

2003 DRAFTING REQUEST

Assembly Amendment (AA-AB(LRBx1585/1))

Received: **04/21/2003**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Tony Staskunas (608) 266-0620**

By/Representing: **Adrienne**

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

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Privacy
Trade Regulation - other**

Extra Copies: **rlr
rpn**

Submit via email: **YES**

Requester's email: **Rep.Staskunas@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Notice regarding unauthorized use of personal information

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>
/1	mdsida 04/22/2003	kgilfoy 04/22/2003	rschluet 04/22/2003	_____	amentkow 04/22/2003	amentkow 04/22/2003	
/2	mdsida 04/30/2003	kgilfoy 04/30/2003	jfrantze 04/30/2003	_____	sbasford 04/30/2003	sbasford 04/30/2003	

FE Sent For:

<END>

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FE Sent For:

12-4/30
kmg

~~kgilfoy~~ 4/30

~~rschluet~~ 4/30

1/08
4/30

END

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/1	mdsida	1 - 4/22 King	le conclusion on 4/22				

FE Sent For:

Handwritten signatures and initials, including a large signature and the text '<END>'.

Bill Request Form

Legislative Reference Bureau
100 N. Hamilton Street
Legal Section. 266-3561

You may use this form or talk directly with the LRB attorney who will draft the bill.

Date April 21, 2003

Legislator, agency, or other person requesting this draft Rep. Tony Staskunas

Person submitting request (name and phone number) Adrienne 6-0620

Persons to contact for questions about this draft (names and phone numbers) ↑

Describe the problem, including any helpful examples. How do you want to solve the problem?

Attached please find a copy of a Leg. Council amendment from the Task Force on Identity Theft. Tony would like you to draft this as an amendment to Rep. Sundrum's LRB-1585/1

Please attach a copy of any correspondence or other material that may help us. If you know of any statute sections that might be affected, list them or provide a marked-up copy.

You may attach a marked-up copy of any LRB draft or provide its number (e.g., 2001 LRB-2345/1 or 1999AB-67).

Requests are confidential unless stated otherwise. May we tell others that we are working on this for you? YES NO

If yes:

Anyone who asks? YES NO
Any legislator? YES NO

Only the following persons _____

Do you consider this request urgent? YES NO If yes, please indicate why

it has not yet been introduced is scheduled for a hearing on Thurs. 4/24.

Should we give this request priority over any pending request of this legislator, agency, or person? YES NO *Tony would like to have the amendment at the hearing.*

amendment to LRB-1585/1

1 AN ACT to create 895.507 of the statutes; relating to: . . .

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

COMMENT: The provisions in this draft were previously included in WLC: 0012/3. The changes made to the previous version, based on the December 11, 2002 meeting, are summarized in the comment at the end of the draft.

2 SECTION 1. 895.507 of the statutes is created to read:

3 **895.507 Notice of unauthorized use of personal information. (1) DEFINITIONS.** In
4 this section:

5 (a) "Entity" means a person other than an individual that in the ordinary course of
6 business maintains personal information.

7 (b) "Personal information" means:

8 1. For an individual, the individual's first name or first initial and last name in
9 combination with any of the following, when either the name or the information combined
10 with the name is not encrypted:

11 a. The individual's social security number.

12 b. The unique identifying driver number assigned to the individual by the department
13 of transportation under s. 343.17 (3) (a) 4.

14 c. An account number, credit or debit card number, in combination with any required
15 security code, access code, or password that permits access to the individual's financial
16 account.

1 2. For a person other than an individual, the person's name in combination with any of
2 the following, when either the name or the information combined with the name is not
3 encrypted:

4 a. An account number, credit or debit card number, in combination with any required
5 security code, access code, or password that permits access to the person's financial account.

6 b. The person's federal employer identification number.

7 (2) REQUIRED NOTICE. An entity that knows of the [unauthorized use or unauthorized
8 attempted use] [~~unlawful use~~] of personal information that was obtained while in the custody
9 of the entity shall make a reasonable attempt to notify each person who is the subject of the
10 information. The notification shall indicate that the entity is aware of the [unauthorized use
11 or unauthorized attempted use] [~~unlawful use~~] of personal information belonging to the
12 individual that was obtained from the entity while in the custody of the entity. Notice may be
13 given in any manner reasonably calculated to reach each individual entitled to notice. The
14 notification process shall begin no later than 5 business days after the [unauthorized use or
15 unauthorized attempted use] [~~unlawful use~~] was discovered.

16 (3) EFFECT ON CIVIL CLAIMS. Compliance with this section is not an affirmative defense
17 to a claim in a civil action or proceeding. Failure to comply with this section does not
18 constitute negligence per se [or a breach of any duty as a matter of law].

19 (4) REQUEST BY LAW ENFORCEMENT NOT TO NOTIFY. Subsection (2) does not apply during
20 any period a law enforcement agency requests the entity not to attempt the notice otherwise
21 required.

is wrong

COMMENT: Revises the provision in the previous draft by:

1. Narrowing the definition of "personal information". In the previous draft, the definition was linked to the definition of "personal identifying information" in the identity theft statute. The definition in this draft is

How to limit the period?

derived from California law requiring notice of breach of data security. See California civil code s. 1798.29 (e) and a parallel provision in s. 1798.82 (e).

2. Replacing previous notice provisions by:

- (a) Requiring that a "reasonable attempt to notify" be made.
- (b) Requiring that notice be given "in any manner reasonably calculated to reach each individual entitled to notice".
- (c) Requiring that the notification process begin not later than 5 business days after the use was discovered.

3. Expanding sub. (3) to apply to civil claims generally. The bracketed language, not previously considered by the task force, is intended to make the 2nd sentence parallel to the revised first sentence, which previously only applied to claims of negligence.

4. Adding sub. (4).



State of Wisconsin
2003 - 2004 LEGISLATURE

LRBa0461/1
MGD: *rich King*

ASSEMBLY AMENDMENT,
TO 2003 ASSEMBLY BILL (LRB-1585/1)

Wed. 4/23

1 At the locations indicated, amend the bill as follows:

2 *10 m*
"SECTION 895.507 of the statutes is created to read:

3 **895.507 Notice of unauthorized use of personal information. (1)**

4 **DEFINITIONS.** In this section:

5 (a) "Entity" means a person other than an individual that in the ordinary
6 course of business maintains personal information.

7 (b) "Personal information" means: *any of the following*

8 1. For an individual, the individual's first name or *information* **first** initial and last name
9 in combination with any of the following when either the name or the information
10 combined with the name is not encrypted:

11 a. The individual's social security number.

12 b. The unique identifying driver number assigned to the individual by the
13 department of transportation under s. 343.17 (3) (a) 4.

NS 1/1

NS 1/4

1 c. An account number, ^{or} credit or debit card number, in combination with any
2 required security code, access code, or password that permits access to the
3 individual's ^{depository} ~~financial~~ account.

4 2. For a person other than an individual, the person's name in combination with
5 any of the following, ^{information} when either the name or the information combined with the
6 name is not encrypted:

7 a. An account number, ^{or} credit or debit card number, in combination with any
8 required security code, access code, or password that permits access to the person's
9 ^{depository} ~~financial~~ account.

10 b. The person's federal employer identification number.

11 (2) REQUIRED NOTICE. ^{if} An entity ~~that~~ knows of the ~~unauthorized use or~~
12 ~~unauthorized attempted use~~ ^{unlawful use} of personal information that was
13 obtained ^{from} ~~while in the custody of~~ the entity ^{while maintained by the entity, it} shall make a reasonable attempt to notify
14 each person who is the subject of the ^{personal} information. The ^{notice} ~~notification~~ shall indicate that
15 the entity is aware of the ~~unauthorized use or unauthorized attempted use~~
16 ~~unlawful use~~ of personal information ^{relating} ~~belonging~~ to the ^{person and} ~~individual~~ ^{the personal information} that was obtained
17 from the entity while ^{maintained by} ~~in the custody of~~ the entity. Notice may be given in any manner
18 reasonably calculated to reach each ^{person} ~~individual~~ entitled to notice. ^{Except as provided in sub. (4),} The notification
19 process shall begin no later than 5 business days after the ~~unauthorized use or~~
20 ~~unauthorized attempted use~~ ^{unlawful use} ~~was discovered.~~ ^{entity learns of the}

21 (3) EFFECT ON CIVIL CLAIMS. Compliance with this section is not an affirmative
22 defense to a claim in a civil action or proceeding. Failure to comply with this section
23 does not constitute negligence ^{per se} for a breach of any duty as a matter of law.

as a matter of law

1 (4) REQUEST BY LAW ENFORCEMENT NOT TO NOTIFY. ~~Subsection (2) does not apply~~
 2 ~~during any period~~ ^{if} a law enforcement agency ~~requests the~~ ^{asks an} entity not to ~~attempt the~~ ^{provide a}
 3 ~~notice otherwise required~~ ^{that is} ~~under sub. (2) for any period of time,~~ the notification
 4 ~~process required under~~

(END)

~~sub. (2) shall begin~~
 no later than 5 business
 days after the end of
 that time period."

A

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0461/lins
MGD:.....

1 **INSERT 1/1**

2 ✓ 1. Page 1, line 9: after "information," insert "notice regarding unauthorized
3 use of personal information,".

4 ✓ 2. Page 7, line 11: after that line insert:

5 **INSERT 1/4** ✓

6 (a) "Depository account" has the meaning given in s. 815.18 (2) (e). ✓

Emery, Lynn

From: Emery, Lynn
Sent: Wednesday, April 23, 2003 10:08 AM
To: Rep.Staskunas
Subject: LRBa0461/1 (attached as requested)



03a0461/1

Lynn Emery
Program Assistant
Legislative Reference Bureau
608-266-3561
lynn.emery@legis.state.wi.us

Dsida, Michael

From: Ramirez, Adrienne
Sent: Wednesday, April 30, 2003 10:36 AM
To: Dsida, Michael
Subject: FW: Fax received (2p) from:'414 224 0323' on ID:2823615



12A6D000.tif

Mike-

Tony would like you to re-draft LRB-a0461. He would like to replace sections 1 and 2 on page 2 with the language on the second page of the attached fax. I will be sending the stripes back to your office. Unfortunately, like so many amendments, time is of the essence, since the bill is scheduled for a noon exec tomorrow. Please call if you have any questions.

Thank you;

Adrienne
Office of Rep. Staskunas
6-0620

~~~~~

# BROYDRICK & ASSOCIATES

111 E. Kilbourn Ave  
Suite 2060  
Milwaukee, WI 53202  
Affiliate Offices in Madison, WI  
And Washington D.C.

Phone: (414) 224-9393  
Fax: (414) 224-0323  
Email: tje@broydrick.com  
Website: www.broydrick.com

Fax Cover Sheet

|                                   |                           |
|-----------------------------------|---------------------------|
| To: <i>Rep. Stashura</i>          | From: <i>Tim Elverman</i> |
| Fax Number: <i>(608) 282-3615</i> | Date: <i>4/27/03</i>      |
| Phone:                            | Pages: <i>2</i>           |
| Re:                               | CC:                       |

- URGENT   
 REPLY ASAP   
 PLEASE COMMENT   
 PLEASE REVIEW   
 FOR YOUR INFORMATION

Comments:

*- Here is the suggested language from Northwestern Mutual & the Wab Bank Assoc.*

*- This is not my language! (Bank One)*

*Thanks - See you tomorrow.*

*Tim*

**895.507 Notice of unauthorized use of personal identifying information.** (1) Definitions. In this section:

- (a) "Entity" means a person other than an individual that in the ordinary course of business maintains personal identifying information.
- (b) "Personal identifying information" has the meaning given in s. 943.201(1)(b), however, "personal identifying information" does not include publicly available information.
- (c) "Publicly available information" means any information that an entity has a reasonable basis to believe is lawfully made available to the general public from:
  - (1) Federal, state or local government records;
  - (2) Widely distributed media; or
  - (3) Disclosures to the general public that are required to be made by federal, state or local law.

(2) **REQUIRED NOTICE.** An entity that knows of the unauthorized use of unencrypted personal identifying information, other than discovering such unauthorized use by the individual themselves, that was obtained while in the custody of the entity shall make reasonable efforts to notify the individuals who are the subject of the information. The notification shall indicate that the entity knows of the unauthorized use of personal identifying information. Notice shall be given in a manner and time frame that is reasonable taking into consideration the number of notices to be given and methods of communication available to the entity. In no circumstances shall the notice be issued more than 30 days after the entity knew the unauthorized use of the personal identifying information.



**Dsida, Michael**

---

**From:** Ramirez, Adrienne  
**Sent:** Wednesday, April 30, 2003 11:09 AM  
**To:** Dsida, Michael  
**Subject:** RE: Fax received (2p) from:'414 224 0323' on ID:2823615

Tony said that would be fine.

-----Original Message-----

**From:** Dsida, Michael  
**Sent:** Wednesday, April 30, 2003 11:07 AM  
**To:** Ramirez, Adrienne  
**Subject:** RE: Fax received (2p) from:'414 224 0323' on ID:2823615

"Widely distributed media" does not work well. "Information" can be widely distributed, but "media" cannot. It is the method of distribution.

Here's what I propose as an alternative:

"Information that is made widely available to the public through any media."

-----Original Message-----

**From:** Ramirez, Adrienne  
**Sent:** Wednesday, April 30, 2003 10:36 AM  
**To:** Dsida, Michael  
**Subject:** FW: Fax received (2p) from:'414 224 0323' on ID:2823615

Mike-

Tony would like you to re-draft LRB-a0461. He would like to replace sections 1 and 2 on page 2 with the language on the second page of the attached fax. I will be sending the stripes back to your office. Unfortunately, like so many amendments, time is of the essence, since the bill is scheduled for a noon exec tomorrow. Please call if you have any questions.

Thank you,

Adrienne  
Office of Rep. Staskunas  
6-0620

~~~~~



State of Wisconsin
2003 - 2004 LEGISLATURE

LRBa0461/D
MGD:kmg:rs

or/2
↑

ASSEMBLY AMENDMENT,
TO 2003 ASSEMBLY BILL (LRB-1585/1)

now

1 At the locations indicated, amend the bill as follows:

2 ✓ 1. Page 1, line 9: after "information," insert "notice regarding unauthorized
3 use of personal information,".

4 ✓ 2. Page 7, line 11: after that line insert:

5 "SECTION 10m. 895.507 of the statutes is created to read:

6 ~~895.507 Notice of unauthorized use of personal information. (1)~~

7 DEFINITIONS. In this section:

8 (a) "Depository account" has the meaning given in s. 815.18 (2) (e).

9 (b) "Entity" means a person, other than an individual, that in the ordinary
10 course of business maintains personal information.

11 (c) "Personal information" means any of the following:

NS
1/5

1 1. For an individual, the individual's first name or initial and last name in
2 combination with any of the following information, when either the name or the
3 information combined with the name is not encrypted:

4 a. The individual's social security number.

5 b. The unique identifying driver number assigned to the individual by the
6 department of transportation under s. 343.17 (3) (a) 4.

7 c. An account number or credit or debit card number, in combination with any
8 required security code, access code, or password that permits access to the
9 individual's depository account.

10 2. For a person other than an individual, the person's name in combination with
11 any of the following information, when either the name or the information combined
12 with the name is not encrypted:

13 a. An account number or credit or debit card number, in combination with any
14 required security code, access code, or password that permits access to the person's
15 depository account.

16 b. The person's federal employer identification number.

17 (2) REQUIRED NOTICE. (a) If an entity knows of the unauthorized use
18 ~~unauthorized attempted~~ use of ^{unencrypted} personal information that was obtained from the
19 entity while ⁱⁿ maintained by the entity, it shall make ^{reasonable efforts} a reasonable attempt to notify
20 each ^{individual} person who is the subject of the personal information. The notice shall indicate
21 that the entity is ^{knows} aware of the unauthorized use or ~~unauthorized attempted use~~ of
22 personal information relating to the ^{individual} person and that the personal information was
23 ~~obtained from the entity while maintained by the entity~~. Notice may be given in any
24 ~~manner reasonably calculated to reach each person entitled to notice. Except as~~

identifying

INS 2/22

1 provided in sub. (4), the notification process shall begin no later than 5 business days
2 after the entity learns of the unauthorized use or unauthorized attempted use.

3 (3) EFFECT ON CIVIL CLAIMS. Compliance with this section is not a defense to a
4 claim in a civil action or proceeding. Failure to comply with this section does not
5 constitute negligence or a breach of any duty as a matter of law.

6 (4) REQUEST BY LAW ENFORCEMENT NOT TO NOTIFY. If a law enforcement agency
7 asks an entity not to provide a notice that is otherwise required under sub. (2) for any
8 period of time, the notification process required under sub. (2) shall begin ~~no later~~
9 ~~than 5 business days~~ ^{at} after the end of that time period.”

10 (END)

1 INSERT 1/5 ✓

2 **895.507 Notice of unauthorized use of personal identifying**
3 **information. (1) DEFINITIONS. In this section:**

4 (a) "Entity" means a person, other than an individual, that in the ordinary
5 course of business maintains personal identifying information.

6 (b) "Personal identifying information" has the meaning given in s. 943.201 (1)
7 ✓ (b) but does not include publicly available information.

8 (c) "Publicly available information" means any information that an entity
9 reasonably believes is one of the following:

10 1. Information that is lawfully made widely available through any media.

11 2. Information that is lawfully made available to the general public from
12 federal, state, or local government records or disclosures to the general public that
13 are required to be made by federal, state, or local law.

14 INSERT 2/22 ✓

15 (b) 1. The entity shall provide the notice under par. (a) in a manner and within
16 a time that is reasonable, taking into consideration the number of notices it must
17 provide and ^{the} methods of communication available to the entity. ^{that}

18 2. Notwithstanding subd. 1., the entity shall provide any notice required under
19 par. (a) within 30 days after the entity learns of the unauthorized use of the personal
20 identifying information. ^{or, if sub. (4) applies, within 30 days after}
^{the end of the time period specified by a law}

21 (c) Notwithstanding pars. (a) and (b), an entity is not required to provide notice ^{enforcement agency under that}
22 to an individual of the unauthorized use of personal identifying information relating ^{subsection}
23 to that individual if the entity learns of the unauthorized use from that individual.

, subject to sub. (4),