

## 2005 DRAFTING REQUEST

### Senate Substitute Amendment (SSA-SB164)

Received: 10/27/2005

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **Ted Kanavas (608) 266-9174**

By/Representing: **mike richards**

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

Drafter: **csundber**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - electron com**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Kanavas@legis.state.wi.us**

Carbon copy (CC:) to:

---

#### Pre Topic:

No specific pre topic given

---

#### Topic:

Revise exemption for regulated entities

---

#### 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>
/?	csundber 10/28/2005	lkunkel 10/31/2005		_____			
/1			chaugen 10/31/2005	_____	lnorthro 10/31/2005	lnorthro 10/31/2005	

FE Sent For:

<END>

**2005 DRAFTING REQUEST**

**Senate Substitute Amendment (SSA-SB164)**

Received: 10/27/2005

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **Ted Kanavas (608) 266-9174**

By/Representing: **mike richards**

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

Drafter: **csundber**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - electron com**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Kanavas@legis.state.wi.us**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Revise exemption for regulated entities ✓

---

**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>
/?	csundber	10/31/1 lmk	Oh 10-31	GA 10-31			

FE Sent For:

<END>

PG. 4 line 7

- (a) An entity, is exempt from this section if they are subject to, and comply with, the privacy and security provisions of 15 U.S.C. Section 6801, et seq., or any person under contract with such entity, **and have company policies regarding breaches of security**, shall be deemed in compliance with this section.

CHRIS,

HERE IS THE LAST AMENDMENT CHANGE TO SB164. (ATTACHED)  
EASIER FOR YOU - A SUB ON A SIMPLE. JUST LET  
ME KNOW.

THE COMMITTEE HEARING IS ON NOV. 2<sup>nd</sup>.

Thanks \_\_\_\_\_

MIKE RICHMOND  
\_\_\_\_\_



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRBs0222/1  
CTS:all:rs

**SENATE SUBSTITUTE AMENDMENT ,  
TO 2005 SENATE BILL 164**

1     **AN ACT** *to create* 895.507 of the statutes; **relating to:** notice regarding  
2             unauthorized acquisition of personal information.

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

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

4             **895.507 Notice of unauthorized acquisition of personal information.**

5             **(1) DEFINITIONS.** In this section:

6             (a) 1. "Entity" means a person, other than an individual, that does any of the  
7             following:

8             a. Conducts business in this state and maintains personal information in the  
9             ordinary course of business.

10            b. Stores personal information in this state.

11            c. Maintains for a resident of this state a depository account as defined in s.

12            815.18 (2) (e).

1 shall make reasonable efforts to notify each subject of the personal information. The  
2 notice shall indicate that the entity knows of the unauthorized acquisition of  
3 personal information pertaining to the subject of the personal information.

4 (b) If an entity whose principal place of business is not located in this state  
5 knows that personal information pertaining to a resident of this state has been  
6 acquired by a person whom the entity has not authorized to acquire the personal  
7 information, the entity shall make reasonable efforts to notify each resident of this  
8 state who is the subject of the personal information. The notice shall indicate that  
9 the entity knows of the unauthorized acquisition of personal information pertaining  
10 to the resident of this state who is the subject of the personal information.

11 (cm) Notwithstanding pars. (a) and (b), an entity is not required to provide  
12 notice of the acquisition of personal information if any of the following apply:

13 1. The acquisition of personal information does not compromise the security,  
14 confidentiality, or integrity of personal information in the entity's possession.

15 2. The personal information was acquired in good faith by an employee or agent  
16 of the entity, if the personal information is used for a lawful purpose of the entity.

17 (3) TIMING AND MANNER OF NOTICE. (a) Subject to sub. (5), an entity shall provide  
18 the notice required under sub. (2) within a reasonable time, not to exceed 30 business  
19 days after the entity learns of the acquisition of personal information. A  
20 determination as to reasonableness under this paragraph shall include  
21 consideration of the number of notices that an entity must provide and the methods  
22 of communication available to the entity.

23 (b) An entity shall provide the notice required under sub. (2) by mail or by a  
24 method the entity has previously employed to communicate with the subject of the  
25 personal information. If an entity cannot with reasonable diligence determine the

1 information, except as authorized by the law enforcement agency that made the  
2 request.

3 (6m) LOCAL ORDINANCES OR REGULATIONS PROHIBITED. No city, village, town, or  
4 county may enact or enforce an ordinance or regulation that relates to notice or  
5 disclosure of the unauthorized acquisition of personal information.

6 (7m) EFFECT OF FEDERAL LEGISLATION. If the joint committee on administrative  
7 rules determines that the federal government has enacted legislation that imposes  
8 notice requirements substantially similar to the requirements of this section and  
9 determines that the legislation does not preempt this section, the joint committee on  
10 administrative rules shall submit to the revisor of statutes for publication in the  
11 Wisconsin administrative register a notice of its determination. This section does not  
12 apply after publication of a notice under this subsection.

13

(END)

2005 - 2006 LEGISLATURE

In: 10/28/05

Due: Monday, 10/31/05

0277/1  
LRBs0222/1  
CTS:all:rs  
RMNR  
↑  
keep

SENATE SUBSTITUTE AMENDMENT 2,

TO 2005 SENATE BILL 164

LPS: inserts to inserts

October 12, 2005 - Offered by Senator KANAVAS.

INS A

Rosen

1 AN ACT to create 895.507 of the statutes; relating to: notice regarding  
2 unauthorized acquisition of personal information.

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

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

4 **895.507 Notice of unauthorized acquisition of personal information.**

5 (1) DEFINITIONS. In this section:

6 (a) 1. "Entity" means a person, other than an individual, that does any of the  
7 following:

8 a. Conducts business in this state and maintains personal information in the  
9 ordinary course of business.

10 b. Stores personal information in this state.

11 c. Maintains for a resident of this state a depository account as defined in s.

12 815.18 (2) (e).

1 d. Lends money to a resident of this state.

2 2. “Entity” includes all of the following:

3 a. The state and any office, department, independent agency, authority,  
4 institution, association, society, or other body in state government created or  
5 authorized to be created by the constitution or any law, including the legislature and  
6 the courts.

7 b. A city, village, town, or county.

8 (am) “Name” means an individual’s last name combined with the individual’s  
9 first name or first initial.

10 (b) “Personal information” means any of the information specified in s. 943.201  
11 (1) (b) 4., 5., 9., 11., 12. a. and c., and 13. if all of the following apply:

12 1. The information is accompanied by the name of the individual to whom the  
13 information pertains.

14 2. The information is not publicly available.

15 3. The information is not encrypted.

16 (c) “Publicly available information” means any information that an entity  
17 reasonably believes is one of the following:

18 1. Lawfully made widely available through any media.

19 2. Lawfully made available to the general public from federal, state, or local  
20 government records or disclosures to the general public that are required to be made  
21 by federal, state, or local law.

22 (2) NOTICE REQUIRED. (a) If an entity whose principal place of business is  
23 located in this state or an entity that stores personal information in this state knows  
24 that personal information in the entity’s possession has been acquired by a person  
25 whom the entity has not authorized to acquire the personal information, the entity

1 shall make reasonable efforts to notify each subject of the personal information. The  
2 notice shall indicate that the entity knows of the unauthorized acquisition of  
3 personal information pertaining to the subject of the personal information.

4 (b) If an entity whose principal place of business is not located in this state  
5 knows that personal information pertaining to a resident of this state has been  
6 acquired by a person whom the entity has not authorized to acquire the personal  
7 information, the entity shall make reasonable efforts to notify each resident of this  
8 state who is the subject of the personal information. The notice shall indicate that  
9 the entity knows of the unauthorized acquisition of personal information pertaining  
10 to the resident of this state who is the subject of the personal information.

11 (cm) Notwithstanding pars. (a) and (b), an entity is not required to provide  
12 notice of the acquisition of personal information if any of the following apply:

13 1. The acquisition of personal information does not compromise the security,  
14 confidentiality, or integrity of personal information in the entity's possession.

15 2. The personal information was acquired in good faith by an employee or agent  
16 of the entity, if the personal information is used for a lawful purpose of the entity.

17 **(3) TIMING AND MANNER OF NOTICE.** (a) Subject to sub. (5), an entity shall provide  
18 the notice required under sub. (2) within a reasonable time, not to exceed 30 business  
19 days after the entity learns of the acquisition of personal information. A  
20 determination as to reasonableness under this paragraph shall include  
21 consideration of the number of notices that an entity must provide and the methods  
22 of communication available to the entity.

23 (b) An entity shall provide the notice required under sub. (2) by mail or by a  
24 method the entity has previously employed to communicate with the subject of the  
25 personal information. If an entity cannot with reasonable diligence determine the

INS  
4-7

1 mailing address of the subject of the personal information, and if the entity has not  
2 previously communicated with the subject of the personal information, the entity  
3 shall provide notice by a method reasonably calculated to provide actual notice to the  
4 subject of the personal information.

5 (3m) REGULATED ENTITIES EXEMPT. This section does not apply to any of the  
6 following:

7 (a) An entity that is a financial institution, or any person under contract with  
8 such an entity, if either of the following apply:

9 1. The entity is subject to, and in compliance with, the interagency guidance  
10 on response programs for unauthorized access to customer information and  
11 customer notice as published in the federal register on March 29, 2005.

12 2. The entity is subject to, and in compliance with, the guidance on response  
13 programs for unauthorized access to member information and member notice as  
14 published in the federal register on May 2, 2005.

15 (b) An entity that is described in 45 CFR 164.104 (a), if the entity complies with  
16 the requirements of 45 CFR part 164.

17 (4) EFFECT ON CIVIL CLAIMS. Failure to comply with this section is not negligence  
18 or a breach of any duty, but may be evidence of negligence or a breach of a legal duty.

19 (5) REQUEST BY LAW ENFORCEMENT NOT TO NOTIFY. A law enforcement agency  
20 may, in order to protect an investigation or homeland security, ask an entity not to  
21 provide a notice that is otherwise required under sub. (2) for any period of time and  
22 the notification process required under sub. (2) shall begin at the end of that time  
23 period. Notwithstanding subs. (2) and (3), if an entity receives such a request, the  
24 entity may not provide notice of or publicize an unauthorized acquisition of personal

1 information, except as authorized by the law enforcement agency that made the  
2 request.

3 **(6m)** LOCAL ORDINANCES OR REGULATIONS PROHIBITED. No city, village, town, or  
4 county may enact or enforce an ordinance or regulation that relates to notice or  
5 disclosure of the unauthorized acquisition of personal information.

6 **(7m)** EFFECT OF FEDERAL LEGISLATION. If the joint committee on administrative  
7 rules determines that the federal government has enacted legislation that imposes  
8 notice requirements substantially similar to the requirements of this section and  
9 determines that the legislation does not preempt this section, the joint committee on  
10 administrative rules shall submit to the revisor of statutes for publication in the  
11 Wisconsin administrative register a notice of its determination. This section does not  
12 apply after publication of a notice under this subsection.

13

**(END)**

# 2005 SENATE BILL 164

April 8, 2005 - Introduced by Senators KANAVAS, STEPP, A. LASEE, DARLING, KEDZIE and OLSEN, cosponsored by Representatives J. FITZGERALD, GUNDRUM, DAVIS, NISCHKE, LOEFFELHOLZ, JENSEN, BIES, HINES, OTT, VRAKAS, BALLWEG, KLEEFISCH, OWENS, FREESE, HUNDERTMARK, MCCORMICK and CULLEN.

INS  
A

1 AN ACT *to create* 895.507 of the statutes; **relating to:** notice regarding  
2 unauthorized acquisition of personal information.

*Substitute amendment*  
**Analysis by the Legislative Reference Bureau**

*substitute amendments*

→ This bill requires an entity that possesses certain personal information about an individual to notify the individual when the information is accessed by a person who the entity has not authorized to do so (unauthorized access). The bill's notice requirements apply to entities, including the state and local governments, that do any of the following: conduct business in Wisconsin and maintain personal information in the ordinary course of business; store personal information in this state; maintain a depository account for a Wisconsin resident; or lend money to a Wisconsin resident.

*Substitute amendment*

→ Under the bill, personal information includes any of the following information about an individual, if accompanied by the name of the individual to whom the information pertains: electronic mail address; driver's license number; social security number; employer or place of employment; mother's maiden name; depository account number and certain other financial information; deoxyribonucleic acid (DNA) profile; and any other information about an individual that can be associated with an individual through identifiers or other information. Personal information does not include information that is lawfully available to the public.

*and other biometric data*

*or information that is encrypted*

*certain*

→ As to an entity whose principal place of business is located in Wisconsin or that stores personal information in Wisconsin, if the entity knows or has reason to know of an unauthorized access, the bill requires the entity to make reasonable efforts to

*substitute amendment*

*used to obtain money, goods, or services, or other things of value*

**SENATE BILL 164**

a reasonable time not to exceed 30

INS A-1

Under the substitute amendments

substitute amendment

notify the individual that is the subject of the personal information (subject) that the individual's personal information has been accessed. As to an entity whose principal place of business is not located in Wisconsin, if the entity knows or has reason to know of an unauthorized access involving information pertaining to a Wisconsin resident, the bill requires the entity to make reasonable efforts to notify the subject.

An entity required to notify a subject must, within 15 business days after learning of the unauthorized access, inform the subject that the entity knows of the unauthorized use of personal information pertaining to the subject. The entity must deliver the notice by mail or by another method the entity has previously used to communicate with the subject. If the entity cannot reasonably determine the subject's mailing address, the entity may notify the subject by another means reasonably calculated to provide actual notice to the subject. Under the bill, if a law enforcement agency requests an entity to delay a required notice for any period of time, the entity must begin the notification process after the requested delay period.

The bill provides that compliance with the bill's requirements is not a defense to civil claims. A failure to comply is not negligence or a breach of a legal duty, but may be evidence of negligence or a breach of a legal duty.

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

with the substitute amendments requirements

substitute amendments

INS A-2

may

substitute amendment

in order to protect an investigation or

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

homeland security  
An entity that receives such a request

- 1 SECTION 1. 895.507 of the statutes is created to read:
- 2 **895.507 Notice of unauthorized use of personal identifying**
- 3 **information. (1) DEFINITIONS.** In this section:
- 4 (a) 1. "Entity" means a person, other than an individual, that does any of the
- 5 following:
- 6 a. Conducts business in this state and maintains personal information in the
- 7 ordinary course of business.
- 8 b. Stores personal information in this state.
- 9 c. Maintains for a resident of this state a depository account as defined in s.
- 10 815.18 (2) (e).
- 11 d. Lends money to a resident of this state.
- 12 2. "Entity" includes all of the following:

2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBs0277/1ins  
CTS:.....

1 **Insert A-1 to insert A:**

2 An entity is not required to give notice if the acquisition of personal information does  
3 not compromise the security, confidentiality, or integrity of the personal information,  
4 or if the personal information was acquired in good faith by an employee of the entity  
5 and the personal information is used for a lawful purpose of the entity.

6 **Insert A-2 to insert A:**

7 ¶ The substitute amendment contains exemptions from the notice requirements  
8 for certain entities that are subject to, and in compliance with, certain requirements  
9 imposed by federal law and regulations that generally relate to the privacy and  
10 security of medical and financial data. The substitute amendment also prohibits the  
11 enactment or enforcement by a city, village, town, or county of an ordinance or  
12 regulation that relates to notice or disclosure of the unauthorized acquisition of  
13 personal information.

14 **Insert 4-7:**

15 subject to, and in compliance with, the privacy and security requirements of 15 USC  
16 6801 to 6827, or a person that has a contractual obligation to such an entity, if the  
17 entity or person has in effect a policy concerning breaches of information security.