

# 1999 ASSEMBLY BILL 549

October 20, 1999 – Introduced by Representatives HUEBSCH, RHOADES, SUDER, PETTIS, MONTGOMERY, LADWIG, M. LEHMAN, MUSSER, PORTER, STONE, OWENS and LEIBHAM, cosponsored by Senators DRZEWIECKI and WELCH. Referred to Committee on Judiciary and Personal Privacy.

1     **AN ACT to create** 895.502 of the statutes; **relating to:** limiting disclosure of  
2           information regarding children and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

This bill prohibits any person, including public agencies, from disclosing any personal information about or obtained from a person under 18 years of age for commercial or trade purposes without the prior written consent of the parent or guardian of the child. The bill does not prohibit a person from disclosing information to an appropriate public agency to the extent necessary for investigative or law enforcement purposes. The bill allows a parent to withdraw consent and prohibits further disclosure once that consent is withdrawn. Under the bill, the person given consent to disclose information about the child must provide the parent or guardian certain information, including the information being disclosed and the identity of persons to whom the information will be disclosed.

The bill prohibits the conditioning of the any sale, service or other thing of value on the parent granting the consent to disclose personal information regarding a child. The bill provides that a person who receives a child's personal information in connection with a sale, service, game or other thing of value may not contact that child for any reason other than in connection with the specific sale, service, game or other thing of value. The bill prohibits the use of prison inmate labor for data processing regarding the personal information of a child under 18 years of age. The bill also requires a person to make an effort to obtain certain information before disclosing a child's personal information for commercial or trade purposes, including the identity of the user of the information and the purpose for which the information will be used.

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The bill gives the parent's and the attorney general authority to petition for an injunction of the use of a child's personal information disclosed in violation of the provisions of this bill.

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

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

1           **SECTION 1.** 895.502 of the statutes is created to read:

2           **895.502 Personal information of children. (1)** In this section:

3           (a) "Child" means a person under 18 years of age.

4           (b) "Disclose" means to make available to another person by exchanging,  
5           renting, revealing, selling or releasing.

6           (c) "Immediate family" means persons who are related as spouses, as siblings  
7           or as parent and child.

8           (d) "Person" means a natural person, corporation, limited liability company,  
9           partnership, association, cooperative, county, city, village, town or other local  
10          governmental unit, utility, the state of Wisconsin or a state agency.

11          (e) "Personal information" means any data that identify a child or a child's  
12          immediate family or guardian, including the child's name, postal or electronic mail  
13          address, telephone number, social security number, date of birth, physical  
14          description or income.

15          **(2)** No person may disclose personal information about or obtained from a child  
16          for commercial or trade purposes without the prior written consent of a parent or  
17          guardian of the child. This subsection does not prohibit a person from disclosing  
18          information to an appropriate public agency to the extent necessary for investigative  
19          or law enforcement purposes.

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1           **(3)** A parent or guardian may withdraw the written consent given under sub.  
2           (2) at any time, in writing. If consent is withdrawn under this subsection, the further  
3           disclosure of personal information is prohibited. A parent or guardian may correct  
4           or revise any personal information previously permitted to be disclosed if that  
5           information changes.

6           **(4)** When a person receives consent to disclose personal information, he or she  
7           shall provide the parent or guardian with all of the following in writing prior to  
8           disclosing any personal information:

9           (a) The source of the personal information.

10          (b) A copy of the personal information that will be disclosed.

11          (c) The identity of all persons to whom the personal information is intended to  
12          be disclosed.

13          (d) The procedures by which a parent or guardian may correct, revise or  
14          withdraw consent to use the personal information.

15          **(5)** No person may condition the provision of any sale, service or other thing  
16          of value to a child or to the child's parent or guardian on the granting of consent to  
17          disclose personal information regarding the child.

18          **(6)** Whenever any person purchases or acquires personal information and uses  
19          that information to directly contact a child or the child's parent or guardian to  
20          attempt to sell any thing of value or to offer any service or thing of value, the person  
21          shall provide the child's parent or guardian with all of the following in writing:

22          (a) The source of the personal information.

23          (b) A copy of the personal information.

24          (c) The identity of all persons to whom the personal information is intended to  
25          be disclosed.

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1           **(7)** No person may disclose any personal information to any person other than  
2 those persons identified under sub. (4) (c) or (6) (c) unless consent is obtained to  
3 disclose that personal information to those additional persons.

4           **(8)** A person who receives personal information under this section for  
5 commercial or trade purposes in connection with a sale, service, game, contest, club  
6 or other thing of value may not contact the child whose personal information is used  
7 for any reason other than in connection with that sale, service, game, contest, club  
8 or other thing of value, unless the child's parent or guardian gives consent to that  
9 contact.

10           **(9)** No person may knowingly use prison inmate labor for data processing or  
11 input of personal information.

12           **(10)** No person may disclose personal information for commercial purposes or  
13 purposes of trade without first making a reasonable effort to secure all of the  
14 following:

15           (a) The identity of the user of the personal information, including the user's  
16 name, postal or electronic mail address and telephone number.

17           (b) The purpose for which the personal information will be used.

18           (c) When appropriate, a sample of the type of material to be distributed using  
19 that information.

20           **(11)** This section does not apply to the requirements to report certain  
21 information to consumer reporting agencies under 15 USC 1681 to 1681u or to any  
22 law enforcement authorities or other government officials who are engaged in a  
23 search for a child.

24           **(12)** The attorney general may file a petition to enjoin the use of personal  
25 information disclosed in violation of this section after giving at least 5 days' notice

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1 to the defendant. A court may issue an injunction against the further use of the  
2 personal information if the court determines that the defendant has violated this  
3 section, whether or not anyone was harmed by the disclosure of information in  
4 violation of this section.

5 **(13)** A parent or guardian may bring a cause of action on behalf of a child or  
6 himself or herself for the disclosure of personal information against a person who  
7 violates this section to enjoin the person from further use of the information and for  
8 actual damages or \$500, whichever is greater.

9 **(14)** (a) A person who violates this section shall be fined not more than \$10,000  
10 for the first offense and not more than \$25,000 for a 2nd or subsequent offense.

11 (b) No person may be be fined under this subsection if the person shows, by a  
12 preponderance of the evidence, that the violation was not intentional and resulted  
13 from a bona fide error that occurred notwithstanding the person's adherence to  
14 procedures designated to ensure compliance with this section.

15 **SECTION 2. Initial applicability.**

16 (1) This act first applies to disclosures of personal information made on the  
17 effective date of this subsection.

18 (END)