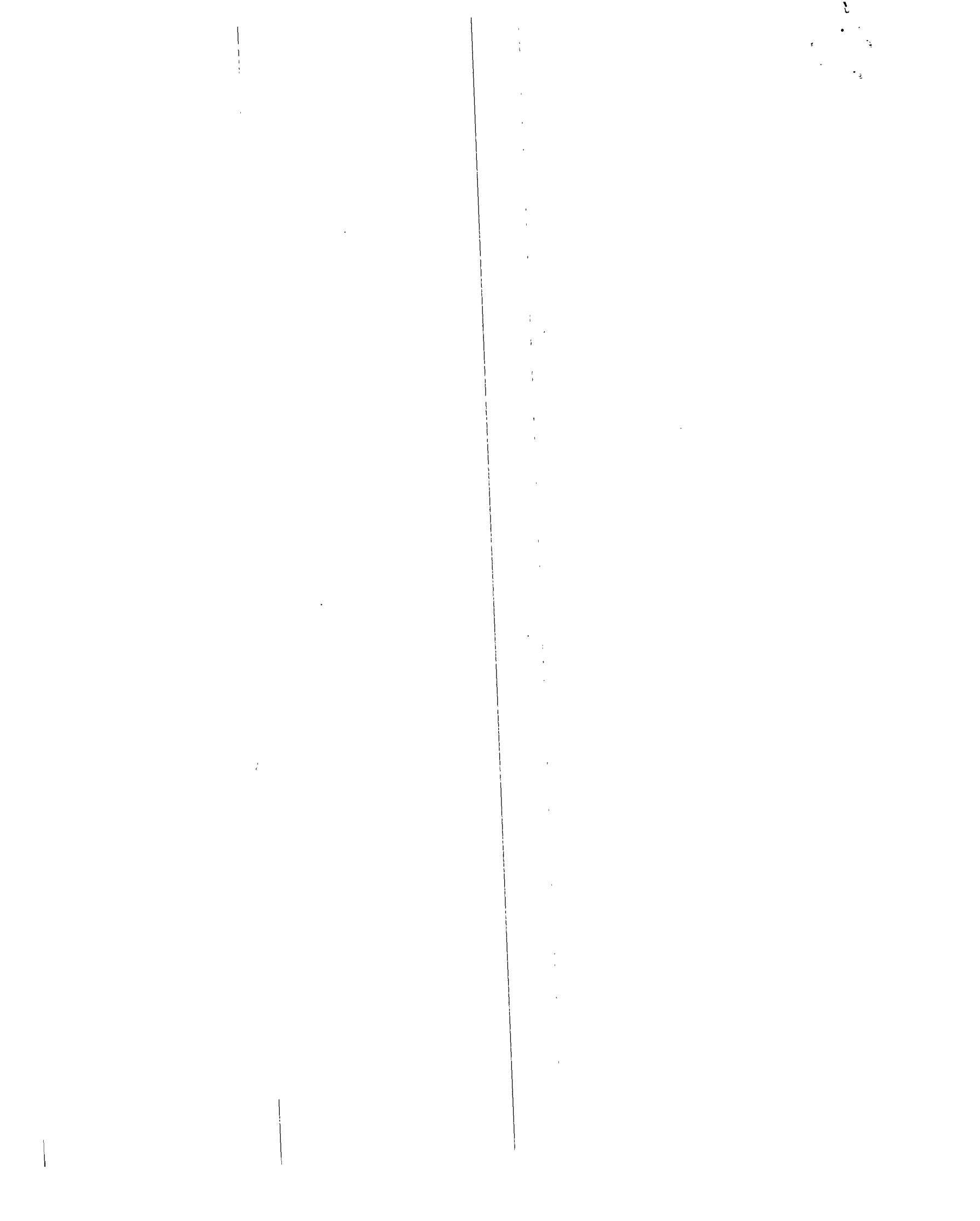
8 (3) **EXCEPTIONS.** A person may disclose information about a cardholder if any
9 of the following apply:

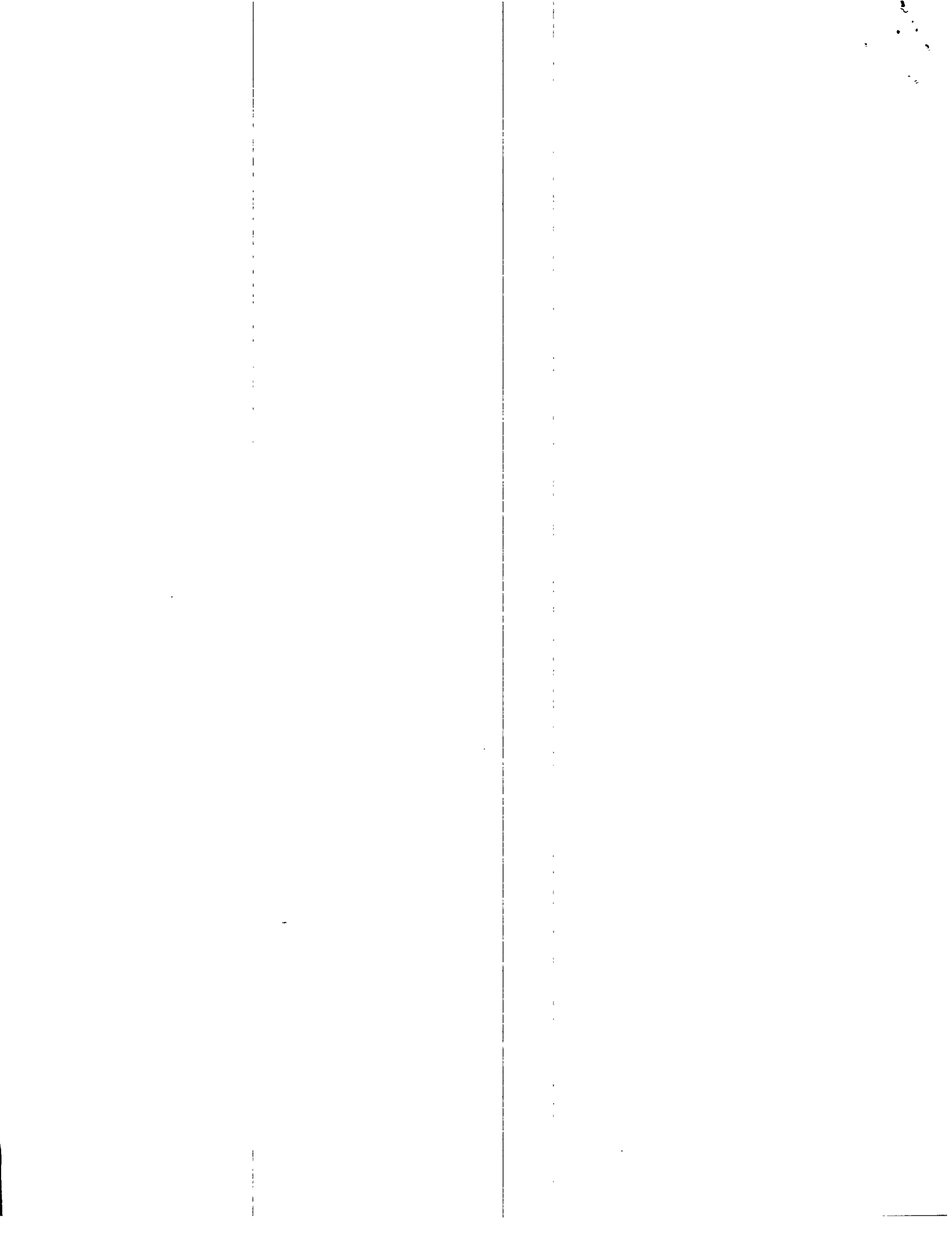
10 (a) The disclosure is made to a consumer reporting agency for purposes of a
11 consumer report.

12 (b) The disclosure is made to or by persons that are affiliated with the issuer
13 of the financial transaction card by common ownership or control solely for the
14 purpose of performing functions for or on behalf of the issuer. The affiliated person
15 may not disclose any information received pursuant to this paragraph to a person
16 other than the issuer, unless the issuer could make the disclosure under this section.

17 (c) If the issuer of the financial transaction card is a retailer, the disclosure is
18 made to or by contractors or agents of the issuer for the purposes of performing
19 functions for or on behalf of the issuer. The contractor or agent may not disclose any
20 information received pursuant to this paragraph to a person other than the issuer,
21 unless the issuer could make the disclosure under this section.

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







State of Wisconsin
1999 - 2000 LEGISLATURE

1
LRBa1081
RJM:.....

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cmr
SLG
RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

ASSEMBLY AMENDMENT,
TO 1999 ASSEMBLY BILL 101

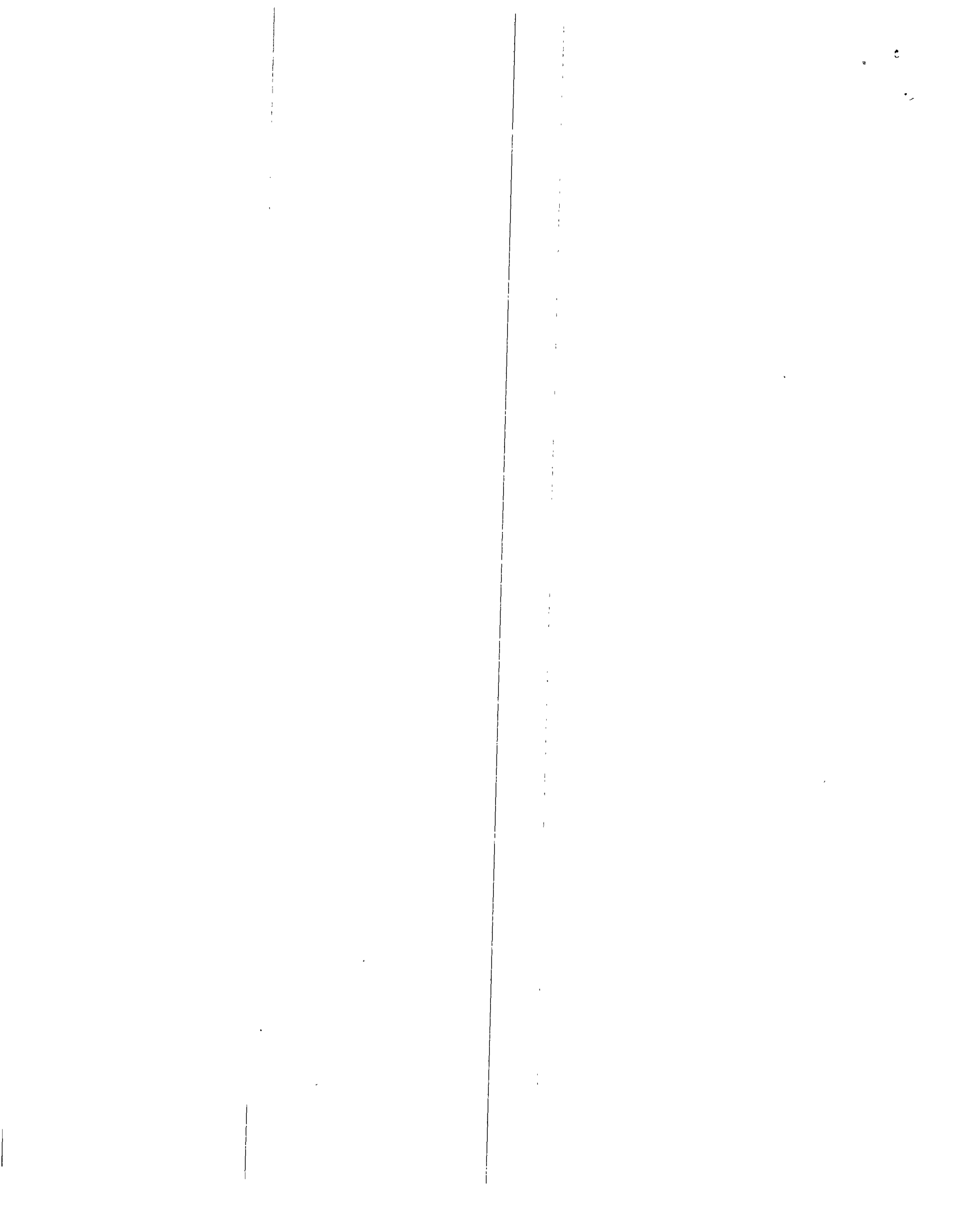
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INSERT 1-2

1 At the locations indicated, amend the bill as follows:

2 1. Page 3, line 3: after that line insert:

3 (END)



BILL

INSERT 1-2

With certain exceptions, though, the bill does prohibit these affiliates, contractors and agents from selling any personally identifiable information received from a financial institution. Finally, the bill repeals the provisions in current law authorizing the sale or other use of customer lists by state savings and loan associations and state savings banks.

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

1 SECTION 2. 214.37 (4) (n) of the statutes is created to read:

2 214.37 (4) (n) The disclosure of information pursuant to s. 224.45.

3 SECTION 3. 214.37 (7) of the statutes is repealed.

4 SECTION 4. 215.26 (8) (c) of the statutes is amended to read:

5 215.26 (8) (c) The books and records of an association pertaining to savings
6 accounts and loans shall be kept confidential by the association, its directors, officers
7 and employes. Except as authorized under pars. (a) and (d) to (f) and s. 224.45, no
8 other person may have access to the books and records or may be furnished or may
9 possess a partial or complete list of borrowers or savings account owners.

10 SECTION 5. 215.26 (8) (f) of the statutes is repealed.

11 SECTION 6. 224.45 of the statutes is created to read:

12 224.45 ^{(B) Disclosure} ~~Sale~~ of personal customer information. (1) DEFINITIONS. In this
13 section:

14 (a) "Affiliate" has the meaning given in s. 66.082 (2) (a).

15 (b) "Financial institution" has the meaning given in s. 705.01 (3).

16 (c) "Personally identifiable information" has the meaning given in s. 19.62 (5).

17 (2) ^{(B) DISCLOSURE} ~~SALE~~ BY FINANCIAL INSTITUTIONS. (a) *Generally*. Except as provided in par.

18 (b), no financial institution may disclose to another person, for money or anything
19 else of value, any personally identifiable information that relates to a customer of the

Notwithstanding
s. 138.25 (2) and



BILL

1 financial institution or that relates to a customer of an affiliate of the financial
2 institution.

3 (b) *Exceptions.* If any of the following applies, a financial institution may
4 disclose personally identifiable information that relates to a customer of the
5 financial institution or that relates to a customer of an affiliate of the financial
6 institution:

7 1. The disclosure is made with the consent of the customer to whom the
8 personally identifiable information being disclosed relates.

9 2. The disclosure is made to an affiliate of the financial institution.

10 3. The disclosure is made to a contractor or agent of the financial institution
11 for the purpose of enabling the contractor or agent to perform functions for or on
12 behalf of the financial institution.

Notwithstanding § 138.25(3)(b) and (c),

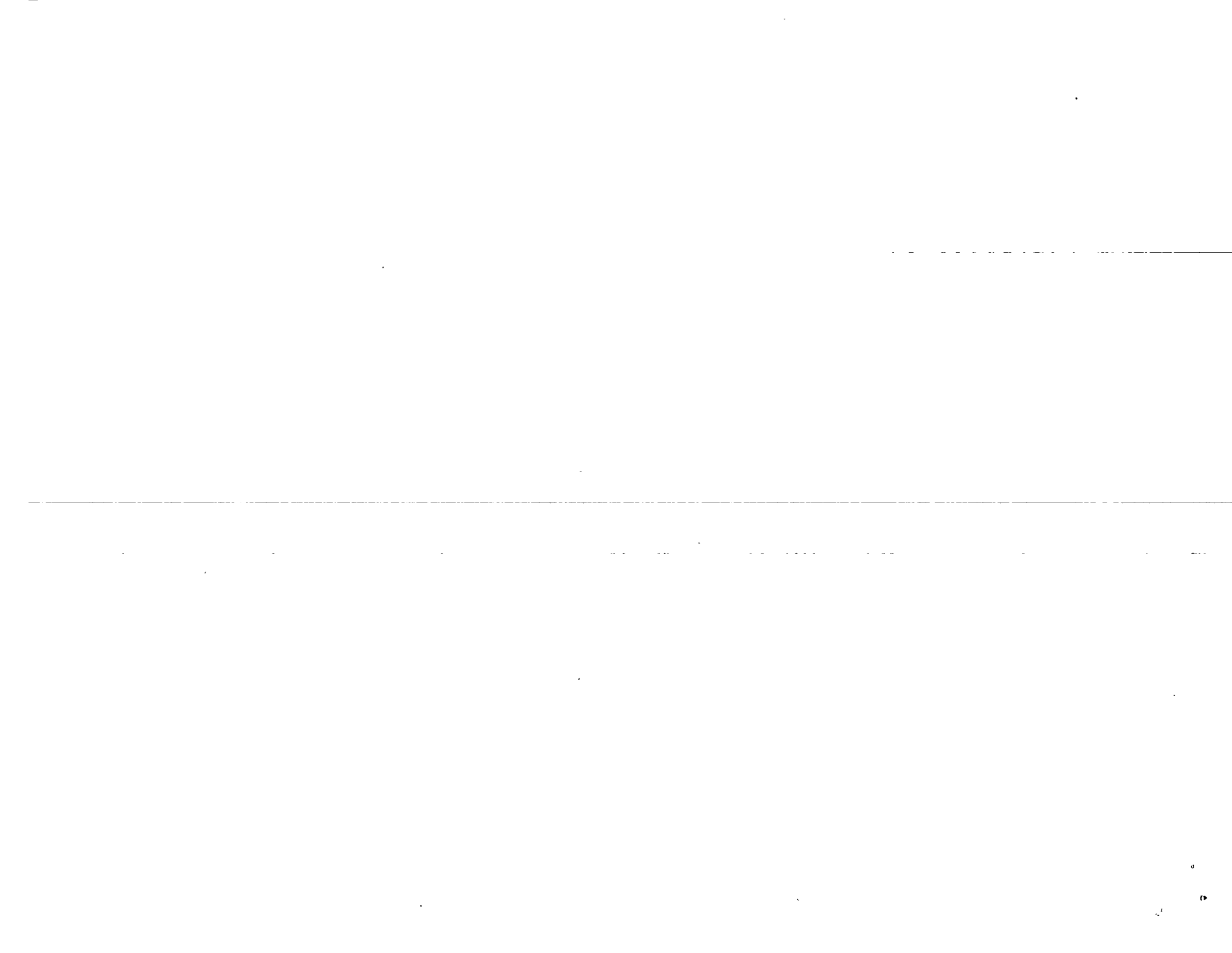
DISCLOSURE

13 (3) ~~SALE~~ BY AFFILIATES, CONTRACTORS AND AGENTS. ~~No~~ affiliate, contractor or
14 agent of a financial institution may disclose to another person, for money or anything
15 else of value, any personally identifiable information received from the financial
16 institution, unless the disclosure is to the financial institution or unless the financial
17 institution would be allowed to make the disclosure under sub. (2).

18 (4) PENALTY. Any person that violates sub. (2) or (3) may be required to forfeit
19 not more than \$10,000 for each violation. Each disclosure of information relating to
20 a particular customer constitutes a separate violation.)

21

~~END~~
END INS



**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa1081/1dn
RJM:.....

Representative Schneider:

1. I applied the same forfeiture to a violation of this amendment as is provided in 1999 AB-101. Please let me know if you desire any changes.

2. Although it is difficult to predict how a court would hold, this amendment may unconstitutionally impair existing contracts that require financial institutions to furnish personal customer information. Because the disclosure of customer information by financial institutions is not heavily regulated, a court may hold that this bill causes an unforeseeable, substantial impairment of existing contracts. See *Chrysler Corp. v. Kolosso Auto Sales, Inc.*, 148 F.3d 892 (7th Cir. 1998). To avoid this possibility, you may want to consider an initial applicability provision that, in effect, exempts existing contracts from the requirements of this amendment.

3. Portions of the federal Gramm-Leach-Bliley Act (P.L. 106-102), which will take effect approximately six months after the promulgation of certain federal regulations, will regulate the manner in which financial institutions may disclose personal customer information to nonaffiliates. Among other things, P.L. 106-102 will generally require financial institutions to permit customers to opt out of these types of disclosures. Upon taking effect, these provisions may preempt the enforcement of this amendment against federal financial institutions.

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

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa1081/1dn
RJM:cmh&jlg:jf

December 14, 1999

Representative Schneider:

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