

2001 ASSEMBLY BILL 195

March 13, 2001 – Introduced by Representatives HUEBSCH, STARZYK, BOYLE, FREESE, LADWIG, MUSSER, SUDER, SYKORA, WADE, STONE, M. LEHMAN and LEIBHAM, cosponsored by Senator ROESSLER. Referred to Committee on Personal Privacy.

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

Analysis by the Legislative Reference Bureau

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 The bill allows a parent to withdraw consent and prohibits further disclosure once that consent is withdrawn.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

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

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

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

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

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

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

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

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

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

8 (d) "Person" includes the state of Wisconsin.

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

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

18 **(3)** A parent or guardian may withdraw the written consent given under sub.
19 (2) at any time, in writing. If consent is withdrawn under this subsection, the further

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1 disclosure of personal information is prohibited. A parent or guardian may correct
2 or revise any personal information previously permitted to be disclosed if that
3 information changes.

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

7 (a) The source of the personal information.

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

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

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

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

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

20 (a) The source of the personal information.

21 (b) A copy of the personal information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **SECTION 2. Initial applicability.**

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

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(END)