

1999 DRAFTING REQUEST

Bill

Received: **01/8/99**

Received By: **nelsorp1**

Wanted: **Today**

Identical to LRB: **99-1663/1**

For: **Jon Erpenbach (608) 266-6670**

By/Representing: **Julie**

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

Drafter: **nelsorp1**

May Contact:

Alt. Drafters:

Subject: **Courts - miscellaneous**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Create a consumer privacy advocate in DOJ

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>
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/1			jfrantze 05/28/99	_____	lrb_docadmin 05/28/99	lrb_docadmin 05/28/99	

FE Sent For:

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sent 11-04-99 by request of Senate President

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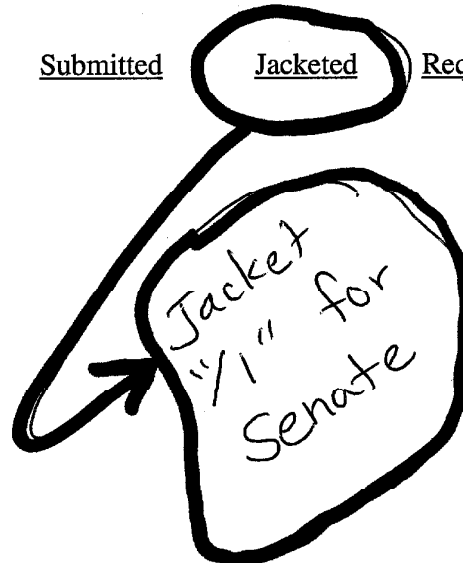
See Attached

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cancel
05-28-99
(bad router)
New #
99-3149/1

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Not Needed

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Take No as / 1

Topic:

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DOJ concerned about p 3, 116 "in order to raise" change to "that include" or "related to" ?

Instructions:

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SB 72 / AB 162

Students
-tryrag

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1?	nelsorp1	CMH 1/1 3/22	3-23 LP	3-23 LP KMT	Submit plus attached documents		

FE Sent For:

<END>

Drafting Request - by Julie 6-6670
Senator Erpenbach

1-7-99

create in DOJ

office of consumer privacy advocate
and to institute litigation possibly
one position

role similar to public intervenor

identity theft
fraud of internet etc

also serve as source of info. for local
law enforcement

concerns re: on-line shopping
i.e. protection of identity

can disclose & discuss this request
w/ Rep. Schneider & his staff

State Trends

Critical Issues, Emerging Trends and Best Practices in State Government

The Council of State Governments

Winter 1999 • Volume 5 • Issue 1

IDENTITY THEFT:

Stealing Your Life Away

In today's world of easy credit and computer transactions, thieves have more opportunities to steal and misuse the identity of unsuspecting individuals. They have advanced from stealing identification from wallets and receipts to assuming someone's identity through pre-approved credit applications and accessing personal information stored in computer databases. A Federal Trade Commission spokesperson testified before a U.S. Senate subcommittee in May 1998 that individual thieves and organized identity-theft rings are using more sophisticated theft schemes — even taking low-level jobs with financial institutions to gain access to consumer credit reports or other identifying data.

Until recently, federal law and most state laws would not recognize a consumer as a



Thieves can easily access personal information from credit card applications and financial institution information.

using someone else's personal identifying information (i.e., name, Social Security number, address, date of birth or mother's maiden name) in order to obtain something of value.

The Consumer Vanishes

The exact frequency and cost of identity theft is unknown. "Identity fraud can be an element in a variety of financial crimes, such as bank fraud, credit-card fraud, social-program fraud, tax-refund fraud, and mail fraud," according to the 1998 Government Accounting Office briefing report, *Identity Fraud: Information on Prevalence, Cost, and Internet Impact is Limited*. In the report, the GAO found no comprehensive estimates of the prevalence or costs of identity fraud. VISA reported to the GAO that U.S. fraud losses among its member banks for fiscal 1997 totaled \$490 million. The U.S. Public Interest Research Group, a consumer advocacy organization, estimates that 40,000 acts of identity theft occur each year.

The U.S. Secret Service's Financial Crimes Division, the federal agency with primary jurisdiction for investigations involving financial crimes, provided the GAO arrest and cost statistics of its financial-crime cases considered to be directly associated with identity fraud (see box). Between fiscal 1995 and 1997, the number of arrests rose from 8,806 to 9,455 and the costs increased from

The Impact on Victims

It is often difficult for consumers to cleanse their credit reports of the perpetrators' bad acts. Victims must go through the time-consuming process of (1) trying to prove to lenders and credit reporting agencies that they were in fact victimized by identity theft and did not personally incur or authorize the perpetrators' charges; (2) having the erroneous information removed from their credit report; and (3) preventing the perpetrators' future activities from further damaging their records.

Source: Testimony before the U.S. Senate Judiciary Committee's Subcommittee on Technology, Terrorism and Government Information by David Modine, associate director for credit practices, Bureau of Consumer Protection, Federal Trade Commission, May 20, 1998

victim of crime. Instead, "fraud laws treat the creditors as the victims because they incurred the financial loss," explains Cynthia Lamb, investigator in the Federal Trade Commission's Division of Financial Practices. To give legal recourse to the victims in these cases, at least nine states (Arizona, California, Colorado, Georgia, Kansas, Massachusetts, Mississippi, West Virginia and Wisconsin) and Congress have passed laws against "identity theft" —

cont'd on page 2



INSIDE . . .

- End of Life Decisions 3
- Organ Donation 5
- Charter Schools 6
- Voter Interest 8

Stealing Your Life Away

from page 1

\$442 million to \$745 million.

These numbers only tell part of the story. Law-enforcement officials and consumer advocates are quick to point out that immeasurable human costs result from identity theft. Though the victim is not

State Trends

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State Trends reports on issues critical to state government leaders from state, regional and national perspectives. Drawing from current research, historical data and 50-state surveys, the publication tracks trends and provides timely information on the most creative solutions to problems faced by state governments.

State Trends is published quarterly by the Council of State Governments. Individual copies (\$15) and annual subscriptions (\$49.99) of *State Trends* can be ordered through CSG's publications sales department at (800) 800-1910.

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CSG, the multibranch organization of the states and U.S. territories, champions excellence in state government by working with state leaders across the nation and through its regions to put the best ideas and solutions into practice. To this end, CSG:

- Builds leadership skills to improve decision-making;
- Advocates multistate problem-solving and partnerships;
- Interprets changing national and international conditions to prepare states for the future; and,
- Promotes the sovereignty of the states and their role in the American federal system.



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State Efforts to Curb Identity Fraud

Arizona	H.R. 4151 (effective 1/1/99)	Criminalizes identity fraud
California	S.B. 1370 (effective 1/1/99)	Criminalizes identity fraud; A.B. 592 (pending) — increases fines for identity fraud
Colorado	H.B. 1100 (effective 1/2/99)	Criminalizes identity fraud and misuse of Social Security numbers
Connecticut	P.B. 1120 (effective 7/1/99)	Criminalizes financial identity fraud
Florida	H.B. 2749 (effective 7/1/99)	Criminalizes identity fraud
Massachusetts	H.B. 5117 (effective 1/1/99)	Criminalizes identity theft
Mississippi	H.B. 1090 (effective 7/1/99)	Criminalizes identity fraud and misuse of Social Security numbers
New Jersey	S.2478 (pending; raised 1/1/99)	Increases certain types of wrongful impersonation to identity fraud and establishes penalties for the crime
New York	S.B. 1165 (pending)	Increases penalties for identity fraud; A.B. 10132; S.B. 6006 (pending) — delays to certain provisions on credit reporting and identity fraud
Ohio	H.B. 2734 (pending)	Criminalizes identity fraud
Texas	H.B. 2114 (pending)	Relates to credit reporting and identity fraud
Washington	S.B. 2000 (effective 7/1/99)	Criminalizes identity fraud
West Virginia	H.B. 4240 (effective 6/1/99)	Criminalizes identity fraud

Source: *Legislation*, Fall 1998, pp. 9, 10, 11, 12, 13, 14, 15, updated by CSG staff

responsible for the debts accumulated by the thief (federal law limits a consumer's liability for credit card and banking fraud to \$50 per account), he or she is stuck with the bad credit record. In some instances, victims are even arrested for crimes the thief committed in their name.

The traumatic and arbitrary nature of identity theft is drawing attention to the crime. Many victims are uniting to ensure no one else suffers the devastation of identity theft. Edward Mierzwinski, consumer program director for the U.S. Public Interest Research Group, said, "These 'victims' are a force to be reckoned with. They have lived through a nightmare. It's largely due to their efforts that changes are being made."

Criminalizing Identity Theft

The ultimate frustration for identity-theft victims is being told that no crime has been committed against them. Financial institutions — seen as the victim under fraud laws — often do not pursue the criminal because the losses do not justify the expense. With no law against identity theft on the books, law-enforcement officials cannot file a report on behalf of the consumer.

Congress recently made identity theft a federal crime by passing H.R. 4151, the Identity Theft and Assumption Deterrence Act of 1998, which President Clinton said he will sign. U.S. Rep. John Shadegg of Arizona, sponsor of the bill, said the federal law allows a "pre-emptive strike against fraud crime." Under current federal statutes, law-enforcement officials could arrest criminals only after they had used the stolen identity to

commit fraud. With H.R. 4151, just taking the social security number or assuming someone's identity is now a federal crime. The law also sets stiff penalties for identity theft, allows consumer victims to seek restitution from the criminal, and directs the FTC to establish a centralized complaints and consumer education service.

How will the federal law impact state identity theft laws? "H.R. 4151 does not preempt state laws, and should complement them by increasing awareness of the crime," Rep. Shadegg says. State law enforcement can use the federal law, but it was designed to be a tool for federal law-enforcement officials in cracking organized-crime rings. State law-enforcement officials may be more effective in pursuing the individual, case-by-case crimes. Also, victims usually contact local officials, who need a law to guide them. Sen. W. Scott Oelslager, who proposed a bill (S.B. 273) to criminalize identity theft in Ohio, said, "I agree that the state identity-theft law is still necessary."

John Byrne, senior council and compliance manager for the American Bankers Association, the nation's largest banking trade association, agrees. "Mirroring federal laws may allow state prosecutors to take up cases that federal prosecutors avoid due to limited resources," Byrne said.

Saving Private Information

Consumer advocates encourage lawmakers to move beyond criminalizing identity theft to prevent the crime. Lamb sees a role for state officials in public education, for example. "Iowa's

cont'd on page 10

Stealing Your Life Away

from page 2

attorney general recently put out an excellent brochure on identity theft," Lamb said.

"State officials can take steps to remove the Social Security number from circulation," said Beth Givens, project director of the Privacy Rights Clearinghouse, a California nonprofit consumer education and advocacy program. To protect this critical piece of personal information from theft, some states already removed Social Security numbers from driver's licenses. Givens recommends removing them from mailing labels for state tax forms, cover pages of court documents, time cards, ID badges and student ID cards.

To increase consumer awareness of errors on credit reports, the USPIRG encourages state officials to require credit bureaus provide one free credit report annually to consumers upon request. (The federal Free Credit Reporting Act requires credit bureaus to provide credit

With no law against identity theft on the books, law-enforcement officials cannot file a report on behalf of the consumer.

reports to consumers upon request for a reasonable fee, usually \$8. At least six states — Colorado, Georgia, Maryland, Massachusetts, New Jersey and Vermont — allow one free credit report per year.) "Colorado's credit report law (CRS 12-14.3-102) is an excellent model because it requires the credit bureaus to notify consumers of their rights and when a negative change is made to their report," Mierzwinski said.

"I would like to see the credit industry be made accountable for its part in the identity theft epidemic. It's the negligent practices of

credit grantors, particularly those who grant instant credit, that allow this crime to be committed so easily," Givens said. Consumer advocates' recommendations to state officials

in this area include:

- Requiring financial institutions to destroy personally sensitive documents prior to disposal.
- Allowing

consumers to block access to their credit reports to anyone without express authorization.

- Requiring credit applications match credit reports on at least four points of correspondence, such as exact name and exact address.

The credit industry does not agree that such requirements are necessary. "The banking industry has a long history of protecting privacy," Byrne said. In the past few years, the ABA has sent its members brochures on effective security measures and on training personnel to recognize the warning signs of identity theft.

Arrests and Costs Relating to Identity Fraud

These figures include **only** the identity theft cases handled by the U.S. Secret Service. There are no comprehensive statistics on identity theft.

Fiscal year	Total financial-crimes arrests	Financial-crimes arrests involving identity fraud*	Costs of identity fraud (millions)**
1995	9,470	8,806	\$442
1996	9,220	8,686	450
1997	10,066	9,455	745

*Financial crimes generally involve identity fraud, as reflected in arrests.

**The costs of identity fraud are the actual costs or losses to victimized individuals and financial institutions. The Secret Service attributes the steep increase from 1995 to 1997 to its increased focus on high-dollar cases, improved training for agents and emerging technologies that create new opportunities for criminals.

Source: U.S. Secret Service Data, "Identity Fraud: Information on Prevalence, Cost, and Internet Impact is Limited," Government Accounting Office, May 1998

"We already shred data, and requiring four identifiers would create an inconvenience for the consumer. There is no need to micro-manage security measures," Byrne said.

Associated Credit Bureaus, Inc., an international trade association of consumer credit, mortgage reporting and collection-service companies, agrees that legislating security mechanisms would be ineffective and burdensome. "Crime is a moving target, so it is difficult to make prescriptive measures today that will work tomorrow," said Stuart Pratt, vice president of government relations for ACB. "The industry can respond to crime strategies as they develop," Pratt said, pointing to the evolution of security measures (e.g., holograms, tamper-proof signature plates) in response to credit card fraud. "For the sake of a healthy credit economy, we should maintain the benefits of our high-tech system," Pratt said.

State officials addressing the growing problem of identity theft face tough choices. They must balance the desire to protect consumers with the demand for convenient, speedy financial transactions. ♦

Cindy Jasper Luckey is a policy analyst, The Council of State Governments, (606) 244-8163, cindyl@csg.org.

nonvoters have towards both government and elections in general. This continued disenchantment of the electorate sends a clear and disturbing message to political leaders and state election officials: Elections are hard to understand, time-consuming and ultimately don't matter.

What Can States Do?

Given this sentiment, states are focusing on three specific areas in which they think innovation and creativity can make a difference in citizen participation: registration, education and simplification. Registration efforts have, over the last few years, become greatly simplified. Passage of the national Motor Voter Law in 1993 greatly increased national registration and started state election agencies on the path to other innovative registration efforts. California began a "Voter Registration Week" in which various groups come together to promote voter registration across the state. A nonpartisan project partnered with various industries such as technology and entertainment, the week-long campaign strives to make it impossible to go a day without citizens being reminded to register and vote.

States are warming up to the fact that education, especially in elementary and high schools, can greatly increase the chance that students (and their parents) will vote.

Twenty state election offices now maintain Internet Web sites from which a registration form can be downloaded, printed and mailed. States are promoting in overwhelming numbers "Get Out the Vote" campaigns. These efforts, traditionally the province of private and nonprofit groups, have resulted in joint public/private efforts to register voters.

Voter education is a factor in the election

equation that has been sorely lacking across the country. States are warming up to the fact that education, especially in elementary and high schools, can greatly increase the chance that students (and their parents) will vote. Montana is taking on low voter turnout with its "Building Excellence in Statewide Turnout" (BEST) program which focuses on the long-term commitment of citizens to participate in elections. Its message is that not only does your vote count today, but also tomorrow. "Our efforts focus on the long-term. We're committed to working with students, to make voting a regular part of their lives," said Joe Kerwin of the Montana Office of Elections.

Idaho launched its "Saved By The Bell" program in fall 1997 in an effort to educate high school students on the importance of civic leadership and understanding government. The program focuses on teaching students how the legislature works and how bills become law. "If you can get students excited about the legislative process, you get them one step closer to becoming part of that process," said program producer Joan Cartan-Hansen of Idaho Public Television. The program has enjoyed great success in creating future civic leaders and won a 1998 CSG Innovations Award.

Simplified voting is perhaps the most visible change states have made in the voting process. One noticeable alternative to standing in line on

election day is early voting. First conducted in Texas in 1988, early voting allows voters to cast their ballots at various satellite locations up to 40 days before the election. Texas experienced about one-third of voters voting early in 1994 and is optimistic about this year's potential.

Oregon is having tremendous success with voting by mail. Voters receive their ballots in the mail two to three weeks before the

International Voter Turnout Comparisons

Belgium	93%	Germany	78%
Turkey	92%	Greece	77%
Italy	89%	United Kingdom ..	76%
Luxembourg	87%	Finland	72%
Austria	86%	Spain	70%
Iceland	86%	Ireland	69%
Sweden	86%	Portugal	68%
Denmark	83%	France	65%
Norway	83%	Switzerland	47%
Netherlands	80%	United States	38%

source: the center for voting and democracy

election, complete the ballot at their leisure and mail it in free-of-charge. Votes are certified by matching the signature on the ballot with that on the voter's registration card. During the program's 15 years of operation, there has been only one documented case of voter fraud out of 10 million votes cast. Oregon reports that voting-by-mail increased turnout by 6 percent and is far less costly, reducing expenditures by more than 60 percent. "We want to make elections as easy and practical as possible," said Amy Cody of the Oregon Elections Division.

State Interest vs. State Responsibility

Without question, states are becoming more active and imaginative in their efforts to promote voter turnout. But the role of states in the election process is complex and costly. Additional programs and duties will almost certainly drain the already feeble resources of election divisions. In the end, though, states can only do so much to make Election Day special. The rest is up to the individual. Voter education and the simplification of the voting process mean nothing if people simply choose not to vote. For many Americans, the question is not "For whom to vote?" it's "Why vote at all?" ♦

John Mountjoy is a regional coordinator, The Council of State Governments, (606) 244-8156, jmountjoy@csg.org.



State of Wisconsin
1999 - 2000 LEGISLATURE

D-Note

LRB-1663/P1

RPN.....

cmr

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

sen cat

1 **AN ACT** ...; relating to: creating a consumer privacy advocate in the department
2 of justice and making an appropriation.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

3 **SECTION 1.** 18.13 (4) of the statutes is created to read:

4 18.13 (4) CONSUMER PRIVACY ADVOCATE. Notwithstanding s. 165.06, the
5 consumer privacy advocate does not have authority to initiate any action or
6 proceeding concerning the issuance of obligations by the building commission under
7 this chapter.

8 **SECTION 2.** 165.06 of the statutes is created to read:

9 **165.06 Assistant attorney general — consumer privacy advocate. (1)**

10 The attorney general shall designate an assistant attorney general on the attorney

1 general's staff as the consumer privacy advocate. The consumer privacy advocate
2 shall represent the consumer's interests in issues concerning consumer privacy,
3 including the purchase of products on the internet and the prevention of theft of the
4 consumer's personal identifying information. The secretary of administration shall
5 give the consumer privacy advocate written notices of all proceedings under subch.
6 VII of ch. 16. The prosecutor of any action under s. 943.201, 943.392, 943.41 or 943.70
7 shall give the consumer privacy advocate written notices of all proceedings under
8 those sections. The consumer privacy advocate shall be provided the minutes,
9 reports, recommendations and any documents provided by or to the joint committee
10 on information policy. Annually, the consumer privacy advocate shall report to the
11 joint committee on information policy on the status of consumer privacy in this state.

12 (2) The consumer privacy advocate may, on his or her own initiative or upon
13 request of any committee of the legislature, formally intervene in all civil
14 proceedings described in sub. (1) whenever such intervention is needed for the
15 protection of consumer's rights to privacy, including the restriction of access to the
16 consumer's personal identifying information and the prevention of fraudulent use of
17 the consumer's personal identifying information on the internet.

18 (3) Personnel of the department of administration shall, upon the request of
19 the consumer privacy advocate, make such investigations, studies and reports as the
20 consumer may request in connection with proceedings described in sub. (1), either
21 before or after formal intervention. Personnel of state agencies shall, at the
22 consumer privacy advocate's request, provide information, serve as witnesses in civil
23 proceedings described in sub. (1) and otherwise cooperate in the carrying out of the
24 consumer privacy advocate's functions. Formal intervention shall be by filing a
25 statement to that effect with the examiner or other person immediately in charge of

1 the proceeding. Upon filing the statement, the consumer privacy advocate shall be
2 considered a party in interest with full power to present evidence, subpoena and
3 cross-examine witnesses, submit proof, file briefs or do any other acts appropriate
4 for a party to the proceedings.

5 (4) The consumer privacy advocate may appeal from administrative rulings to
6 the courts. In all administrative proceedings and judicial review proceedings the
7 consumer privacy advocate shall be identified as "consumer privacy advocate". This
8 section does not preclude or prevent any division of any department or independent
9 agency from appearing by its staff as a party in those proceedings.

10 SECTION 3. 165.06~~5~~² of the statutes is created to read:

11 **165.06~~5~~² Assistant attorney general; consumer privacy advocate;**
12 **authority.** In carrying out his or her duty to protect the consumer's right to privacy,
13 the consumer privacy advocate has the authority to initiate actions and proceedings
14 before any agency or court in order to raise issues, including issues concerning
15 constitutionality, present evidence and testimony and make arguments.

16 SECTION 4. 165.06~~5~~² of the statutes is created to read:

17 **165.06~~5~~² Assistant attorney general; consumer privacy advocate;**
18 **advisory committee.** The attorney general shall appoint a consumer privacy
19 advisory committee under s. 15.04(1)(c). The consumer privacy advisory committee
20 shall consist of not less than 7 nor more than 9 members. The members shall have
21 backgrounds in or demonstrated experience or records relating to privacy protection,
22 record security or information technology. The consumer privacy advisory
23 committee shall advise the consumer privacy advocate consistent with his or her
24 duty to protect the consumer's right to privacy. The consumer privacy advisory

1 committee shall conduct meetings consistent with subch. V of ch. 19 and shall permit
2 public participation and public comment on consumer privacy advocate activities.

3 SECTION 5. 814.245 (2) (d) of the statutes is amended to read:

4 814.245 (2) (d) "State agency" does not include the consumer privacy advocate
5 or citizens utility board.

6 SECTION 6. Appropriation changes.

7 (1) DEPARTMENT OF JUSTICE. In the schedule under section 20.005 (3) of the
8 statutes for the appropriation to the department of justice under section 20.455 (1)
9 (a) of the statutes, as affected by the acts of 1999, the dollar amount is increased by
10 \$120,700 for fiscal year 1999-00 and the dollar amount is increased by \$120,700 for
11 fiscal year 2000-01 to increase the authorized FTE positions for the department by
12 1.0 GPR attorney positions on the effective date of this subsection for the purposes
13 of the consumer privacy advocate.

14 SECTION 7. Effective date.

15 (1) This act takes effect on July 1, 1999, or on the day after publication,
16 whichever is later.

17 (END)

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

LRB-1663/P1dn

RPN.....

cmf

I based this draft on 1999 Senate Bill 72, which creates an office of public intervenor in the department of justice. Your request suggested one staff attorney, so I appropriated half of the funds appropriated in SB72, which provided for two staff attorneys. I do not know exactly what kind of proceedings the consumer privacy advocate should be involved in, so I referred to the state information statutes and the criminal statutes relating to computers and personal identification. Attached are copies of statutory sections that I found relating to privacy, information technology and computers. Check those to see if additional duties should be added to the advocate's functions.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511

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

LRB-1669/P1dn
RPN:cmh:lp

March 23, 1999

I based this draft on 1999 Senate Bill 72, which creates an office of public intervenor in the department of justice. Your request suggested one staff attorney, so I appropriated half of the funds appropriated in SB72, which provided for two staff attorneys. I do not know exactly what kind of proceedings the consumer privacy advocate should be involved in, so I referred to the state information statutes and the criminal statutes relating to computers and personal identification. Attached are copies of statutory sections that I found relating to privacy, information technology and computers. Check those to see if additional duties should be added to the advocate's functions.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511



State of Wisconsin
1999 - 2000 LEGISLATURE

P2
LRB-1663/PA
RPN:cmh:lp

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT ^{relating to} *to amend* 814.245 (2) (d); and *to create* 18.13 (4), 165.06, 165.061 and
2 165.062 of the statutes; **relating to:** creating a consumer privacy advocate in
3 the department of justice and making an appropriation.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

4 SECTION 1. 18.13 (4) of the statutes is created to read:

5 18.13 (4) CONSUMER PRIVACY ADVOCATE. Notwithstanding s. 165.061, the
6 consumer privacy advocate does not have authority to initiate any action or
7 proceeding concerning the issuance of obligations by the building commission under
8 this chapter.

9 SECTION 2. 165.06 of the statutes is created to read:

10 **165.06 Assistant attorney general — consumer privacy advocate. (1)**

11 The attorney general shall designate an assistant attorney general on the attorney

and the standing committees of the assembly and senate dealing with privacy matters

1 general's staff as the consumer privacy advocate. The consumer privacy advocate
2 shall represent the consumers' interests in issues concerning consumer privacy,
3 including the purchase of products on the internet and the prevention of theft of the
4 consumer's personal identifying information. The secretary of administration shall
5 give the consumer privacy advocate written notices of all proceedings under subch.
6 VII of ch. 16. The prosecutor of any action under s. 943.201, 943.392, 943.41 or 943.70
7 shall give the consumer privacy advocate written notices of all proceedings under
8 those sections. The consumer privacy advocate shall be provided the minutes,
9 reports, recommendations and any documents provided by or to the joint committee
10 on information policy. Annually, the consumer privacy advocate shall report to the
11 ~~joint committee on information policy~~ *appropriate standing committees of the assembly and senate* on the status of consumer privacy in this state.

12 (2) The consumer privacy advocate may, on his or her own initiative or upon
13 request of any committee of the legislature, formally intervene in all civil
14 proceedings described in sub. (1) whenever such intervention is needed for the
15 protection of consumers' rights to privacy, including the restriction of access to the
16 consumer's personal identifying information and the prevention of fraudulent use of
17 the consumer's personal identifying information on the internet.

18 (3) Personnel of the department of administration shall, upon the request of
19 the consumer privacy advocate, make such investigations, studies and reports as the
20 consumer may request in connection with proceedings described in sub. (1), either
21 before or after formal intervention. Personnel of state agencies shall, at the
22 consumer privacy advocate's request, provide information, serve as witnesses in civil
23 proceedings described in sub. (1) and otherwise cooperate in the carrying out of the
24 consumer privacy advocate's functions. Formal intervention shall be by filing a
25 statement to that effect with the examiner or other person immediately in charge of

1 the proceeding. Upon filing the statement, the consumer privacy advocate shall be
2 considered a party in interest with full power to present evidence, subpoena and
3 cross-examine witnesses, submit proof, file briefs or do any other acts appropriate
4 for a party to the proceedings.

5 (4) The consumer privacy advocate may appeal from administrative rulings to
6 the courts. In all administrative proceedings and judicial review proceedings the
7 consumer privacy advocate shall be identified as “consumer privacy advocate”. This
8 section does not preclude or prevent any division of any department or independent
9 agency from appearing by its staff as a party in those proceedings.

10 **SECTION 3.** 165.061 of the statutes is created to read:

11 **165.061 Assistant attorney general; consumer privacy advocate;**
12 **authority.** In carrying out his or her duty to protect the consumers’ right to privacy,
13 the consumer privacy advocate has the authority to initiate actions and proceedings
14 before any agency or court in order to raise issues, ^{related to consumer privacy} including issues concerning
15 constitutionality, ^{to} present evidence and testimony and ^{to} make arguments.

16 **SECTION 4.** 165.062 of the statutes is created to read:

17 **165.062 Assistant attorney general; consumer privacy advocate;**
18 **advisory committee.** The attorney general shall appoint a consumer privacy
19 advisory committee under s. 15.04 (1)(c). The consumer privacy advisory committee
20 shall consist of not less than 7 nor more than 9 members. The members shall have
21 backgrounds in or demonstrated experience or records relating to privacy protection,
22 record security or information technology. The consumer privacy advisory
23 committee shall advise the consumer privacy advocate consistent with his or her
24 duty to protect the consumers’ right to privacy. The consumer privacy advisory

1 committee shall conduct meetings consistent with subch. V of ch. 19 and shall permit
2 public participation and public comment on consumer privacy advocate activities.

3 **SECTION 5.** 814.245 (2) (d) of the statutes is amended to read:

4 814.245 (2) (d) "State agency" does not include the consumer privacy advocate
5 or citizens utility board.

6 **SECTION 6. Appropriation changes.**

7 (1) DEPARTMENT OF JUSTICE. In the schedule under section 20.005 (3) of the
8 statutes for the appropriation to the department of justice under section 20.455 (1)
9 (a) of the statutes, as affected by the acts of 1999, the dollar amount is increased by
10 \$120,700 for fiscal year 1999-00 and the dollar amount is increased by \$120,700 for
11 fiscal year 2000-01 to increase the authorized FTE positions for the department by
12 1.0 GPR attorney position on the effective date of this subsection for the purposes of
13 the consumer privacy advocate.

14 **SECTION 7. Effective date.**

15 (1) This act takes effect on July 1, 1999, or on the day after publication,
16 whichever is later.

17

(END)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1663/12
RPN:cmh:ijs

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

regen cat

1 AN ACT *to amend* 814.245 (2) (d); and *to create* 18.13 (4), 165.06, 165.061 and
2 165.062 of the statutes; **relating to:** creating a consumer privacy advocate in
3 the department of justice and making an appropriation.

Analysis by the Legislative Reference Bureau

*Insert
ALL*

~~This is a preliminary draft. An analysis will be provided in a later version.~~

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

4 SECTION 1. 18.13 (4) of the statutes is created to read:

5 18.13 (4) CONSUMER PRIVACY ADVOCATE. Notwithstanding s. 165.061, the
6 consumer privacy advocate does not have authority to initiate any action or
7 proceeding concerning the issuance of obligations by the building commission under
8 this chapter.

9 SECTION 2. 165.06 of the statutes is created to read:

10 **165.06 Assistant attorney general — consumer privacy advocate. (1)**

11 The attorney general shall designate an assistant attorney general on the attorney

1 general's staff as the consumer privacy advocate. The consumer privacy advocate
2 shall represent the consumers' interests in issues concerning consumer privacy,
3 including the purchase of products on the Internet and the prevention of theft of the
4 consumer's personal identifying information. The secretary of administration shall
5 give the consumer privacy advocate written notices of all proceedings under subch.
6 VII of ch. 16. The prosecutor of any action under s. 943.201, 943.392, 943.41 or 943.70
7 shall give the consumer privacy advocate written notices of all proceedings under
8 those sections. The consumer privacy advocate shall be provided the minutes,
9 reports, recommendations and any documents provided by or to the joint committee
10 on information policy and the standing committees of the assembly and senate
11 dealing with privacy matters. Annually, the consumer privacy advocate shall report
12 to the appropriate standing committees of the assembly and senate on the status of
13 consumer privacy in this state.

14 (2) The consumer privacy advocate may, on his or her own initiative or upon
15 request of any committee of the legislature, formally intervene in all civil
16 proceedings described in sub. (1) whenever such intervention is needed for the
17 protection of consumers' rights to privacy, including the restriction of access to the
18 consumer's personal identifying information and the prevention of fraudulent use of
19 the consumer's personal identifying information on the Internet.

20 (3) Personnel of the department of administration shall, upon the request of
21 the consumer privacy advocate, make such investigations, studies and reports as the
22 consumer may request in connection with proceedings described in sub. (1), either
23 before or after formal intervention. Personnel of state agencies shall, at the
24 consumer privacy advocate's request, provide information, serve as witnesses in civil
25 proceedings described in sub. (1) and otherwise cooperate in the carrying out of the

1 consumer privacy advocate's functions. Formal intervention shall be by filing a
2 statement to that effect with the examiner or other person immediately in charge of
3 the proceeding. Upon filing the statement, the consumer privacy advocate shall be
4 considered a party in interest with full power to present evidence, subpoena and
5 cross-examine witnesses, submit proof, file briefs or do any other acts appropriate
6 for a party to the proceedings.

7 (4) The consumer privacy advocate may appeal from administrative rulings to
8 the courts. In all administrative proceedings and judicial review proceedings the
9 consumer privacy advocate shall be identified as "consumer privacy advocate". This
10 section does not preclude or prevent any division of any department or independent
11 agency from appearing by its staff as a party in those proceedings.

12 SECTION 3. 165.061 of the statutes is created to read:

13 **165.061 Assistant attorney general; consumer privacy advocate;**
14 **authority.** In carrying out his or her duty to protect the consumers' right to privacy,
15 the consumer privacy advocate has the authority to initiate actions and proceedings
16 before any agency or court ~~in order to raise issues~~ related to consumer privacy,
17 including issues concerning constitutionality, to present evidence and testimony and
18 to make arguments.

19 SECTION 4. 165.062 of the statutes is created to read:

20 **165.062 Assistant attorney general; consumer privacy advocate;**
21 **advisory committee.** The attorney general shall appoint a consumer privacy
22 advisory committee under s. 15.04 (1) (c). The consumer privacy advisory committee
23 shall consist of not less than 7 nor more than 9 members. The members shall have
24 backgrounds in or demonstrated experience or records relating to privacy protection,
25 record security or information technology. The consumer privacy advisory

1 committee shall advise the consumer privacy advocate consistent with his or her
2 duty to protect the consumers' right to privacy. The consumer privacy advisory
3 committee shall conduct meetings consistent with subch. V of ch. 19 and shall permit
4 public participation and public comment on consumer privacy advocate activities.

5 **SECTION 5.** 814.245 (2) (d) of the statutes is amended to read:

6 814.245 (2) (d) "State agency" does not include the consumer privacy advocate
7 or citizens utility board.

8 **SECTION 6. Appropriation changes.**

9 (1) DEPARTMENT OF JUSTICE. In the schedule under section 20.005 (3) of the
10 statutes for the appropriation to the department of justice under section 20.455 (1)
11 (a) of the statutes, as affected by the acts of 1999, the dollar amount is increased by
12 \$120,700 for fiscal year 1999-00 and the dollar amount is increased by \$120,700 for
13 fiscal year 2000-01 to increase the authorized FTE positions for the department by
14 1.0 GPR attorney position on the effective date of this subsection for the purposes of
15 the consumer privacy advocate.

16 **SECTION 7. Effective date.**

17 (1) This act takes effect on July 1, 1999, or on the day after publication,
18 whichever is later.

19 (END)

**1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1663/lins
RPN:cmh:ijs

insert anl:

9 This bill creates a consumer privacy advocate in the department of justice. Under the bill, the department of justice is given an additional attorney position and the attorney general is required to designate an assistant attorney general as the consumer privacy advocate. The advocate, under the bill, is required to represent the consumer's interest in issues concerning consumer privacy, such as the purchase of products on the Internet and the prevention of theft of a consumer's personal identification information. The advocate may intervene in civil actions related to information technology services provided by the state, misappropriation of personal identifying information, data alteration, financial card misuse and computer program and data misuse, if necessary to protect the consumer's right to privacy. The bill requires the department of administration to make investigations, studies and reports at the advocate's request related to these proceedings. Other state agencies are required by the bill to cooperate with the advocate in carrying out his or her functions.

9 The bill gives the consumer privacy advocate the authority to appeal from administrative rulings to the courts. In addition, the advocate may initiate actions before any agency or court related to consumer privacy issues and may present evidence and make arguments in those actions. The bill requires the attorney general to appoint a consumer privacy advisory committee to advise the consumer privacy advocate regarding his or her duties.

End

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 5/19/99

To: Senator Erpenbach

Relating to LRB drafting number: LRB-1663

Topic

Create a consumer privacy advocate in DOJ

Subject(s)

Courts - miscellaneous

1. **JACKET** the draft for introduction _____

in the **Senate** or the **Assembly** _____ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Robert P. Nelson, Senior Legislative Attorney
Telephone: (608) 267-7511



Today 5/28
State of Wisconsin
1999 - 2000 LEGISLATURE

3/49/1
LRB-~~16637~~
RPN:cmh:kjf

D-Note

1999 SENATE BILL

1 **AN ACT to amend** 814.245 (2) (d); and **to create** 18.13 (4), 165.06, 165.061 and
2 165.062 of the statutes; **relating to:** creating a consumer privacy advocate in
3 the department of justice and making an appropriation.

request

Analysis by the Legislative Reference Bureau

This bill creates a consumer privacy advocate in the department of justice. Under the bill, the department of justice is given an additional attorney position and the attorney general is required to designate an assistant attorney general as the consumer privacy advocate. The advocate, under the bill, is required to represent the consumer's interest in issues concerning consumer privacy, such as the purchase of products on the Internet and the prevention of theft of a consumer's personal identification information. The advocate may intervene in civil actions related to information technology services provided by the state, misappropriation of personal identifying information, data alteration, financial card misuse and computer program and data misuse, if necessary to protect the consumer's right to privacy. The bill requires the department of administration to make investigations, studies and reports at the advocate's request related to these proceedings. Other state agencies are required by the bill to cooperate with the advocate in carrying out his or her functions.

The bill gives the consumer privacy advocate the authority to appeal from administrative rulings to the courts. In addition, the advocate may initiate actions before any agency or court related to consumer privacy issues and may present evidence and make arguments in those actions. The bill requires the attorney

SENATE BILL 178

general to appoint a consumer privacy advisory committee to advise the consumer privacy advocate regarding his or her duties.

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

1 **SECTION 1.** 18.13 (4) of the statutes is created to read:

2 18.13 (4) CONSUMER PRIVACY ADVOCATE. Notwithstanding s. 165.061, the
3 consumer privacy advocate does not have authority to initiate any action or
4 proceeding concerning the issuance of obligations by the building commission under
5 this chapter.

6 **SECTION 2.** 165.06 of the statutes is created to read:

7 **165.06 Assistant attorney general — consumer privacy advocate. (1)**
8 The attorney general shall designate an assistant attorney general on the attorney
9 general's staff as the consumer privacy advocate. The consumer privacy advocate
10 shall represent the consumers' interests in issues concerning consumer privacy,
11 including the purchase of products on the Internet and the prevention of theft of the
12 consumer's personal identifying information. The secretary of administration shall
13 give the consumer privacy advocate written notices of all proceedings under subch.
14 VII of ch. 16. The prosecutor of any action under s. 943.201, 943.392, 943.41 or 943.70
15 shall give the consumer privacy advocate written notices of all proceedings under
16 those sections. The consumer privacy advocate shall be provided the minutes,
17 reports, recommendations and any documents provided by or to the joint committee
18 on information policy and the standing committees of the assembly and senate
19 dealing with privacy matters. Annually, the consumer privacy advocate shall report
20 to the appropriate standing committees of the assembly and senate on the status of
21 consumer privacy in this state.

SENATE BILL 178

1 (2) The consumer privacy advocate may, on his or her own initiative or upon
2 request of any committee of the legislature, formally intervene in all civil
3 proceedings described in sub. (1) whenever such intervention is needed for the
4 protection of consumers' rights to privacy, including the restriction of access to the
5 consumer's personal identifying information and the prevention of fraudulent use of
6 the consumer's personal identifying information on the Internet.

7 (3) Personnel of the department of administration shall, upon the request of
8 the consumer privacy advocate, make such investigations, studies and reports as the
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12 proceedings described in sub. (1) and otherwise cooperate in the carrying out of the
13 consumer privacy advocate's functions. Formal intervention shall be by filing a
14 statement to that effect with the examiner or other person immediately in charge of
15 the proceeding. Upon filing the statement, the consumer privacy advocate shall be
16 considered a party in interest with full power to present evidence, subpoena and
17 cross-examine witnesses, submit proof, file briefs or do any other acts appropriate
18 for a party to the proceedings.

19 (4) The consumer privacy advocate may appeal from administrative rulings to
20 the courts. In all administrative proceedings and judicial review proceedings the
21 consumer privacy advocate shall be identified as "consumer privacy advocate". This
22 section does not preclude or prevent any division of any department or independent
23 agency from appearing by its staff as a party in those proceedings.

24 **SECTION 3.** 165.061 of the statutes is created to read:

SENATE BILL 178**SECTION 3**

1 **165.061 Assistant attorney general; consumer privacy advocate;**
2 **authority.** In carrying out his or her duty to protect the consumers' right to privacy,
3 the consumer privacy advocate has the authority to initiate actions and proceedings
4 before any agency or court related to consumer privacy, including issues concerning
5 constitutionality, to present evidence and testimony and to make arguments.

6 **SECTION 4.** 165.062 of the statutes is created to read:

7 **165.062 Assistant attorney general; consumer privacy advocate;**
8 **advisory committee.** The attorney general shall appoint a consumer privacy
9 advisory committee under s. 15.04 (1) (c). The consumer privacy advisory committee
10 shall consist of not less than 7 nor more than 9 members. The members shall have
11 backgrounds in or demonstrated experience or records relating to privacy protection,
12 record security or information technology. The consumer privacy advisory
13 committee shall advise the consumer privacy advocate consistent with his or her
14 duty to protect the consumers' right to privacy. The consumer privacy advisory
15 committee shall conduct meetings consistent with subch. V of ch. 19 and shall permit
16 public participation and public comment on consumer privacy advocate activities.

17 **SECTION 5.** 814.245 (2) (d) of the statutes is amended to read:

18 814.245 (2) (d) "State agency" does not include the consumer privacy advocate
19 or citizens utility board.

20 **SECTION 6. Appropriation changes.**

21 (1) DEPARTMENT OF JUSTICE. In the schedule under section 20.005 (3) of the
22 statutes for the appropriation to the department of justice under section 20.455 (1)
23 (a) of the statutes, as affected by the acts of 1999, the dollar amount is increased by
24 \$120,700 for fiscal year 1999–00 and the dollar amount is increased by \$120,700 for
25 fiscal year 2000–01 to increase the authorized FTE positions for the department by

SENATE BILL 178

1 1.0 GPR attorney position on the effective date of this subsection for the purposes of
2 the consumer privacy advocate.

3 **SECTION 7. Effective date.**

4 (1) This act takes effect on July 1, 1999, or on the day after publication,
5 whichever is later.

6 (END)

cm 17

D-Note

*This draft is identical
to LRB-1663/1 and replaces
that draft.*

RPA

[Signature]

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

LRB-3149/1dn
RPN:cmh:jf

May 28, 1999

This draft is identical to LRB-1663/1 and replaces that draft.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511

Barman, Mike

From: Barman, Mike
Sent: Wednesday, June 09, 1999 2:05 PM
To: Laundrie, Julie
Subject: LRB 99-3149/1 (per your request)

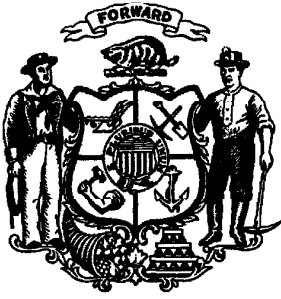


99-3149/1

Mike Barman

Mike Barman - Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

State of Wisconsin
Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703



Wisconsin Senate

Donald J. Schneider
Senate Chief Clerk

November 3, 1999

Mr. Steve Miller, Director
Legislative Reference Bureau
100 N. Hamilton.
Madison, WI 53703

LRB COPY

Keep In File

copy also to Deborah AT DOA

Steve
Dear Mr. Miller:

Pursuant to Joint Rule 41 (2) (b), I am requesting that the Legislative Reference Bureau have the Department of Administration prepare a Fiscal Estimate on Senate Bill 259, relating to creating a consumer privacy advocate in the department of justice and making an appropriation.

Thank you for your attention to this matter.

Sincerely,

Fred
FRED A. RISSER
Senate President