

Committee Name:

**Senate Committee – Privacy, Electronic Commerce and Financial Institutions
(SC-PECFI)**

Appointments

01hr_SC-PECFI_Appoint_pt00

Clearinghouse Rules

01hr_SC-PECFI_CRule_01-

Committee Hearings

01hr_SC-PECFI_CH_pt00

Committee Reports

01hr_SC-PECFI_CR_pt00

Executive Sessions

01hr_SC-PECFI_ES_pt00

Hearing Records

01hr_ab0000

01hr_sb0000

Misc.

01hr_SC-PECFI__Misc__pt10

Record of Committee Proceedings

01hr_SC-PECFI_RCP_pt00

HEARING PROCEDURE 2-21-02

1. **Call to Order** “The Senate Committee on Privacy, Electronic Commerce and Financial Institutions will come to order, Will members please take your seats.”
2. **Call the roll:** “ We will dispense with the calling of the roll and the clerk will note presence of Senators as they arrive.” Julie will fill in roll sheet as Senators arrive.
3. **Welcome and Announce Purpose of Hearing**

“Welcome members of the public, legislators, and staff.”

“The purpose of this hearing is to hold a joint public hearing and possible executive session on Senate Bill 442, SB 191, SB 392, and Assembly Bill 196. In addition, there will be an executive session will be held on 442, 191 and SB 16 and possibly SB 392.”
4. **Operation of the Hearing** “If you wish to testify to the Committee, please fill out a hearing slip and return it to the Senate messenger.” Point out messenger “If you wish to simply to register fill out the slip and give it to the messenger as well.”
5. **To the extent possible, I will call people to testify alternating support and oppose.**
6. **If we have time issue I may limit testimony to 5 minutes per person.**

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Paper ballot later

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Roll

Public Hearing X date: 2-21-02

~~Executive Session _____ date: _____~~

	Present	Absent
Senator Erpenbach	<u>X</u>	_____
Senator Jauch	_____	_____
Senator Plache	<u>X</u>	_____
Senator Fitzgerald	<u>X</u>	_____
Senator Kanavas	_____	_____

Current Erpenbach Woznicki Fix Proposal

Will codify current law balancing test, this bill does not replace common law but just makes current court decisions clearer.

Sets a standard for what should be released without notice – what should not be released – and what should be noticed

So basically, everything is open with two exceptions.

1. **The do not release category:** Home address, telephone numbers (unless employee requests the release), information relating to a current investigation of a possible criminal offense or possible misconduct connected with employment by and employee prior to disposition of the investigation, information relating to employment examinations (except scores), and other information relating to one or more specific employees that is used for staff management planning including performance evaluations, salary and wage proposals, management bonus plans, promotions, job assignments, letters of reference and comments of ratings relating to employees – CURRENTLY many of these records are not provided under the balancing test and have been prevented from release with Woznicki rights.
2. **The only release after court option category:** The bill also creates statutory procedure under which public or private with government contracts employees (other than high ranking officials) can seek a court order to stop the release of records to third parties, like Woznicki is now. If the record keeper receives a request for information in a record containing information about an investigation by the officer or agency into a disciplinary matter and possible violation of statute, ordinance, rule or regulation, or policy or any record obtained through a subpoena or search warrant, the officer must before providing access to the records written notice to the subject so that the subject can object to the release of records in court

This has not been an easy task but when the coalition that once consisted of the Newspaper association, WEAC and the Professional Police Association – approached me and asked me to author this

compromise I thought – this will be OK they have a plan, they have a compromise RIGHT – it is never this easy. Now the group also includes the AFLCIO, AFSCME

SENATE AMENDMENT 1 – makes a change to the bill (chapter 40 reference) for Employee Trust Funds – they currently do not maintain any lists that would be affected by this change to chapter 40 but they may in the future so to solve a future potential problem we will amend the bill and take out reference to chapter 40, the drafter originally thought the reference was necessary but has decided it is not.

BACKGROUND AND RATIONALE FOR PROPOSED CHANGE TO PUBLIC RECORDS LAW

In *Woznicki v. Erickson*, 202 Wis. 2d 178, 549 N.W.2d 699 (1996), the Wisconsin Supreme Court recognized that individuals' privacy interests can be affected by the release of documents held by a governmental entity. In order to protect these interests, the Court held that a record custodian must give a record subject notice of the custodian's intent to release records implicating the record subject's privacy interests. The custodian must also allow the individual enough time to bring an action seeking to close the record. The custodian in *Woznicki* was a district attorney, however the Court later clarified that the process articulated in *Woznicki* applied to any record custodian.

Some record custodians are confused about the scope of the Court's decision and have granted *Woznicki* rights for information that had previously been routinely released. Legislation is necessary to codify the *Woznicki* decision and clarify those instances in which the procedural rights apply. Legislation is also necessary to protect employee privacy interests and governmental entities' interests in operating efficiently.

The proposed legislation clarifies those instances where a record subject is entitled to the procedural protections articulated in *Woznicki*, and creates an expedited statutory procedure for the determination of those rights. The proposed legislation, consistent with the law in many other states,¹ also exempts from disclosure some records contained in employee personnel files. The proposed legislation recognizes and balances the rights of the public in accessing public records and the rights of individuals in protecting their privacy interests.

Building on the recommendation of the Governor's Task Force on Privacy, the Wisconsin Newspaper Association, and the Freedom of Information Council, the Wisconsin Education Association Council and the Wisconsin Professional Police Association have worked together to reach this compromise to resolve confusion as to open records procedures.

¹ See for example, Idaho, I.C. §9-340C(1); Illinois, 5 ILCS 140/7(1); Kansas, K.S.A. §45-221; Maryland, MD Code State Govt §§ 10-616 and 617; Missouri, V.A.M.S. § 610.021; Nebraska, Neb. Rev. St. §84-712.05; New Hampshire, N.H. Rev. Stat. 91-A:5; 51 Oklahoma, Okl. St. Ann. §241.7; Rhode Island, Gen. Laws 1956, §38-2-2; Vermont, 1 V.S.A. § 317; and Wyoming, W.S. 1977 § 16-4-203.

No contact info
No phone #
No email
No address
No SSN
No date of birth

NAME
Employer

Have
Notice ^{to} ^{opt out}
to ^{opt out}
to ^{opt out}

Hired/not appointed

Private Info
- home address
- home phone #
- SSN
- current/pending investigation

Worricki Info
result of disciplinary procedure involving employee - or possible violation of law
Court

Public record Balancing test
Elected Official
Those appointed to supervisory by elected
Attac

Names list
Newspaper
Newspaper

Local govt - individual serves for specified term
Public Items
personnel

NAME + WORK OF ALL EMPLOYEES

From HR 333

SEC. 1301. ENHANCED DISCLOSURES UNDER AN OPEN END CREDIT PLAN.

(a) MINIMUM PAYMENT DISCLOSURES- Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

(11)(A) In the case of an open end credit plan that requires a minimum monthly payment of not more than 4 percent of the balance on which finance charges are accruing, the following statement, located on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 2% minimum monthly payment on a balance of \$1,000 at an interest rate of 17% would take 88 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum payments, call this toll-free number: XXXXXX.' (the blank space to be filled in by the creditor).

(B) In the case of an open end credit plan that requires a minimum monthly payment of more than 4 percent of the balance on which finance charges are accruing, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. Making a typical 5% minimum monthly payment on a balance of \$300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call this toll-free number: XXXXXX.' (the blank space to be filled in by the creditor).

(C) Notwithstanding subparagraphs (A) and (B), in the case of a creditor with respect to which compliance with this title is enforced by the Federal Trade Commission, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance.'

For example, making only the typical 5% minimum monthly payment on a balance of \$300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call the Federal Trade Commission at this toll-free number: XXXXXX.' (the blank space to be filled in by the creditor). A creditor who is subject to this subparagraph shall not be subject to subparagraph (A) or (B).

`(D) Notwithstanding subparagraph (A), (B), or (C), in complying with any such subparagraph, a creditor may substitute an example based on an interest rate that is greater than 17 percent. Any creditor that is subject to subparagraph (B) may elect to provide the disclosure required under subparagraph (A) in lieu of the disclosure required under subparagraph (B).

`(E) The Board shall, by rule, periodically recalculate, as necessary, the interest rate and repayment period under subparagraphs (A), (B), and (C).

`(F)(i) The toll-free telephone number disclosed by a creditor or the Federal Trade Commission under subparagraph (A), (B), or (G), as appropriate, may be a toll-free telephone number established and maintained by the creditor or the Federal Trade Commission, as appropriate, or may be a toll-free telephone number established and maintained by a third party for use by the creditor or multiple creditors or the Federal Trade Commission, as appropriate. The toll-free telephone number may connect consumers to an automated device through which consumers may obtain information described in subparagraph (A), (B), or (C), by inputting information using a touch-tone telephone or similar device, if consumers whose telephones are not equipped to use such automated device are provided the opportunity to be connected to an individual from whom the information described in subparagraph (A), (B), or (C), as applicable, may be obtained. A person that receives a request for information described in subparagraph (A), (B), or (C) from an obligor through the toll-free telephone number disclosed under subparagraph (A), (B), or (C), as applicable, shall disclose in response to such request only the information set forth in the table promulgated by the Board under subparagraph (H)(i).

(ii)(I) The Board shall establish and maintain for a period not to exceed 24 months following the effective date of the Bankruptcy Reform Act of 2001, a toll-free telephone number, or provide a toll-free telephone number established and maintained by a third party, for use by creditors that are depository institutions (as defined in section 3 of the Federal Deposit Insurance Act), including a Federal credit union or State credit union (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)), with total assets not exceeding \$250,000,000. The toll-free telephone number may connect consumers to an automated device through which consumers may obtain information described in subparagraph (A) or (B), as applicable, by inputting information using a touch-tone telephone or similar device, if consumers whose telephones are not equipped to use such automated device are provided the opportunity to be connected to an individual from whom the information described in subparagraph (A) or (B), as applicable, may be obtained. A person that receives a request for information described in subparagraph (A) or (B) from an obligor through the toll-free telephone number disclosed under subparagraph (A) or (B), as applicable, shall disclose in response to such request only the information set forth in the table promulgated by the Board under subparagraph (H)(i). The dollar amount contained in this subclause shall be adjusted according to an indexing mechanism established by the Board.

(II) Not later than 6 months prior to the expiration of the 24-month period referenced in subclause (I), the Board shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the program described in subclause (I).

(G) The Federal Trade Commission shall establish and maintain a toll-free number for the purpose of providing to consumers the information required to be disclosed under subparagraph (C).

(H) The Board shall--

(i) establish a detailed table illustrating the approximate number of months that it would take to repay an outstanding balance if a consumer pays only the required minimum monthly

payments and if no other advances are made, which table shall clearly present standardized information to be used to disclose the information required to be disclosed under subparagraph (A), (B), or (C), as applicable;

`(ii) establish the table required under clause (i) by assuming--

`(I) a significant number of different annual percentage rates;

`(II) a significant number of different account balances;

`(III) a significant number of different minimum payment amounts; and

`(IV) that only minimum monthly payments are made and no additional extensions of credit are obtained; and

`(iii) promulgate regulations that provide instructional guidance regarding the manner in which the information contained in the table established under clause (i) should be used in responding to the request of an obligor for any information required to be disclosed under subparagraph (A), (B), or (C).

`(I) The disclosure requirements of this paragraph do not apply to any charge card account, the primary purpose of which is to require payment of charges in full each month.

`(J) A creditor that maintains a toll-free telephone number for the purpose of providing customers with the actual number of months that it will take to repay the customer's outstanding balance is not subject to the requirements of subparagraph (A) or (B).

(K) A creditor that maintains a toll-free telephone number for the purpose of providing customers with the actual number of months that it will take to repay an outstanding balance shall include the following statement on each billing statement: 'Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For more information, call this toll-free number: XXXX.' (the blank space to be filled in by the creditor).'

(b) REGULATORY IMPLEMENTATION-

(1) IN GENERAL- The Board of Governors of the Federal Reserve System (hereafter in this title referred to as the 'Board') shall promulgate regulations implementing the requirements of section 127(b)(11) of the Truth in Lending Act, as added by subsection (a) of this section.

(2) EFFECTIVE DATE- Section 127(b)(11) of the Truth in Lending Act, as added by subsection (a) of this section, and the regulations issued under paragraph (1) of this subsection shall not take effect until the later of--

(A) 18 months after the date of enactment of this Act; or

(B) 12 months after the publication of such final regulations by the Board.

(c) STUDY OF FINANCIAL DISCLOSURES-

(1) IN GENERAL- The Board may conduct a study to determine the types of information available to potential borrowers from consumer credit lending institutions regarding factors qualifying potential borrowers for credit, repayment requirements, and the consequences of default.

(2) FACTORS FOR CONSIDERATION- In conducting a study under paragraph (1), the Board should, in consultation with the other Federal banking agencies (as defined in section 3 of the Federal

Deposit Insurance Act), the National Credit Union Administration, and the Federal Trade Commission, consider the extent to which--

(A) consumers, in establishing new credit arrangements, are aware of their existing payment obligations, the need to consider those obligations in deciding to take on new credit, and how taking on excessive credit can result in financial difficulty;

(B) minimum periodic payment features offered in connection with open end credit plans impact consumer default rates;

(C) consumers make only the required minimum payment under open end credit plans;

(D) consumers are aware that making only required minimum payments will increase the cost and repayment period of an open end credit obligation; and

(E) the availability of low minimum payment options is a cause of consumers experiencing financial difficulty.

(3) REPORT TO CONGRESS- Findings of the Board in connection with any study conducted under this subsection shall be submitted to Congress. Such report shall also include recommendations for legislative initiatives, if any, of the Board, based on its findings.