

Insert 2-6

2001 BILL



to juvenile court intake workers, and to

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~~AN ACT to renumber and amend 48.396 (2) (g); to amend 48.396 (1), 48.396 (5) (a) (intro.), 938.396 (1), 938.396 (2) (c), 938.396 (2) (gm) and 938.396 (5) (a) (intro.); and to create 48.396 (1h), 48.396 (1j), 48.396 (1k), 48.396 (2) (c), 48.396 (2) (gr), 938.396 (1h), 938.396 (1j), 938.396 (1k) and 938.396 (2) (gr) of the statutes; relating to: disclosure of the records of a law enforcement agency or of a juvenile or municipal court to other law enforcement agencies, other juvenile or municipal courts, district attorneys, corporation counsels, and other representatives of the public interest; and juvenile court intake workers.~~

to

**Analysis by the Legislative Reference Bureau**

Under current law, subject to certain exceptions, law enforcement agency records of a juvenile, the records of the court assigned to exercise jurisdiction under the Children's Code and the Juvenile Justice Code (juvenile court), and the records of a municipal court exercising jurisdiction in a proceeding against a juvenile for a local ordinance violation are confidential and may not be opened to inspection or their contents disclosed except by order of the juvenile court. Currently, those exceptions include an exception that permits the confidential exchange of information between law enforcement agencies; an exception that requires a juvenile court, on the request of a law enforcement agency to review the juvenile court's

(end of insert)

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3774/linsJTK  
JTK.....

JNS 2A

This bill creates various prohibitions, restrictions, and requirements, and makes changes in existing laws with respect to protection of personal privacy and security of personal information, and changes the place of trial for certain existing crimes. The changes include:

sub heading  
(subsub)

Identification numbers for  
private college students

Insert A

**2001 BILL**

sub sub  
Disclosure of juvenile records

1 **AN ACT to renumber and amend 48.396 (2) (g); to amend 48.396 (1), 48.396**  
2 **(5) (a) (intro.), 938.396 (1), 938.396 (2) (c), 938.396 (2) (gm) and 938.396 (5) (a)**  
3 **(intro.); and to create 48.396 (1h), 48.396 (1j), 48.396 (1k), 48.396 (2) (e), 48.396**  
4 **(2) (gr), 938.396 (1h), 938.396 (1j), 938.396 (1k) and 938.396 (2) (gr) of the**  
5 **statutes; relating to:** disclosure of the records of a law enforcement agency or  
6 of a juvenile or municipal court to other law enforcement agencies; other  
7 juvenile or municipal courts; district attorneys, corporation counsels, and other  
8 representatives of the public interest; and juvenile court intake workers.

**Analysis by the Legislative Reference Bureau**

Under current law, subject to certain exceptions, law enforcement agency records of a juvenile, the records of the court assigned to exercise jurisdiction under the Children's Code and the Juvenile Justice Code (juvenile court), and the records of a municipal court exercising jurisdiction in a proceeding against a juvenile for a local ordinance violation are confidential and may not be opened to inspection or their contents disclosed except by order of the juvenile court. Currently, those exceptions include an exception that permits the confidential exchange of information between law enforcement agencies; an exception that requires a juvenile court, on the request of a law enforcement agency to review the juvenile court's

**BILL**

- 2 -  
Encl A

records for the purpose of investigating alleged criminal gang activity, to open for inspection by the law enforcement agency the records of the juvenile court relating to any juvenile who has committed a felony at the request of or for the benefit of a criminal gang; and an exception that requires a juvenile court, on the request of any other juvenile court, a district attorney, or a corporation counsel to review the juvenile court's records for the purpose of any proceeding in that other juvenile court, to open for inspection by the requester the records of the juvenile court relating to any juvenile who has been the subject of a proceeding under the Children's Code or the Juvenile Justice Code.

This bill permits a law enforcement agency to disclose information in its records relating to a juvenile as follows:

1. To another law enforcement agency as necessary for the other law enforcement agency to pursue an investigation of any alleged criminal or delinquent activity.
2. To a juvenile court, a municipal court, or a district attorney, corporation counsel, municipal attorney, or other person representing the interests of the public in a proceeding under the Children's Code or the Juvenile Justice Code as necessary for the court to conduct, or for the person representing the interests of the public to prepare for, a proceeding in that court.
3. To a juvenile court intake worker as necessary for the intake worker to provide intake services.

Similarly, the bill requires a juvenile court or a municipal court to disclose its records relating to a juvenile as follows:

1. To a law enforcement agency as necessary for the law enforcement agency to pursue an investigation of any alleged criminal or delinquent activity.
2. To another juvenile court, another municipal court, or a district attorney, corporation counsel, municipal attorney, or other person representing the interests of the public in a proceeding under the Children's Code or the Juvenile Justice Code as necessary for the other court to conduct, or for the person representing the interests of the public to prepare for, a proceeding in that court.
3. To a juvenile court intake worker as necessary for the intake worker to provide intake services.

The bill requires a person who obtains information under the bill to keep the information confidential and permits the person to disclose the information only for the purpose for which the information was obtained or as otherwise permitted under current law, as affected by the bill.

~~For further information see the 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. 48.396(1) of the statutes is amended to read:

(cont. next)

**BILL**

2  
Insert 15-201

records for the purpose of investigating alleged criminal gang activity, to open for inspection by the law enforcement agency the records of the juvenile court relating to any juvenile who has committed a felony at the request of or for the benefit of a criminal gang; and an exception that requires a juvenile court, on the request of any other juvenile court, a district attorney, or a corporation counsel to review the juvenile court's records for the purpose of any proceeding in that other juvenile court, to open for inspection by the requester the records of the juvenile court relating to any juvenile who has been the subject of a proceeding under the Children's Code or the Juvenile Justice Code.

This bill permits a law enforcement agency to disclose information in its records relating to a juvenile as follows:

1. To another law enforcement agency as necessary for the other law enforcement agency to pursue an investigation of any alleged criminal or delinquent activity.

2. To a juvenile court, a municipal court, or a district attorney, corporation counsel, municipal attorney, or other person representing the interests of the public in a proceeding under the Children's Code or the Juvenile Justice Code as necessary for the court to conduct, or for the person representing the interests of the public to prepare for, a proceeding in that court.

3. To a juvenile court intake worker as necessary for the intake worker to provide intake services.

Similarly, the bill requires a juvenile court or a municipal court to disclose its records relating to a juvenile as follows:

1. To a law enforcement agency as necessary for the law enforcement agency to pursue an investigation of any alleged criminal or delinquent activity.

2. To another juvenile court, another municipal court, or a district attorney, corporation counsel, municipal attorney, or other person representing the interests of the public in a proceeding under the Children's Code or the Juvenile Justice Code as necessary for the other court to conduct, or for the person representing the interests of the public to prepare for, a proceeding in that court.

3. To a juvenile court intake worker as necessary for the intake worker to provide intake services.

The bill requires a person who obtains information under the bill to keep the information confidential and permits the person to disclose the information only for the purpose for which the information was obtained or as otherwise permitted under current law, as affected by the bill.

For further information see the *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 <sup>#</sup> 48.396 (1) <sup>✓</sup> of the statutes is amended to read:




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Insert 15-20

1           48.396 (1) Law enforcement officers' records of children shall be kept separate  
2 from records of adults. Law enforcement officers' records of the adult expectant  
3 mothers of unborn children shall be kept separate from records of other adults. Law  
4 enforcement officers' records of children and the adult expectant mothers of unborn  
5 children shall not be open to inspection or their contents disclosed except under sub.  
6 (1b), (1d), (1h), (1j), (1k), or (5) or s. 48.293 or by order of the court. This subsection  
7 does not apply to the representatives of ~~newspapers or other reporters of news~~ the  
8 news media who wish to obtain information for the purpose of reporting news  
9 without revealing the identity of the child or adult expectant mother involved, to the  
10 confidential exchange of information between the police and officials of the school  
11 attended by the child or other law enforcement or social welfare agencies, or to  
12 children 10 years of age or older who are subject to the jurisdiction of the court of  
13 criminal jurisdiction. A public school official who obtains information under this  
14 subsection shall keep the information confidential as required under s. 118.125, and  
15 a private school official who obtains information under this subsection shall keep the  
16 information confidential in the same manner as is required of a public school official  
17 under s. 118.125. A law enforcement agency that obtains information under this  
18 subsection shall keep the information confidential as required under this subsection  
19 and s. 938.396 (1). A social welfare agency that obtains information under this  
20 subsection shall keep the information confidential as required under ss. 48.78 and  
21 938.78.

22           \*  
SECTION ~~§~~ 48.396 (1h) of the statutes is created to read:

23           48.396 (1h) If requested by another law enforcement agency, a law enforcement  
24 agency may, subject to official agency policy, disclose to the other law enforcement  
25 agency any information in its records relating to a child or an adult expectant mother



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Insert 15-20


1 of an unborn child as necessary for the other law enforcement agency to pursue an  
2 investigation of any alleged criminal or delinquent activity. A law enforcement  
3 agency that obtains information under this subdivision shall keep the information  
4 confidential as required under sub. (1) and s. 938.396 (1) and may disclose the  
5 information only for the purpose of pursuing that investigation or as permitted under  
6 sub. (1) or s. 938.396 (1).

7 ~~SECTION 9.~~ SECTION 48.396 (1j) of the statutes is created to read:

8 48.396 (1j) If requested by a court assigned to exercise jurisdiction under this  
9 chapter and ch. 938, a court exercising jurisdiction under s. 48.16, a court exercising  
10 jurisdiction under s. 938.17 (2), or a person representing the interests of the public  
11 under s. 48.09 or 938.09, a law enforcement agency may, subject to official agency  
12 policy, disclose to the requester any information in its records relating to a child or  
13 an adult expectant mother of an unborn child as necessary for the court to conduct,  
14 or the person representing the interests of the public to prepare for, any proceedings  
15 in the court. A court that obtains information under this subdivision shall keep the  
16 information confidential as required under sub. (2) (a) and s. 938.396 (2) (a) and may  
17 disclose the information only for the purpose of conducting those proceedings or as  
18 permitted under sub. (2) (a) and s. 938.396 (2) (a). A person representing the  
19 interests of the public who obtains any information under this subdivision shall keep  
20 the information confidential and may disclose the information only as necessary for  
21 the person to perform the person's official duties relating to those proceedings.

22 ~~SECTION 10.~~ SECTION 48.396 (1k) of the statutes is created to read:

23 48.396 (1k) If requested by any person designated to provide intake services  
24 under s. 48.067 or 938.067, a law enforcement agency may, subject to official agency  
25 policy, disclose to the person any information in its records relating to a child or an



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Insert 15-20


1 adult expectant mother of an unborn child as necessary for the person to provide  
2 those services. A person designated to provide intake services who obtains any  
3 information under this subdivision shall keep the information confidential and may  
4 disclose the information only as necessary for the person to provide those services.

5 ~~SECTION 48.396~~ SECTION 48.396 (2) (c) of the statutes is created to read:

6 48.396 (2) (c) Upon request of any law enforcement agency to review court  
7 records for the purpose of pursuing an investigation of any alleged delinquent or  
8 criminal activity, the court shall open for inspection by any authorized  
9 representative of the requester the records of the court relating to a child or an adult  
10 expectant mother of an unborn child who has been the subject of a proceeding under  
11 this chapter as necessary for the law enforcement agency to pursue the investigation.  
12 A law enforcement agency that obtains information under this paragraph shall keep  
13 the information confidential as required under sub. (1) and s. 938.396 (1) and may  
14 disclose the information only for the purpose of pursuing that investigation or as  
15 permitted under sub. (1) or s. 938.396 (1).

16 ~~SECTION 48.396~~ SECTION 48.396 (2) (g) of the statutes is renumbered 48.396 (2) (gm) and  
17 amended to read:

18 48.396 (2) (gm) Upon request of any other court assigned to exercise  
19 jurisdiction under this chapter and ch. 938, ~~a district attorney or corporation counsel~~  
20 any court exercising jurisdiction under s. 48.16, any court exercising jurisdiction  
21 under s. 938.17 (2), or any person representing the interests of the public under s.  
22 48.09 or 938.09 to review court records for the purpose of conducting or preparing for  
23 any proceeding in that other court, the court shall open for inspection by any  
24 authorized representative of the requester the records of the court relating to any  
25 child who has been the subject of a proceeding under this chapter. A court that





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1 obtains information under this paragraph shall keep the information confidential as  
 2 required under par. (a) and s. 938.396 (2) (a) and may disclose the information only  
 3 for the purpose of conducting those proceedings or as permitted under par. (a) and  
 4 s. 938.396 (2) (a). A person representing the interests of the public who obtains any  
 5 information under this paragraph shall keep the information confidential and may  
 6 disclose the information only as necessary for the person to perform the person's  
 7 official duties relating to that proceeding.

8 ~~SECTION 7.~~ SECTION 48.396 (2) (gr) of the statutes is created to read:

9 48.396 (2) (gr) Upon request of any person designated to provide intake  
 10 services under s. 48.067 or 938.067 to review court records for the purpose of  
 11 performing those services, the court shall open for inspection by the person the  
 12 records of the court relating to a child or an adult expectant mother of an unborn child  
 13 who has been the subject of a proceeding under this chapter. A person designated  
 14 to provide intake services who obtains any information under this paragraph shall  
 15 keep the information confidential and may disclose the information only as  
 16 necessary for the person to provide those services.

17 ~~SECTION 8.~~ SECTION 48.396 (5) (a) (intro.) of the statutes is amended to read:

18 48.396 (5) (a) (intro.) Any person who is denied access to a record under sub.  
 19 (1), (1b) ~~or~~, (1d), (1h), (1j), or (1k) may petition the court to order the disclosure of the  
 20 records governed by the applicable subsection record. The petition shall be in writing  
 21 and shall describe as specifically as possible all of the following:

22 ~~SECTION 9. 938.396 (1) of the statutes is amended to read:~~

23 938.396 (1) Law enforcement officers' records of juveniles shall be kept  
 24 separate from records of adults. Law enforcement officers' records of juveniles shall  
 25 not be open to inspection or their contents disclosed except under sub. (1b), (1d), (1g),

(end of insert)

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Insert 21 - 3

1 obtains information under this paragraph shall keep the information confidential as  
2 required under par. (a) and s. 938.396 (2) (a) and may disclose the information only  
3 for the purpose of conducting those proceedings or as permitted under par. (a) and  
4 s. 938.396 (2) (a). A person representing the interests of the public who obtains any  
5 information under this paragraph shall keep the information confidential and may  
6 disclose the information only as necessary for the person to perform the person's  
7 official duties relating to that proceeding.

8 SECTION 7. 48.396 (2) (gr) of the statutes is created to read:

9 48.396 (2) (gr) Upon request of any person designated to provide intake  
10 services under s. 48.067 or 938.067 to review court records for the purpose of  
11 performing those services, the court shall open for inspection by the person the  
12 records of the court relating to a child or an adult expectant mother of an unborn child  
13 who has been the subject of a proceeding under this chapter. A person designated  
14 to provide intake services who obtains any information under this paragraph shall  
15 keep the information confidential and may disclose the information only as  
16 necessary for the person to provide those services.

17 SECTION 8. 48.396 (5) (a) (intro.) of the statutes is amended to read:

18 48.396 (5) (a) (intro.) Any person who is denied access to a record under sub.  
19 (1), (1b) or, (1d), (1h), (1j), or (1k) may petition the court to order the disclosure of the  
20 records governed by the applicable subsection record. The petition shall be in writing  
21 and shall describe as specifically as possible all of the following:

22 SECTION 9. 938.396 (1) of the statutes is amended to read:


23 938.396 (1) Law enforcement officers' records of juveniles shall be kept  
24 separate from records of adults. Law enforcement officers' records of juveniles shall  
25 not be open to inspection or their contents disclosed except under sub. (1b), (1d), (1g),

1 (1h), (1j), (1k), (1m), (1r), (1t), (1x) or (5) or s. 938.293 or by order of the court. This  
2 subsection does not apply to representatives of the news media who wish to obtain  
3 information for the purpose of reporting news without revealing the identity of the  
4 juvenile involved, to the confidential exchange of information between the police and  
5 officials of the school attended by the juvenile or other law enforcement or social  
6 welfare agencies, or to juveniles 10 years of age or older who are subject to the  
7 jurisdiction of the court of criminal jurisdiction. A public school official who obtains  
8 information under this subsection shall keep the information confidential as  
9 required under s. 118.125, and a private school official who obtains information  
10 under this subsection shall keep the information confidential in the same manner as  
11 is required of a public school official under s. 118.125. A law enforcement agency that  
12 obtains information under this subsection shall keep the information confidential as  
13 required under this subsection and s. 48.396 (1). A social welfare agency that obtains  
14 information under this subsection shall keep the information confidential as  
15 required under ss. 48.78 and 938.78.

16 ~~SECTION 10.~~ SECTION 938.396 (1h) of the statutes is created to read:

17 938.396 (1h) If requested by another law enforcement agency, a law  
18 enforcement agency may, subject to official agency policy, disclose to the other law  
19 enforcement agency any information in its records relating to a juvenile as necessary  
20 for the other law enforcement agency to pursue an investigation of any alleged  
21 criminal or delinquent activity. A law enforcement agency that obtains information  
22 under this subdivision shall keep the information confidential as required under sub.  
23 (1) and s. 48.396 (1) and may disclose the information only for the purpose of  
24 pursuing that investigation or as permitted under sub. (1) or s. 48.396 (1).

25 ~~SECTION 11.~~ SECTION 938.396 (1j) of the statutes is created to read:



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*Insert 213*

1           938.396 (1j) If requested by a court assigned to exercise jurisdiction under this  
 2 chapter and ch. 48, a court exercising jurisdiction under s. 48.16, a court exercising  
 3 jurisdiction under s. 938.17 (2), or a person representing the interests of the public  
 4 under s. 48.09 or 938.09, a law enforcement agency may, subject to official agency  
 5 policy, disclose to the requester any information in its records relating to a juvenile  
 6 as necessary for the court to conduct, or for the person representing the interests of  
 7 the public to prepare for, any proceedings in the court. A court that obtains  
 8 information under this subdivision shall keep the information confidential as  
 9 required under sub. (2) (a) and s. 48.396 (2) (a) and may disclose the information only  
 10 for the purpose of conducting those proceedings or as permitted under sub. (2) (a) or  
 11 s. 48.396 (2) (a). A person representing the interests of the public who obtains any  
 12 information under this subdivision shall keep the information confidential and may  
 13 disclose the information only as necessary for the person to perform the person's  
 14 official duties relating to those proceedings.

15           ~~SECTION 12.~~ SECTION ~~12.~~ 938.396 (1k) of the statutes is created to read:

16           938.396 (1k) If requested by any person designated to provide intake services  
 17 under s. 48.067 or 938.067, a law enforcement agency may, subject to official agency  
 18 policy, disclose to the person any information in its records relating to a juvenile as  
 19 necessary for the person to provide those services. A person designated to provide  
 20 intake services who obtains any information under this subdivision shall keep the  
 21 information confidential and may disclose the information only as necessary for the  
 22 person to provide those services.

23           ~~SECTION 13.~~ SECTION ~~13.~~ 938.396 (2) (c) of the statutes is amended to read:

24           938.396 (2) (c) Upon request of a law enforcement agency to review court  
 25 records for the purpose of ~~investigating a crime that might constitute criminal gang~~




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Insert 21-3

1 activity, as defined in s. 941.38 (1) (b) pursuing an investigation of any alleged  
2 delinquent or criminal activity, the court shall open for inspection by authorized  
3 representatives of the law enforcement agency the records of the court relating to any  
4 juvenile who has been found to have committed a delinquent act at the request of or  
5 for the benefit of a criminal gang, as defined in s. 939.22 (9), that would have been  
6 a felony under chs. 939 to 948 or 961 if committed by an adult the subject of a  
7 proceeding under this chapter as necessary for the law enforcement agency to pursue  
8 the investigation. A law enforcement agency that obtains information under this  
9 paragraph shall keep the information confidential as required under sub. (1) and s.  
10 48.396 (1) and may disclose the information only for the purpose of pursuing that  
11 investigation or as permitted under sub. (1) or s. 48.396 (1).

12 SECTION ~~14~~ 938.396 (2) (gm) of the statutes is amended to read:

13 938.396 (2) (gm) Upon request of any other court assigned to exercise  
14 jurisdiction under this chapter and ch. 48, ~~a district attorney or corporation counsel~~  
15 any court exercising jurisdiction under s. 48.16, any court exercising jurisdiction  
16 under s. 938.17 (2), or any person representing the interests of the public under s.  
17 48.09 or 938.09 to review court records for the purpose of conducting or preparing for  
18 any proceeding in that other court, the court shall open for inspection by any  
19 authorized representative of the requester the records of the court relating to any  
20 juvenile who has been the subject of a proceeding under this chapter. A court that  
21 obtains information under this paragraph shall keep the information confidential as  
22 required under par. (a) and s. 48.396 (2) (a) and may disclose the information only  
23 for the purpose of conducting those proceedings or as permitted under par. (a) or s.  
24 48.396 (2) (a). A person representing the interests of the public who obtains any  
25 information under this paragraph shall keep the information confidential and may



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*Insert 21-3*

1 disclose the information only as necessary for the person to perform the person's  
2 official duties relating to that proceeding.

3 SECTION ~~17~~<sup>#</sup> 938.396 (2) (gr) of the statutes is created to read:

4 938.396 (2) (gr) ~~Court intake worker~~ Upon request of any person designated  
5 to provide intake services under s. 48.067 or 938.067 to review court records for the  
6 purpose of performing those services, the court shall open for inspection by the  
7 person the records of the court relating to a juvenile who has been the subject of a  
8 proceeding under this chapter. A person designated to provide intake services who  
9 obtains any information under this paragraph shall keep the information  
10 confidential and may disclose the information only as necessary for the person to  
11 provide those services.

12 SECTION ~~18~~<sup>#</sup> 938.396 (5) (a) (intro.) of the statutes is amended to read:

13 938.396 (5) (a) (intro.) Any person who is denied access to a record under sub.  
14 (1), (1b), (1d), (1g), (1h), (1j), (1k), (1m), (1r), or (1t) may petition the court to order  
15 the disclosure of the records ~~governed by the applicable subsection~~ record. The  
16 petition shall be in writing and shall describe as specifically as possible all of the  
17 following:

18 (END)

*(Insert)*

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

LRB-3774/P1dn 1dn  
DAK/RNK/PJD/JTK:....:ch

October 4, 2001

This bill adds "pharmacy" to the definition of "health care provider" under s. 146.81 (1) (fm), stats. Although both civil and criminal penalties under s. 146.84 (1) (b) and (c) and (2) (a) 2., (b), and (c), stats., would appear to apply to a pharmacy or pharmacist that releases a patient health care record, I drafted s. 146.84 (1) (d) to prohibit the obtaining of a patient health care record.

Note the amendment to s. 146.81 (4), stats.; I believe this is necessary because a pharmacy does not necessarily prepare a patient health care record and clearly does not supervise a pharmacist who does so (see s. 450.09 (1) (a), stats.). However, I was informed earlier in the year by Bill Black, an attorney who works with the Pharmacy Examining Board, that the patient health care records are the property of the pharmacy, not the pharmacist.

Note also the amendment of s. 146.82 (2) (a) 20., stats.; this clears up what otherwise would appear to be a loophole.

Lastly, reference is made in the following statutes to the definition of "health care provider" in s. 146.81 (1): 15.107 (6) (a), 48.422 (9) (b), 103.10 (1) (e), 146.36 (1) (c), 146.50 (12) (a), 146.905 (1), 153.01 (4t), 252.15 (1) (ar) 1., 302.388 (1) (a), 631.89 (2) (bm), 632.725 (1), 632.87 (4), and 857.035, stats. There does not seem to be a legal impediment to adding a pharmacy to the definition as it is cross-referenced in these statutes, but you may wish to look at them to see if there is any policy impediment as far as you are concerned.

Please let me know if you need further assistance with this bill.

Debora A. Kennedy  
Managing Attorney  
Phone: (608) 266-0137  
E-mail: debora.kennedy@legis.state.wi.us

*the  
SACRA  
violation  
under*

*a violation of*

~~This draft will be included in the compiled privacy bill that you requested. Please note that there is no penalty specified for the prohibition created in the draft. Consequently, the general penalty provisions under s. 939.61, stats., will apply to this draft. Under s. 939.61, stats., a person who violates s. 134.92, as created in this draft, will be subject~~

*proposed s. 134.92  
relating to credit card  
receipts issued at  
gas pumps*

to a forfeiture of up to \$200. If you would like to create a different penalty or if you would like to create a private right of action, please contact me and I will redraft accordingly.

Robin N. Kite  
Legislative Attorney  
Phone: (608) 266-7291  
E-mail: robin.kite@legis.state.wi.us

*draft includes*  
This is 1999 AB-23 updated. ~~It is for your compiled bill on privacy.~~ Does the initial applicability section meet your intent? 1999 AB-23 provided that the act first applied to bills introduced in the 2001-03 legislative session. 50

The language of proposed s. 13.0991 (7) to the effect that a bill for which a privacy impact statement is required or requested may not be heard or reported by a standing committee to which the bill is referred until the statement is received creates a rule of procedure under article IV, section 8, of the constitution. The supreme court has held that the remedy for noncompliance with this type of provision lies exclusively within the legislative branch. See *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 363-369 (1983). In other words, while this type of provision may be effective to govern internal legislative procedure, the courts will not enforce this type of provision and it does not affect the validity of any enactment resulting from a procedure that may be viewed as contravening the provision.

Atty. Peter J. Dykman  
General Counsel  
Phone: (608) 266-7098  
E-mail: peter.dykman@legis.state.wi.us

This draft does not provide any additional FTE positions for the two officers to be added to the department of electronic government. Under the draft, DEG will need to assign the functions of the officers to existing employees and to reallocate workload to accommodate this assignment. If you would like to authorize additional positions, please let me know.

Jeffery T. Kuesel  
Managing Attorney  
Phone: (608) 266-6778

INSERT MDT



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

LRB-3849/1dn  
MDK:kmg:pg

September 27, 2001

INSERT MDIT

AB-459 requires telephone directories to include a listing indicating whether or not a residential customer wants to receive telephone solicitations. I did not include that requirement in this bill because the budget act addressed the same issue, but in a different way. The budget act requires DATCP to maintain a nonsolicitation directory that lists residential customers who do not wish to receive telephone solicitations. Therefore, I assume that you no longer want to require telephone directories to include the listings. Is that okay?

Also, you may want to review the budget act's requirements regarding telephone solicitations. Is there anything that you want to change?

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

LRB-3774/1dn

DAK/RNK/PJD/JTK/MDK:wlj:kjf

October 5, 2001

This bill adds "pharmacy" to the definition of "health care provider" under s. 146.81 (1) (fm), stats. Although both civil and criminal penalties under s. 146.84 (1) (b) and (c) and (2) (a) 2., (b), and (c), stats., would appear to apply to a pharmacy or pharmacist that *releases* a patient health care record, I drafted s. 146.84 (1) (d) to prohibit the *obtaining* of a patient health care record.

Note the amendment to s. 146.81 (4), stats.; I believe this is necessary because a pharmacy does not necessarily prepare a patient health care record and clearly does not supervise a pharmacist who does so (see s. 450.09 (1) (a), stats.). However, I was informed earlier in the year by Bill Black, an attorney who works with the Pharmacy Examining Board, that the patient health care records are the property of the pharmacy, not the pharmacist.

Note also the amendment of s. 146.82 (2) (a) 20., stats.; this clears up what otherwise would appear to be a loophole.

Lastly, reference is made in the following statutes to the definition of "health care provider" in s. 146.81 (1): 15.107 (6) (a), 48.422 (9) (b), 103.10 (1) (e), 146.36 (1) (c), 146.50 (12) (a), 146.905 (1), 153.01 (4t), 252.15 (1) (ar) 1., 302.388 (1) (a), 631.89 (2) (bm), 632.725 (1), 632.87 (4), and 857.035, stats. There does not seem to be a legal impediment to adding a pharmacy to the definition as it is cross-referenced in these statutes, but you may wish to look at them to see if there is any policy impediment as far as you are concerned.

Please let me know if you need further assistance with this bill.

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Please note that there is no penalty specified for a violation of the prohibition created in proposed s. 134.92 relating to credit card receipts issued at gas pumps. Consequently, the general penalty provisions under s. 939.61, stats., will apply to the violation under this draft. Under s. 939.61, stats., a person who violates s. 134.92, as

created in this draft, will be subject to a forfeiture of up to \$200. If you would like to create a different penalty or if you would like to create a private right of action, please contact me, and I will redraft accordingly.

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This draft includes 1999 AB-23 updated. Does the initial applicability section meet your intent? 1999 AB-23 provided that the act first applied to bills introduced in the 2001-03 legislative session.

The language of proposed s. 13.0991 (7) to the effect that a bill for which a privacy impact statement is required or requested may not be heard or reported by a standing committee to which the bill is referred until the statement is received creates a rule of procedure under article IV, section 8, of the constitution. The supreme court has held that the remedy for noncompliance with this type of provision lies exclusively within the legislative branch. See *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 363-369 (1983). In other words, while this type of provision may be effective to govern internal legislative procedure, the courts will not enforce this type of provision, and it does not affect the validity of any enactment resulting from a procedure that may be viewed as contravening the provision.

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This draft does not provide any additional FTE positions for the two officers to be added to the department of electronic government. Under the draft, DEG will need to assign the functions of the officers to existing employees and to reallocate workload to accommodate this assignment. If you would like to authorize additional positions, please let me know.

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Managing Attorney  
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requirement in this bill because the budget act addressed the same issue, but in a different way. The budget act requires DATCP to maintain a nonsolicitation directory that lists residential customers who do not wish to receive telephone solicitations. Therefore, I assume that you no longer want to require telephone directories to include the listings. Is that okay?

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Redraft instructions per Vince Williams

Delete:

- SS #'s on insurance cards
- SS #'s for certain patient identification
- credit card receipts at motor fuel pumps

Modify -

- telephone solicitations (per Williams instructions)