

**1999 DRAFTING REQUEST**

**Senate Substitute Amendment (SSA-SB207)**

Received: 02/03/2000

Received By: gibsom

Wanted: As time permits

Identical to LRB:

For: Jon Erpenbach (608) 266-6670

By/Representing: Julie

This file may be shown to any legislator: NO

Drafter: gibsom

May Contact:

Alt. Drafters: rkite

Subject: Trade Regulation

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Personally identifiable information; scope of bill

**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>
/?	gibsom 02/07/2000	wjackson 02/07/2000		_____			
/1			jfrantze 02/08/2000	_____	lrb_docadmin 02/08/2000	lrb_docadmin 02/08/2000	
/2	gibsom 02/10/2000 gibsom 03/02/2000	wjackson 02/10/2000	hhagen 02/10/2000	_____	lrb_docadmin 02/10/2000	lrb_docadmin 02/10/2000	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/3	rkite 03/03/2000	wjackson 03/06/2000	hhagen 03/06/2000	_____	lrb_docadmin 03/06/2000	lrb_docadmin 03/06/2000	

FE Sent For:

<END>

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/2	gibsom 02/10/2000	wjackson 02/10/2000	hhagen 02/10/2000	_____	lrb_docadmin 02/10/2000	lrb_docadmin 02/10/2000	

*1/3 Wlj 3/6*  
*nk*  
*sho*  
*hbfch 3/6*

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No specific pre topic given

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**Topic:**

Personally identifiable information; scope of bill

---

**Instructions:**

See Attached

*redraft instruction  
applies to transfers for consideration only  
not limited to discount program*

---

**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>
/?	gibsom 02/07/2000	wjackson 02/07/2000		_____			
/1		1/2 2/10 WLJ	jfrantze 02/08/2000 <i>h2/10 h1/2/10</i>	_____	lrb_docadmin 02/08/2000	lrb_docadmin 02/08/2000	

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/?	gibsom		<i>JES</i>	<i>JES</i> <u>28</u>			

FE Sent For:

<END>

To: Mary Gibson-Glass Fax:  
From: Julie - Erpenbach's Office Date: 02/01/00  
Re: Pages: 3  
CC:

Urgent  For Review  Please Comment  Please Reply  Please Recycle



**CONFIDENTIAL**



SB 207

P.O. Box 7857  
Madison, WI 53707-7857  
www.doj.state.wi.us

**JAMES E. DOYLE  
ATTORNEY GENERAL**

August 31, 1999

SEP 02 1999

Honorable Jon Erpenbach  
P.O. Box 7882  
Madison, WI 53707-7882

Re: SB 207

Dear Senator Erpenbach,

Thank you for the opportunity to comment on SB 207, a bill relating to the release of personally identifiable information by businesses and their employees and providing a penalty.

I also want to thank you for your leadership on these issues. Your work, along with the work of Representative Marlin Schneider, has highlighted the need to protect consumers and their right to privacy.

On behalf of our office of consumer protection, I would like to forward to you some suggestions for strengthening the original legislation.

- 1) **Definition needs to be broadened.** Including only for-profits or businesses may not protect all consumers who may be harmed by these types of transactions. A consumer could be harmed regardless of the status of the organization that sold or traded the personal information. For example, a person who has diabetes may get a discounted membership or services from a not-for-profit organization and their information could be sold to a third party as well. In fact, a not-for-profit organization may even be disclosing more intimate and personal information involving health status. However, the legislation would not offer the same protections. Also, organizations that cater to senior citizens may provide discounted hotel and travel to its members but they may also sell to travel companies the income, name, and other pertinent information of their members. This type of transaction allows the travel companies to solicit directly from that individual. In our travel scam investigations we have found that individuals and organizations utilize a raffle as a means to receive pertinent information from consumers. They then sell that list to others to perpetuate the victimization of these unsuspecting consumers-all for the promise of something free or discounted. The definition should allow for all types of entities that may collect and sell personally identifiable information.

**Disclosure should be modified.** Disclosure should also include an **opt out** that allows the consumer to receive the discount but to opt out of any use of their personally identifiable information. In addition, the disclosure should be clear and conspicuous to ordinary consumers. You may want to consider language similar to language found in the Wisconsin Consumer Act (sec.423.203 Stats.) which requires that a

Handwritten notes: "see to this"

Honorable Jon Erpenbach

August 31, 1999

Page 2

*JA* notice to the customer of the right to cancel be printed in capital and lowercase letters of not less than 12-point boldface type. The burden should be on the business or advertiser to make the disclosure clear to the consumer rather than the other way around.

*JA* 3) **Violation specified.** Each individual's information being illegally transmitted should be considered as an individual violation. We are suggesting that the language be specific that the transmittal of a database may be one occurrence but it involves multiple violations of this legislation.

*JA* 4) **Elderly penalty enhancer.** We suggest that there be a penalty enhancer for those violators who target the elderly and the vulnerable. We recommend you cross-reference or incorporate this legislation with Wisconsin Statutes 100.264 and 134.95 that provide for increased penalties for violations perpetrated against the elderly or disabled.

*JA* 5) **Reselling the information.** Third party acquisition and reselling should be addressed and subject to the same forfeiture. If an entity violates this chapter and sells to another entity and in turn, that entity sells the information, both parties should be subject to penalties. As we currently interpret the language, the receiving entity did not obtain the information from a customer on an application form and would not be able to be prosecuted under this legislation. Harm to the consumer could be just as great or greater by the third party and we would have no tools to prosecute them.

Thank you for this opportunity to offer some consumer protection enhancements to SB 207. We support your efforts to protect consumers and offer our assistance in your endeavors. Please feel free to contact me if you should have further questions or concerns.

Sincerely,

*JoAnna Richard*  
JoAnna Richard

Legislative Liaison





State of Wisconsin  
1999 - 2000 LEGISLATURE

RMR  
LRBs0282/1  
MGG: /:....  
WJ

D Note  
soon

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION  
SENATE SUBSTITUTE AMENDMENT,  
TO 1999 SENATE BILL 207

① AN ACT <sup>Gen Cat</sup> relating to: the collect<sup>ion</sup> sale and release of personally identifiable  
2 information obtained in operating programs that offer customers discounts on  
3 purchases or other benefits and providing a penalty.

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

4 SECTION 1. 134.44<sup>✓</sup> of the statutes is created to read:  
5 **134.44 Disclosure of personally identifiable information in offering**  
6 **discounts.** (1) DEFINITIONS. In this section:  
7 (a) "Collector of information" means a person who collects and sells or releases  
8 personally identifiable information.  
9 (b) "Discount program" means a program that offers customers discounts on  
10 purchases or other benefits.

1           (c)  
2           (b) "Personally identifiable information" means the name of an individual or  
3 other information that can be used to identify that individual.

4           (2) REQUIREMENTS FOR SALE AND RELEASE. (a) No collector of information who  
5 requests personally identifiable information from a customer on an application form  
6 to participate in a discount program that the collector of information operates may  
7 sell or otherwise release the personally identifiable information to any other person  
8 unless the application form contains a written disclosure stating all of the following:

- 9           (8)           1. The types of personally identifiable information that may be sold or released  
10                       2. The types of 3rd parties to whom the personally identifiable information may  
11 be sold or released.  
12                       3. The purposes for which the personally identifiable information may be sold  
13 or released.

14           (13)           (b) The written disclosure under par. (a) shall be printed in capital and  
15 lowercase letters of not less than 12-point boldface type.

16           (3) TRANSFER OF INFORMATION. No recipient of personally identifiable  
17 information from a collector of information that was collected to participate in a  
18 discount program may sell or otherwise release the personally identifiable  
19 information to another person if the recipient knows or reasonably should know that  
20 the collector of information failed to comply with sub. (2).

21           (4)  
22           (3) Any person who violates sub. (2) or (3) is subject to a forfeiture of not more  
23 than \$100 for each violation. For purposes of counting violations under this  
24 subsection, the violations by a person under sub. (2) or sub. (3) as they relate to each  
customer constitute a separate violation.

SECTION 2. 134.95 (2) of the statutes is amended to read:

1           134.95 (2) SUPPLEMENTAL FORFEITURE. If a fine or a forfeiture is imposed on a  
2 person for a violation under s. 100.171, 100.173, 100.174, 100.175, 100.177, ~~134.44,~~  
3 134.71, 134.72 or 134.87 or ch. 136 or a rule promulgated under these sections or that  
4 chapter, the person shall be subject to a supplemental forfeiture not to exceed  
5 \$10,000 for that violation if the conduct by the defendant, for which the fine or  
6 forfeiture was imposed, was perpetrated against an elderly person or disabled person  
7 and if any of the factors under s. 100.264 (2) (a), (b) or (c) is present.

8           History: 1995 a. 382; 1997 a. 111.

(END)

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

LRB  
MGG:.....  
WJ

- but the draft*
- applies just to*
- applies to any release in*
1. Note that the draft ~~is not just limited to sales and resales of personally identifiable information, but is limited to~~ transactions that offer discounts to customers. OK?
  2. I have inserted a cross-reference <sup>to s. 134.11</sup> in s. 134.95 (2) and not, <sup>in</sup> s. 100.264 (2). The cross-reference must appear only once and it makes sense to have it in ch. 134.
  3. Do you want a delayed effective date to allow time for the interested parties to become informed of the new law?

Mary Gibson-Glass  
Senior Legislative Attorney  
Phone: (608) 267-3215

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

LRBs0282/1dn  
MGG:wlj:jf

February 8, 2000

1. Note that the draft applies to any release of personally identifiable information, but the draft applies just to transactions that offer discounts to customers. OK?
2. I have inserted a cross-reference to s. 134.44 in s. 134.95 (2) and not in s. 100.264 (2). The cross-reference must appear only once and it makes sense to have it in ch. 134.
3. Do you want a delayed effective date to allow time for the interested parties to become informed of the new law?

Mary Gibson-Glass  
Senior Legislative Attorney  
Phone: (608) 267-3215



State of Wisconsin  
1999 - 2000 LEGISLATURE

RMR  
2  
LRBs0282/A  
MGG:wlijf

Mon 10 am

SENATE SUBSTITUTE AMENDMENT,  
TO 1999 SENATE BILL 207

Regn Cat

1 AN ACT ~~to amend~~ 134.95 (2); and ~~to create~~ 134.44 of the statutes; relating to:  
2 the collection ~~sale~~ and ~~release~~ of personally identifiable information obtained  
3 in operating programs that offer customers discounts on purchases or other  
4 ~~benefits~~ and providing a penalty.

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

SECTION 1. 134.44 of the statutes is created to read:

134.44 ~~Disclosure of personally identifiable information in offering~~  
① Transfers

~~discounts~~ (1) DEFINITIONS. In this section:

(a) "Collector of information" means a person who collects and ~~sells or releases~~ <sup>transfers</sup> personally identifiable information.

(b) "Discount program" means a program that offers customers discounts on purchases or other benefits.

4 (c) "Transfer" means to sell, rent, trade or otherwise  
Transfer for consideration.

1 (b) "Personally identifiable information" means the name of an individual or  
2 other information that can be used to identify that individual.

3 ~~TRANSFERS~~ TRANSFERS

(2) REQUIREMENTS FOR ~~SALE AND RELEASE~~. (a) No collector of information who

4 requests personally identifiable information from a customer on an application form

5 to participate in a discount program that the collector of information operates may

6 sell or otherwise <sup>transfer</sup> release the personally identifiable information to any other person

7 unless the <sup>collector of information provides the customer with</sup> application form contains a written disclosure stating all of the following:

8 1. The types of personally identifiable information that may be ~~sold or released~~ <sup>that stated + answered</sup>

9 2. The types of 3rd parties to whom the personally identifiable information may  
10 be ~~sold or released~~ <sup>transferred</sup>.

11 3. The purposes for which the personally identifiable information may be ~~sold~~ <sup>transferred</sup>

12 ~~or released~~

13 (b) The written disclosure under par. (a) shall be printed in capital and  
14 lowercase letters of not less than 12-point boldface type.

15 (3) <sup>RE</sup> TRANSFER OF INFORMATION. No recipient of personally identifiable  
16 information <sup>transferred</sup> from a collector of information <sup>to the recipient</sup> that was collected to participate in a

17 discount program may ~~sell or otherwise release~~ <sup>transfer</sup> the personally identifiable

18 information to another person if the recipient knows or reasonably should know that  
19 the collector of information failed to comply with sub. (2).

20 (4) Any person who violates sub. (2) or (3) is subject to a forfeiture of not more  
21 than \$100 for each violation. For purposes of counting violations under this  
22 subsection, the violations by a person under sub. (2) or (3) as they relate to each  
23 customer constitute a separate violation.

24 SECTION 2. 134.95 (2) of the statutes is amended to read:

1           134.95 (2) SUPPLEMENTAL FORFEITURE. If a fine or a forfeiture is imposed on a  
2 person for a violation under s. 100.171, 100.173, 100.174, 100.175, 100.177, 134.44,  
3 134.71, 134.72 or 134.87 or ch. 136 or a rule promulgated under these sections or that  
4 chapter, the person shall be subject to a supplemental forfeiture not to exceed  
5 \$10,000 for that violation if the conduct by the defendant, for which the fine or  
6 forfeiture was imposed, was perpetrated against an elderly person or disabled person  
7 and if any of the factors under s. 100.264 (2) (a), (b) or (c) is present.

8

(END)



**Gibson-Glass, Mary**

---

**From:** Sweet, Richard  
**Sent:** Friday, February 25, 2000 3:53 PM  
**To:** Gibson-Glass, Mary  
**Cc:** Schmidt, Dan  
**Subject:** SB207

Mary,

Sen. Erpenbach asked me to request the following changes to their sub. am. to SB207 (LRBs282/2):

1. The sub. am. would apply only to for-profit businesses that offer discounts on purchases (as under the original bill).
2. There should be a 9-month delayed effective date for the sub. am.
3. Notwithstanding the requirements in the sub. am., businesses would be allowed to transfer personally identifiable information to businesses with which they merge or businesses that acquire them. However, if the merger or acquisition results in a different policy on release of information (e.g., different info released, different types of 3rd parties or different purposes), the new business would have to contact the customers and let them know of the new policy and give them an opportunity to refuse to have their information released (i.e. opt-out).

Thanks. Let me know if you have any questions.

Dick Sweet

Richard Sweet, Senior Staff Attorney  
Wisconsin Legislative Council Staff  
P.O. Box 2536  
(1 East Main Street, Room 401)  
Madison, WI 53701-2536  
Phone (608)266-2982  
Fax (608)266-3830  
E-mail richard.sweet@legis.state.wi.us

Wanted: 3-7-00  
MRE

1999 - 2000 LEGISLATURE

4 RNK  
3 RMR  
LRB 0282/2  
MGG:wlj:hmh

4:00 MON.  
(TODAY)

**SENATE SUBSTITUTE AMENDMENT**

**TO 1999 SENATE BILL 207**

employed in or  
employed by a  
business for profit  
and who

obtained by businesses  
(in operating programs  
that offer customers discounts  
on purchases or other benefits

Regen

1 **AN ACT** *to amend* 134.95 (2); and *to create* 134.44 of the statutes; **relating to:**  
2 the ~~collection and~~ transfer for consideration of personally identifiable  
3 information and providing a penalty.

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

4 **SECTION 1.** 134.44 of the statutes is created to read:

5 **134.44 Transfers of personally identifiable information. (1)**

Insert  
1-6

6 **DEFINITIONS.** In this section:

7 (a) "Collector of information" means a person who collects and transfers  
8 personally identifiable information

9 (b) "Personally identifiable information" means the name of an individual or  
10 other information that can be used to identify that individual.

Insert  
3-10

11 (c) "Transfer" means to sell, rent, trade or otherwise transfer for consideration.

*on an application form* *person who is engaged in or employed by a business for profit, and*

1 (2) REQUIREMENTS FOR TRANSFERS. (a) No ~~collector of information~~ who requests  
2 personally identifiable information from a customer may transfer the personally  
3 identifiable information to any other person unless the ~~collector of information~~  
4 ~~provides the customer with~~ *application form contains* a written disclosure that states all of the following:

- 5 1. The types of personally identifiable information that may be transferred.
- 6 2. The types of 3rd parties to whom the personally identifiable information may
- 7 be transferred.
- 8 3. The purposes for which the personally identifiable information may be
- 9 transferred.

10 (b) The written disclosure under par. (a) shall be printed in capital and  
11 lowercase letters of not less than 12-point boldface type.

12 (3) RETRANSFER OF INFORMATION. <sup>(a)</sup> No recipient ~~of~~ *to whom* personally identifiable  
13 information ~~transferred from a collector of information to the recipient~~ may transfer  
14 the personally identifiable information to another person if the recipient knows or  
15 reasonably should know that the ~~collector of~~ *this person who transferred the* information failed to comply with sub.

*Insert*  
*2-16*

16 (2).  
17 (4) Any person who violates sub. (2) or (3) is subject to a forfeiture of not more  
18 than \$100 for each violation. For purposes of counting violations under this  
19 subsection, the violations by a person under sub. (2) or (3) as they relate to each  
20 customer constitute a separate violation.

21 SECTION 2. 134.95 (2) of the statutes is amended to read:

22 134.95 (2) SUPPLEMENTAL FORFEITURE. If a fine or a forfeiture is imposed on a  
23 person for a violation under s. 100.171, 100.173, 100.174, 100.175, 100.177, 134.44,  
24 134.71, 134.72 or 134.87 or ch. 136 or a rule promulgated under these sections or that  
25 chapter, the person shall be subject to a supplemental forfeiture not to exceed

*from an application form is transferred*

1 \$10,000 for that violation if the conduct by the defendant, for which the fine or  
2 forfeiture was imposed, was perpetrated against an elderly person or disabled person  
3 and if any of the factors under s. 100.264 (2) (a), (b) or (c) is present.

(END)

Insert  
3-3  
4 →

1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBs0282/3 ins.  
MGG & RNK.....

Insert 1-6

¶ (a) "Application form" means a form that a customer must complete in order to participate in a program that is operated by a business for profit to offer customer discounts.

Insert 4-10

¶ (c) "Predecessor business" means a business for profit that sells or otherwise transfers ownership of the business to another business for profit.

¶ (d) "Successor business" means a business for profit that purchases or otherwise acquires ownership of another business for profit.

~~(e) "Transfer" means to sell, rent, trade or otherwise transfer for consideration.~~

Insert 2-16

¶ (b) <sup>Paragraph</sup> Par. (a) does not apply to a ~~predecessor~~ <sup>successor</sup> business that ~~transfers~~ <sup>receives</sup> personally identifiable information ~~from a predecessor~~ <sup>from a predecessor</sup> business.

¶ (c) Notwithstanding par. (b), if a successor business may release ~~different types~~ <sup>of a different type</sup> personally identifiable information ~~personally identifiable information~~ to different types of 3rd parties or ~~personally identifiable information~~ for different purposes than those specified on the predecessor business' application forms under par. (a), the successor business must advise ~~those~~ <sup>those of the</sup> predecessor business' customers <sup>about</sup> concerning whom it received personally identifiable information of the nature of those differences and provide the customers with a means by which the customers may request that the customers' personally identifiable information not be released

to any 3rd party. If a customer makes such a request, the successor business may not release the customer's personally identifiable information to any 3rd party.

Insert 3-3

41 SECTION <sup>#</sup> 1. Effective date.

41 (1) This act takes effect on first day of the 10th month beginning after publication.