

**1999 DRAFTING REQUEST**

**Assembly Substitute Amendment (ASA-SB46)**

Received: **05/06/1999**

Received By: **rmarchan**

Wanted: **Soon**

Identical to LRB:

For: **Steven Foti (608) 266-2401**

By/Representing: **Michael**

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

Drafter: **rmarchan**

May Contact:

Alt. Drafters:

Subject: **Fin. Inst. - miscellaneous**  
**Criminal Law - miscellaneous**

Extra Copies: **JEO**

**Pre Topic:**

No specific pre topic given

**Topic:**

Disposal and use of documents containing 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>
/?	rmarchan 05/10/1999	gilfokm 05/10/1999		_____			
/1	rmarchan 05/17/1999	gilfokm 05/17/1999	hhagen 05/11/1999	_____	lrb_docadmin 05/11/1999	lrb_docadmin 05/11/1999	
/2			martykr 05/18/1999	_____	lrb_docadmin 05/18/1999	lrb_docadmin 05/18/1999	
/3	rmarchan 08/03/1999	gilfokm 08/04/1999	mclark 08/04/1999	_____	lrb_docadmin 08/04/1999	lrb_docadmin 08/04/1999	

08/04/1999 02:29:02 PM  
Page 2

FE Sent For:

**<END>**

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/?	rmarchan 05/10/99	gilfokm 05/10/99		_____			
/1	rmarchan 05/17/99	gilfokm 05/17/99	hhagen 05/11/99	_____	lrb_docadmin 05/11/99	lrb_docadmin 05/11/99	
/2		<i>13-8-4-99</i> kmg	martykr 05/18/99	_____	lrb_docadmin 05/18/99	lrb_docadmin 05/18/99	

FE Sent For:

*MRC  
8/4*

*MRC/JF  
8/4  
<END>*

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**Pre Topic:**

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**Topic:**

Disposal and use of documents containing personal information

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**Instructions:**

See Attached

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<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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/1		<i>12-5-17-99</i> kmg	hhagen 05/11/99 <i>km 5/19</i>	_____	lrb_docadmin 05/11/99	lrb_docadmin 05/11/99	
FE Sent For:				<i>km 5/18</i>			

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**Instructions:**

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1?	rmarchan	6-5-99 Kmg	5/11	mc 5/11			

FE Sent For:

<END>

1

a0772

① D

FOTI

Do sub.

- ✓ Add language so business can go after someone if damaged
- ✓ Change cause of action to apply regardless of how info was disposed
- ✓ Incorporate SA recovery fees into the sub.



State of Wisconsin  
1999 - 2000 LEGISLATURE

006611

LRBs @ [initials]

RJM @ [initials]

Due Tuesday 5-11-99

Assembly

SENATE SUBSTITUTE AMENDMENT 1,  
TO 1999 SENATE BILL 46

stex  
RMWR  
PWS

March 18, 1999 - Offered by COMMITTEE ON PRIVACY, ELECTRONIC COMMERCE AND FINANCIAL INSTITUTIONS

Jan Cat.

1 AN ACT to create 895.505 of the statutes; relating to: disposal of documents  
2 containing personal information. use of personal information in disposed records and providing a penalty

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

3 SECTION 1. 895.505 of the statutes is created to read:  
4 895.505 <sup>Records</sup> ~~Disposal of records~~ containing personal information. (1)

5 DEFINITIONS. In this section:

- 6 (a) "Credit card" has the meaning given in s. 421.301 (15).
- 7 (b) "Financial institution" means any bank, savings bank, savings and loan  
8 association or credit union that is authorized to do business under state or federal  
9 laws relating to financial institutions, any issuer of a credit card or any investment  
10 company.
- 11 (c) "Investment company" has the meaning given in s. 180.0103 (11e).

INSERT 1-6

1 (d) "Medical business" means any organization or enterprise operated for profit  
2 or not for profit, including a sole proprietorship, partnership, firm, business trust,  
3 joint venture, syndicate, corporation, limited liability company or association, that  
4 possesses information, other than personnel records, relating to a person's physical  
5 or mental health, medical history or medical treatment.

6 (e) "Personal information" means any of the following:

7 1. Personally identifiable data about an individual's medical condition, if the  
8 data is not generally considered to be public knowledge.

9 2. Personally identifiable data that contains an individual's account or  
10 customer number, account balance, balance owing, credit balance or credit limit, if  
11 the data relates to an individual's account or transaction with a financial institution.

12 3. Personally identifiable data provided by an individual to a financial  
13 institution upon opening an account or applying for a loan or credit.

14 4. Personally identifiable data about an individual's insurance, if the insurance  
15 is related to a transaction with a financial institution.

16 5. Personally identifiable data about an individual's federal, state or local tax  
17 <sup>returns</sup>  
~~records~~.

18 (f) "Personally identifiable" means capable of being associated with a particular  
19 individual through one or more identifiers or other information or circumstances.

20 (g) "Record" means any material on which written, drawn, printed, spoken,  
21 visual or electromagnetic information is recorded or preserved, regardless of  
22 physical form or characteristics.

23 (h) "Tax preparation business" means any organization or enterprise operated  
24 for profit, including a sole proprietorship, partnership, firm, business trust, joint  
25 venture, syndicate, corporation, limited liability company or association, that <sup>for a fee</sup>



1 prepares ~~one or more~~ <sup>an individual's</sup> federal, state or local tax ~~files~~ <sup>returns</sup> or counsels ~~others~~ <sup>an individual</sup> regarding  
 2 the ~~persons~~ <sup>individuals</sup> federal, state or local tax ~~files~~ <sup>returns</sup>.

3 (2) DISPOSAL OF RECORDS CONTAINING PERSONAL INFORMATION. A financial  
 4 institution, medical business or tax preparation business may not dispose of a record  
 5 containing personal information unless the financial institution, medical business,  
 6 tax preparation business or other person under contract with the financial  
 7 institution, medical business or tax preparation business does any of the following:

- 8 (a) Shreds the record before the disposal of the record.
- 9 (b) Erases the personal information contained in the record before the disposal  
 10 of the record.
- 11 (c) Modifies the record to make the personal information unreadable before the  
 12 disposal of the record.
- 13 (d) Takes actions that it reasonably believes will ensure that no unauthorized  
 14 person will have access to the personal information contained in the record for the  
 15 period between the record's disposal and the record's destruction.

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INJECT 3-19

16 (3) ~~CIVIL LIABILITY, DISPOSAL AND USE. (a)~~ <sup>(3)</sup> ~~Cost of copies~~ A financial institution, medical business or tax  
 17 preparation business is liable to a person whose personal information is ~~disclosed~~  
 18 disposed of in violation of sub. (2) for the amount of damages resulting from the  
 19 violation ~~and for reasonable attorney fees~~.

20 SECTION 2. Effective date.

21 (1) This act takes effect on the first day of the 4th month beginning after  
 22 publication.

23 (END)

AM

INSERT 1-6 ✓

(A) "Dispose" does not include a sale of a record or the transfer of a record for value.

INSECT  
3-19

1 ~~7. Page 3, line 17: delete "a person" and substitute "an individual".~~

2 ~~8. Page 3, line 20: before that line insert:~~

3 (b) Any person who, for any purpose, uses personal information contained in  
4 a record that was disposed of <sup>by a financial institution, medical business or tax preparation business</sup> ~~in violation of sub. (2)~~ is liable to an individual who is  
5 the subject of the information <sup>AND</sup> ~~to~~ <sup>to the financial institution, medical business or tax preparation business that</sup> ~~disposed of~~ <sup>disposed of</sup> ~~the record~~ for the amount of damages resulting from the person's  
6 use of the information. This paragraph does not apply to a person who uses personal  
7 information with the authorization or consent of the individual who is the subject of  
8 the information.

AS  
DISPOSAL AND USE

9 (4) PENALTIES. (a) A financial institution, medical business or tax preparation  
10 business that violates sub. (2) may be required to forfeit not more than \$1,000 for  
11 each violation.

12 (b) <sup>Any person who</sup> ~~Whoever~~ possesses a record ~~containing personal information~~ that was  
13 disposed of <sup>by a financial institution, medical business, or tax preparation business and who intends</sup> ~~in violation of sub. (2) with intent~~ to use, for any purpose, ~~the~~ personal  
14 information contained in the record may be fined not more than \$10,000 or  
15 imprisoned for not more than 2 years or both. This paragraph does not apply to a  
16 person who possesses a record with the authorization or consent of the individual  
17 whose personal information is contained in the record.

ee

~~CONFIDENTIAL~~

17  
18

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

LRBs0066/1dn

RJM:.....

*attorney*

1. Attached is the substitute amendment to SB46 that you requested. This amendment is based on senate substitute amendment 1 to SB46, as amended by senate amendment 1, which ~~deleted the attorney fees provision~~. This amendment incorporates LRBa0272/2, as well as the following changes:

(a) Title of proposed s. 895.505 and <sup>proposed s.</sup> 895.505 (3) and (4) revised to more accurately reflect the content the proposed statute.

(b) The word "improperly" in proposed s. 895.505 (3) removed as extraneous and confusing. The word implies that there is a proper method of violating proposed s. 895.505 (2).

(c) Liability provision for use of disposed personal information expanded to provide cause of action for damaged financial institution, medical business or tax preparation business and expanded to cover use of personal information regardless of how the personal information was disposed of.

(d) Penalty provision for use of disposed personal information expanded to penalize use of personal information regardless of how the personal information was disposed of.

2. This <sup>substitute</sup> amendment also clarifies the meaning of "dispose". Because "dispose" currently is not defined in the bill, a court could interpret the term to include the sale of a record. Under the definition in this amendment, the sale of a record is not a disposal and, therefore, does not trigger the requirements of proposed s. 895.505 (2). However, it remains unclear whether the voluntary transfer of records between affiliated businesses is a disposal that triggers the requirements of proposed s. 895.505 (2). Furthermore, this definition does not address the problem of a regulated business transferring a record for nominal value. I did not address these concerns because to do so would require additional changes to the bill and it is my understanding that, for political reasons, changes must be kept to a minimum. In addition, to resolve these issues I would need additional information regarding your intent. If you intend to address these concerns or if the definition is otherwise not consistent with your intent, please let me know.

3. As I have discussed with your office, I have two areas of concern with the criminal penalty provisions in proposed s. 895.505 (4) (b). First, this bill may be unconstitutionally vague if applied in a criminal prosecution. Although the definition

✓  
of "personal information" was sufficient when the bill only provided a civil remedy, the definition may not be constitutionally sufficient to delineate a crime. See *State v. Popanz*, 112 Wis. 2d 166 (1983).

Second, by penalizing possession of a record with intent to use, for any purpose, the information contained in the record, proposed s. 895.505 (4) (b) may be broader than you intend. For example, this statute may penalize a journalist who investigates a business's trash to determine how well the business destroys its records. One option would be to apply criminal penalties to possession of a record with intent to use information contained in the record to harm the individual whose information is contained in the record or to obtain something of value. Another more enforceable option would be to penalize the use, rather than the possession, of the information. This approach is used in the current identity theft statute. See s. 943.201, stats.

Please feel free to call if you desire any changes to this amendment.

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**

LRBs0066/1dn  
RJM:kmg:hmh

May 11, 1999

1. Attached is the substitute amendment to SB-46 that you requested. This amendment is based on senate substitute amendment 1 to SB-46, as amended by senate amendment 1, which deleted the attorney fees provision. This amendment incorporates LRBa0272/2, as well as the following changes:

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Please feel free to call if you desire any changes to this amendment.

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

## Marchant, Robert

---

**From:** Marchant, Robert  
**Sent:** Friday, May 14, 1999 3:58 PM  
**To:** Heifetz, Michael  
**Subject:** Disposal of records: penalty language

Mike--

I have come up with two options for changing the penalty language in sub. (4) (b). It is my understanding that you do not want to have a single disposal of 1,000 records count as 1,000 separate violations. Strangely enough, this is a very difficult concept to convey in statutory language without causing unintended consequences. Here are the options I have come up with:

### Option 1

A financial institution, medical business or tax preparation business that violates sub. (2) may be required to forfeit not more than \$1,000. Acts arising out of the same incident or occurrence shall be a single violation.

### Option 2

A financial institution, medical business or tax preparation business that violates sub. (2) may be required to forfeit not more than \$1,000. Each day that a financial institution, medical business or tax preparation business disposes of records in violation of sub. (2) shall be a separate violation.

Option 1 uses a phrase that currently is located in several places in the statutes. Thus, the phrase has the benefit of being interpreted in the past and being somewhat understood. However, upon closer analysis it may not be clear just what "the same incident or occurrence" means in this context. If a business takes a week to dispose of all records from 1985 and fails to shred the records before disposal, it is possible that the business has only committed one violation under option 1, even if records are improperly placed in a dumpster for 5 straight days. The business could argue that the disposal of each record from 1985 arose out of the same incident or occurrence.

Option 2 is less ambiguous, in my opinion. This option would create a separate violation for each day that a business improperly disposes of a record. However, it is important to note that a business could dispose of any number and type of records on the same day and, under option 2, the business would have committed one violation.

After you have reviewed these options please let me know how you want to proceed. Also, please call if you have any questions. Thanks.

*Robert J. Marchant*  
Legislative Attorney  
State of Wisconsin Legislative Reference Bureau  
robert.marchant@legis.state.wi.us



5-17-99

Tcf Mike H. @ Rep. Fotis's office

① Concern over p2 lines 17-18. Delete.

② Use option 1 re: penalty language in email.



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRBs0066/2  
RJM:kmg:hnh

~~ASSEMBLY SUBSTITUTE AMENDMENT~~

ASSEMBLY SUBSTITUTE AMENDMENT,  
TO 1999 SENATE BILL 46

RMNR

DNOFE

Wed. 5-19

1 AN ACT to create 895.505 of the statutes; relating to: disposal of documents  
2 containing personal information, use of personal information in disposed  
3 records and providing a penalty.

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

4 SECTION 1. 895.505 of the statutes is created to read:

5 **895.505 Records containing personal information. (1) DEFINITIONS.** In  
6 this section:

7 (a) "Credit card" has the meaning given in s. 421.301 (15).

8 (am) "Dispose" does not include a sale of a record or the transfer of a record for  
9 value.

10 (b) "Financial institution" means any bank, savings bank, savings and loan  
11 association or credit union that is authorized to do business under state or federal

1 laws relating to financial institutions, any issuer of a credit card or any investment  
2 company.

3 (c) "Investment company" has the meaning given in s. 180.0103 (11e).

4 (d) "Medical business" means any organization or enterprise operated for profit  
5 or not for profit, including a sole proprietorship, partnership, firm, business trust,  
6 joint venture, syndicate, corporation, limited liability company or association, that  
7 possesses information, other than personnel records, relating to a person's physical  
8 or mental health, medical history or medical treatment.

9 (e) "Personal information" means any of the following:

10 1. Personally identifiable data about an individual's medical condition, if the  
11 data is not generally considered to be public knowledge.

12 2. Personally identifiable data that contains an individual's account or  
13 customer number, account balance, balance owing, credit balance or credit limit, if  
14 the data relates to an individual's account or transaction with a financial institution.

15 3. Personally identifiable data provided by an individual to a financial  
16 institution upon opening an account or applying for a loan or credit.

17 ~~4. Personally identifiable data about an individual's insurance, if the insurance~~  
18 ~~is related to a transaction with a financial institution.~~

19 4. Personally identifiable data about an individual's federal, state or local tax  
20 returns.

21 (f) "Personally identifiable" means capable of being associated with a particular  
22 individual through one or more identifiers or other information or circumstances.

23 (g) "Record" means any material on which written, drawn, printed, spoken,  
24 visual or electromagnetic information is recorded or preserved, regardless of  
25 physical form or characteristics.

1           (h) "Tax preparation business" means any organization or enterprise operated  
2 for profit, including a sole proprietorship, partnership, firm, business trust, joint  
3 venture, syndicate, corporation, limited liability company or association, that for a  
4 fee prepares an individual's federal, state or local tax returns or counsels an  
5 individual regarding the individual's federal, state or local tax returns.

6           (2) DISPOSAL OF RECORDS CONTAINING PERSONAL INFORMATION. A financial  
7 institution, medical business or tax preparation business may not dispose of a record  
8 containing personal information unless the financial institution, medical business,  
9 tax preparation business or other person under contract with the financial  
10 institution, medical business or tax preparation business does any of the following:

11           (a) Shreds the record before the disposal of the record.

12           (b) Erases the personal information contained in the record before the disposal  
13 of the record.

14           (c) Modifies the record to make the personal information unreadable before the  
15 disposal of the record.

16           (d) Takes actions that it reasonably believes will ensure that no unauthorized  
17 person will have access to the personal information contained in the record for the  
18 period between the record's disposal and the record's destruction.

19           (3) CIVIL LIABILITY; DISPOSAL AND USE. (a) A financial institution, medical  
20 business or tax preparation business is liable to a person whose personal information  
21 is disposed of in violation of sub. (2) for the amount of damages resulting from the  
22 violation.

23           (b) Any person who, for any purpose, uses personal information contained in  
24 a record that was disposed of by a financial institution, medical business or tax  
25 preparation business is liable to an individual who is the subject of the information

1 and to the financial institution, medical business or tax preparation business that  
2 disposed of the record for the amount of damages resulting from the person's use of  
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6 (4) PENALTIES; DISPOSAL AND USE. (a) A financial institution, medical business  
7 or tax preparation business that violates sub. (2) may be required to forfeit not more  
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9 (b) Any person who possesses a record that was disposed of by a financial  
10 institution, medical business or tax preparation business and who intends to use, for  
11 any purpose, personal information contained in the record may be fined not more  
12 than \$10,000 or imprisoned for not more than 2 years or both. This paragraph does  
13 not apply to a person who possesses a record with the authorization or consent of the  
14 individual whose personal information is contained in the record.

15 **SECTION 2. Effective date.**

16 (1) This act takes effect on the first day of the 4th month beginning after  
17 publication.

18 (END)

RJM: King:

NOTE

Attached is the redraft of the substitute amendment that you requested. Please refer to the drafter's note included with the -4- draft of this substitute amendment for further information.

[RJM]

---

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

LRBs0066/2dn  
RJM:kmg:km

May 18, 1999

Attached is the redraft of the substitute amendment that you requested. Please refer to the drafter's note included with the first draft of this substitute amendment for further information.

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

813 Tcf Mike in Rep. Fott's office

Redraft LRB 5016.6 to provide penalty  
of \$1000 / 90 days rather than class E felony.

Comte to exec. on 17<sup>th</sup>





State of Wisconsin  
1999 - 2000 LEGISLATURE

3  
LRBs0066/3  
RJM:kmg:km

Monday 8/9

RMR

ASSEMBLY SUBSTITUTE AMENDMENT,  
TO 1999 SENATE BILL 46

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19 (f) "Personally identifiable" means capable of being associated with a particular  
20 individual through one or more identifiers or other information or circumstances.

21 (g) "Record" means any material on which written, drawn, printed, spoken,  
22 visual or electromagnetic information is recorded or preserved, regardless of  
23 physical form or characteristics.

24 (h) "Tax preparation business" means any organization or enterprise operated  
25 for profit, including a sole proprietorship, partnership, firm, business trust, joint

1 venture, syndicate, corporation, limited liability company or association, that for a  
2 fee prepares an individual's federal, state or local tax returns or counsels an  
3 individual regarding the individual's federal, state or local tax returns.

4 (2) DISPOSAL OF RECORDS CONTAINING PERSONAL INFORMATION. A financial  
5 institution, medical business or tax preparation business may not dispose of a record  
6 containing personal information unless the financial institution, medical business,  
7 tax preparation business or other person under contract with the financial  
8 institution, medical business or tax preparation business does any of the following:

9 (a) Shreds the record before the disposal of the record.

10 (b) Erases the personal information contained in the record before the disposal  
11 of the record.

12 (c) Modifies the record to make the personal information unreadable before the  
13 disposal of the record.

14 (d) Takes actions that it reasonably believes will ensure that no unauthorized  
15 person will have access to the personal information contained in the record for the  
16 period between the record's disposal and the record's destruction.

17 (3) CIVIL LIABILITY; DISPOSAL AND USE. (a) A financial institution, medical  
18 business or tax preparation business is liable to a person whose personal information  
19 is disposed of in violation of sub. (2) for the amount of damages resulting from the  
20 violation.

21 (b) Any person who, for any purpose, uses personal information contained in  
22 a record that was disposed of by a financial institution, medical business or tax  
23 preparation business is liable to an individual who is the subject of the information  
24 and to the financial institution, medical business or tax preparation business that  
25 disposed of the record for the amount of damages resulting from the person's use of

1 the information. This paragraph does not apply to a person who uses personal  
2 information with the authorization or consent of the individual who is the subject of  
3 the information.

4 (4) PENALTIES; DISPOSAL AND USE. (a) A financial institution, medical business  
5 or tax preparation business that violates sub. (2) may be required to forfeit not more  
6 than \$1,000. Acts arising out of the same incident or occurrence shall be a single  
7 violation.

8 (b) Any person who possesses a record that was disposed of by a financial  
9 institution, medical business or tax preparation business and who intends to use, for  
10 any purpose, personal information contained in the record may be fined not more  
11 than ~~\$1,000~~ <sup>\$1,000</sup> or imprisoned for not more than ~~90 days~~ <sup>90 days</sup> or both. This paragraph does  
12 not apply to a person who possesses a record with the authorization or consent of the  
13 individual whose personal information is contained in the record.

14 **SECTION 2. Effective date.**

15 (1) This act takes effect on the first day of the 4th month beginning after  
16 publication.

17 (END)