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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Health, Health Insurance, Privacy, Property Tax Relief, and Revenue (SC-HHIPTRR)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Senate

Record of Committee Proceedings

Committee on Health, Health Insurance, Privacy, Property Tax Relief, and Revenue

Senate Bill 403

Relating to: authorizing the release of certain personal identifying information collected by the Department of Regulation and Licensing.

By Senators Erpenbach, Risser, Grothman and Olsen; cosponsored by Representatives Parisi, Townsend and Berceau.

November 18, 2009 Referred to Committee on Health, Health Insurance, Privacy, Property Tax Relief, and Revenue.

January 13, 2010 **PUBLIC HEARING HELD**

Present: (7) Senators Erpenbach, Carpenter, Robson, Lassa, Lazich, Kanavas and Darling.

Absent: (0) None.

Appearances For

- Jon Erpenbach — Sen.
- Cary Spivak, Milwaukee — Milwaukee Journal Sentinel
- John Smalley, Madison — Wisconsin State Journal and WI Newspaper Assn.
- Judith Warmuth — Wisconsin Hospital Association

Appearances Against

- None.

Appearances for Information Only

- None.

Registrations For

- Pete Christianson, Madison — Wisconsin Newspaper Association
- Mara Brooks, Madison — Wisconsin Dental Association

Registrations Against

- None.

Registrations for Information Only

- None.

January 27, 2010

EXECUTIVE SESSION HELD

Present: (7) Senators Erpenbach, Carpenter, Robson, Lassa,
Lazich, Kanavas and Darling.

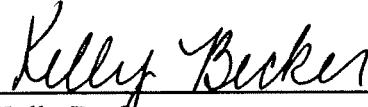
Absent: (0) None.

Moved by Senator Kanavas, seconded by Senator Robson that
Senate Bill 403 be recommended for passage.

Ayes: (7) Senators Erpenbach, Carpenter, Robson,
Lassa, Lazich, Kanavas and Darling.

Noes: (0) None.

PASSAGE RECOMMENDED, Ayes 7, Noes 0



Kelly Becker
Committee Clerk

Vote Record

Committee on Health, Health Insurance, Privacy, Property Tax Relief, and Revenue

Date: _____

Moved by: Kanavas Seconded by: Robson

AB _____ SB 403 Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

A/S Amdt _____
 A/S Amdt _____ to A/S Amdt _____
 A/S Sub Amdt _____
 A/S Amdt _____ to A/S Sub Amdt _____
 A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:
 Passage Adoption Confirmation Concurrence Indefinite Postponement
 Introduction Rejection Tabling Nonconcurrency

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Senator Jon Erpenbach, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Tim Carpenter	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Judith Robson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Julie Lassa	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Mary Lazich	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Ted Kanavas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Alberta Darling	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: _____ _____ _____ _____

Motion Carried Motion Failed



What others say

The Erpenbach solution

It's not often that a legislator recognizes the unintended consequences of a law and steps forward to correct it. That's why state Sen. Jon Erpenbach, D-Waunakee, deserves some praise.

Erpenbach recently began seeking co-sponsors to a modification to the Wisconsin "opt-out" law that he authored in 1999 and was passed in 2000. The law allows license holders to ask that their names not be included in lists that marketers and others, including the public, can acquire. It does so by allowing someone to "opt out" of lists that include 10 or more names.

The law was intended to protect Wisconsin drivers and hunters from having their personal information included in large data lists to marketers. The law also was supposed to ensure the public had access to the names of those who have opted out, as long as they are released in groups of nine or fewer.

The first intended result happened. Of the 4.6 million license holders with the Department of Natural Resources, 3.1 million have opted out. One-third of the state's 4.5 million licensed drivers are opt-outs, according to The Associated Press.

But some state agencies were refusing to release the information even in groups of nine names or fewer. The AP reported in July that neither the state Department of Natural Resources nor the Department of Transportation was releasing any names, even in groups of nine or fewer.

Worse, however, was that the law made it more difficult for members of the public or the media to review information about professional state license holders such as mortgage brokers and doctors. Erpenbach in July said that it never was his intent to make it more difficult to get a public record. He vowed to do something to change that consequence. Now, he's backing up that talk with action.

Erpenbach's proposal would change what information can be opted out for the licenses for dozens of professions handled by the Department of Regulation and Licensing. Because those with professional license provide a service to the public that they have been licensed by the state to provide, Erpenbach says, they should be considered at a different level of public scrutiny than a deer hunter.

The bill still would allow professional licensees to opt out of the release of personal information in groups of 10 or more. But personal information would be limited to Social Security number, telephone number and a street or post office box number. A professional licensee's name, city and ZIP code would not be subject to the opt out. The bill would allow members of the public and the media to look into the background and current status of professional licensees. But it continues to protect hunters and drivers from the exposure of personal information to marketers.

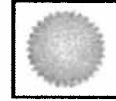
Erpenbach is proposing the changes at the request of the Wisconsin Newspaper Association. His solutions to the unintended consequences of the previous bill make sense and satisfy the interests of both public access to information and to privacy rights of individuals.

We applaud Erpenbach for seeking and proposing reasonable fixes to the problems. Hopefully, his efforts result in the passage and signing of the bill.

— The Monroe Times



FORECAST
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Fix 'opt out' for public good

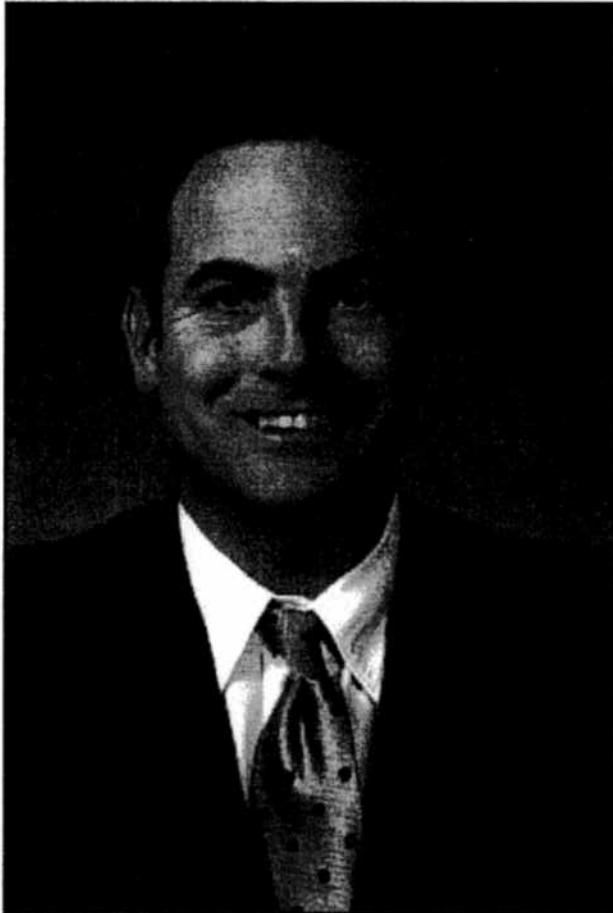
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A Wisconsin State Journal editorial | Posted: Monday, November 2, 2009 10:20 am | 1 Comment



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Sometimes it takes 10 years to fix a problem caused by the unintended consequences of a state law.

Our view: better late than never.

State Sen. Jon Erpenbach, D-Waunakee, deserves credit for stepping up now to fix a problem created by one of his legislative efforts in 1999. Ten years ago Erpenbach and others were concerned about an increasing flood of junk mail to Wisconsin residents, with the flow of unwanted mail often enabled by direct marketers gaining access to huge lists of names through databases in the DNR, DOT and Department of Regulation and Licensing.

So in 1999 Erpenbach authored a bill that allowed people who were licensed by the state through those departments to "opt out" and keep their name and information off any group lists.

Fair enough for someone who paid for a hunting, fishing or driver's license. But the Department of Regulation and Licensing is another matter. That's where occupational and professional licenses are issued, and it's fair and reasonable to hold those licensees to a higher level of public scrutiny.

With this legislative fix those receiving professional licenses through the DRL won't be able to completely "opt out" of a list. They could still keep certain personal information private - such as a Social Security number and telephone number - but the basics of name and city of residence will now be available to the public.

Why is this important? First and foremost, because Wisconsin citizens need to know who the state is licensing in the many dozens of occupations covered by the DRL. And for newspapers that take their "public watchdog" role seriously, access to group lists of licensees provides a means to cross-check criminal backgrounds against the granting of licenses.

A recent Milwaukee Journal Sentinel investigative project first brought to light this unintended consequence of the opt out provision.

Would you want to know if a local real estate appraiser or a home inspector has a criminal record? And what about the dozens of health professionals licensed by the state? Without this amendment to the 1999 legislation, the ability to cross-check license holders against criminal databases is extremely limited.

Bravo to Erpenbach for recognizing the flaw in the 1999 legislation and for stepping up to correct the problem.

Posted in Editorial on *Monday, November 2, 2009 10:20 am* Jon Erpenbach, Open Records, Department Of Regulation And Licensing, Opt Out

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Wisconsin State Journal

STATE LACKS CRIMINAL CHECKS LISTS OF MANY LICENSED PROFESSIONALS AREN'T AVAILABLE

Date: Sunday, January 4, 2009

Section: LOCAL

Edition: ALL

Page: D1

Byline: By JASON STEIN jstein@madison.com 608-252-6129

Correction: Point in story is clarified A story on Page 1 of Sunday's Local section said officials at the state Department of Regulation and Licensing had not yet responded to a Dec. 11 request for information on nurses licensed after 1985. While the state did provide data on those nurses, the State Journal was unable to open the file and officials did not answer questions about it. (Published on 1/7/09)

From *doctors* and *nurses* to *pharmacists* and psychologists, Wisconsin doesn't routinely do criminal background checks when it licenses the professionals entrusted to care for your health.

In addition, a 2000 state privacy law prevents the Wisconsin State Journal from running checks on most of those licensees to see if any had been recently convicted of, or recently served time for, a felony.

The privacy law prohibits state officials from releasing to the public full lists with the names of everyone licensed to practice medicine, nursing and many other professions. The law, meant to protect the privacy of licensees, still allows the public to examine the records of individual doctors or nurses through a state Web site.

Outgoing Rep. Sheldon Wasserman, D-Milwaukee, a practicing physician, said he believes the state should be doing at least a minimum number of criminal background checks on the two-year licenses. Doctors are largely worthy of public trust, he said, but the state should still take reasonable steps to verify whether criminals are slipping through the cracks.

"I think the general public would be surprised to know there aren't checks taking place," Wasserman said. "You have to trust but you have to verify."

Background checks on doctors and other license holders can be done by potential employers such as hospitals and clinics, though state law allows employers to turn down applicants with criminal records only if the crime is related to their job.

But the state Department of Regulation and Licensing and the professional boards that oversee the licensing of dozens of professions in the state don't

have the authority to do criminal background checks on all license applicants, said David Carlson, a spokesman for the state agency. The only exception is for private detectives and private security workers, who all receive the checks as part of their licensing, he said.

For all other professions, the agency is limited to asking applicants to list convictions or pending convictions and then, if they list one, doing a state criminal background check, Carlson said. Those who already hold licenses are also required to report convictions to regulators within 48 hours.

In contrast, the state Department of Public Instruction does criminal background checks on teachers for initial licenses and renewals.

Dr. Gene Musser, chairman of the state Medical Examining Board, said the board has sought unsuccessfully to be allowed to do federal criminal background checks on all applicants for a new license and said it will ask the Legislature for that power again. The costs would be paid by doctors, he said.

Carlson said the Department of Regulation and Licensing also wants the Legislature to grant it the authority to do such checks.

"We're aware of cases of doctors with serious legal problems moving from state to state, and we think pursuing a formal criminal background check would provide a higher and more appropriate level of protection for the public from these rather rare individuals," said Musser, a Madison cardiologist.

Overwhelmingly clean To do its own checks, the State Journal requested state lists of doctors, registered nurses, pharmacists and psychologists with the intention of matching those names against a list of felons who were being monitored by probation or parole agents as of Nov. 4.

It wasn't possible, however, to check the names of the majority of licensees. First, state officials have not yet responded to a Dec. 11 request for information on nurses licensed after 1985. Second, state law allows licensees to have their names withheld from any records request for the names of 10 or more licensees.

As a result, the State Journal was able to check just 28,222 of the 103,800 names in the selected professions. The others - nearly three out of four of those whose information was requested - had opted not to have their names disclosed.

Checks of those whose records were made available overwhelmingly came back as clean. The check did turn up a psychiatrist with a valid license who had been convicted of his fifth drunken driving offense. Other felons turned up by the checks had already lost or not renewed their licenses.

The law allowing the exemptions from lists of professionals was included in an amendment to a 2000 privacy law sought by state Sen. Jon Erpenbach, D-

Middleton.

"The reason behind that was to cut down on the solicitations they got (and make it difficult for companies to profit from this information," Erpenbach said of the amendment, which was approved by the Legislature.

Wasserman said the Legislature should consider an exception to the law to allow nonprofits and the media to access the information. But Erpenbach said such an exemption wouldn't be practical and noted the law already allows the public to access information on individual doctors.

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WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: SENATOR JON B. ERPENBACH

FROM: Dan Schmidt, Senior Analyst *DWS*

RE: Disclosure of Certain Personal Information by the Department of Natural Resources, the Department of Transportation, and the Department of Regulation and Licensing

DATE: July 17, 2009

This memorandum, prepared at your request, describes the statutes that govern the release of certain personal information by the Department of Natural Resources (DNR), the Department of Transportation (DOT), and the Department of Regulation and Licensing (DRL). Specifically, you asked about the provisions which permit an individual to “opt-out” of requests for lists which contain the personal information of 10 or more individuals. These provisions are contained in ss. 23.45 (DNR), 85.103 (DOT), and 440.14 (DRL), Stats., respectively. The stated intent of these provisions has generally been to allow individuals to remove their personal information from compiled lists that these agencies often sell or release for commercial purposes. The individual provisions are described below.

DNR – s. 23.45, Stats.

The DNR is prohibited from disclosing the personal identifier¹ of any individual who has made a declaration of nondisclosure in accordance with this section. The declaration applies to a computer generated list compiled or maintained by the department from information provided to the department by individuals who have applied for an approval² or for registration³ and that contains the personal

¹ A “personal identifier” is defined uniformly in ss. 23.45, 85.103, and 440.14, Stats., as a name, Social Security number, telephone number, street address, post office box number, or nine-digit extended zip code.

² For the purposes of s. 23.45, Stats., “approval” means any approval issued by the department or its agents through an automated system established by the department for the issuance of approvals under s. 29.024 [hunting, trapping, and fishing] or the issuance of vehicle admission receipts under s. 27.01 (7m) (d) [state parks and trails].

³ For the purposes of s. 23.45, Stats., “registration” means any registration documentation, as defined in s. 23.33 (1) (jn) [all-terrain vehicle registration] or 350.01 (10t) [snowmobile registration], or certification or registration documentation, as defined in s. 30.50 (3b) [other general certification or registration documentation], issued by the department or its agents.

identifiers of 10 or more of those individuals. The declaration may occur under any of the following circumstances:

1. If a form that the DNR or its agents require an individual to complete in order to obtain an approval or a registration requires the individual to provide any of the individual's personal identifiers, the form shall include a place for the individual to declare that the individual's personal identifiers obtained by the department or its agents from the information on the form may not be disclosed on a list that the department furnishes to another person.
2. If the DNR or its agents require an individual to provide, by telephone or other electronic means, any of the individual's personal identifiers in order to obtain an approval or a registration from the department, the department or its agents shall ask the individual at the time that the individual provides the information if the individual wants to declare that the individual's personal identifiers obtained by telephone or other electronic means may not be disclosed on a list that the department furnishes to another person.
3. The DNR shall provide to an individual upon request a form that includes a place for the individual to declare that the individual's personal identifiers obtained by the department or its agents may not be disclosed on a list that the department furnishes to another person. [See s. 23.45 (2), (3), and (4), Stats.]

A declaration made on one of these forms does not apply to a list that the DNR furnishes to another state agency, a law enforcement agency, or a federal government agency. A state agency that receives a list from the DNR that contains a personal identifier of an individual who has made a declaration under this section may not disclose the personal identifier to any person other than another state agency, a law enforcement agency, or a federal government agency.

DOT – s. 85.103, Stats.

In providing a person with any information that is collected or prepared by the department and that consists in whole or in part of the personal identifiers of 10 or more persons, the DOT is generally prohibited from disclosing the personal identifier of any person who has made a designation under either of the following provisions:

1. The DOT shall include on any form for application for original registration under s. 341.08, for application for renewal of registration under s. 341.08, for application for a certificate of title under s. 342.06, for application for a license or identification card or renewal of a license or identification card under s. 343.14, and for application for a special identification card under s. 343.51, a place for the individual to designate that the individual's personal identifiers may not be disclosed in information compiled or maintained by the department that contains the personal identifiers of 10 or more individuals, a statement indicating the effect of making such a designation, and a place for an applicant or registrant who has made such a designation to reverse that designation.

2. The DOT shall provide to an individual upon request a form that includes a place for the individual to designate that the individual's personal identifiers may not be disclosed in information compiled or maintained by the department that contains the personal identifiers of 10 or more individuals, a statement indicating the effect of making such a designation, and a place for an applicant or registrant who has made such a designation to reverse that designation. [See s. 85.103 (2) and (3), Stats.]

An exception exists for the disclosure of a personal identifier of a person who has made a nondisclosure designation if the disclosure is made by the DOT for certain specified insurance, tax, debt collection or selective service, and law enforcement purposes. [See s. 85.103 (6), Stats.]

DRL – s. 440.14, Stats.

In similar fashion to that of the DNR, the DRL and its credentialing boards are prohibited from disclosing a personal identifier of any person who has made a declaration of nondisclosure in accordance with this section. The declaration applies to any information compiled or maintained by the department or a credentialing board that contains the personal identifiers of 10 or more individuals. The declaration may occur under any of the following circumstances:

1. If a form that the DRL or a credentialing board requires an individual to complete, in order to apply for a credential or credential renewal or to obtain a product or service from the department or the credentialing board, requires the individual to provide any of the individual's personal identifiers, the form shall include a place for the individual to declare that the individual's personal identifiers obtained by the department or the credentialing board from the information on the form may not be disclosed on any list that the department or the credentialing board furnishes to another person.
2. If the DRL or a credentialing board requires an individual to provide, by telephone or other electronic means, any of the individual's personal identifiers in order to apply for a credential or credential renewal or to obtain a product or service from the department or a credentialing board, the department or the credentialing board shall ask the individual at the time that the individual provides the information if the individual wants to declare that the individual's personal identifiers obtained by telephone or other electronic means may not be disclosed on any list that the department or the credentialing board furnishes to another person.
3. The DRL or a credentialing board shall provide to an individual upon request a form that includes a place for the individual to declare that the individual's personal identifiers obtained by the department or credentialing board may not be disclosed on any list that the department or credentialing board furnishes to another person. [See s. 440.14 (2), (3), and (4), Stats.]

Like the DNR provisions, a declaration made on one of these forms does not apply to a list that the DRL furnishes to another state agency, a law enforcement agency, or a federal government agency. A state agency that receives a list from the DRL that contains a personal identifier of an individual who

has made a declaration under this section may not disclose the personal identifier to any person other than another state agency, a law enforcement agency, or a federal government agency.

Exception for Lists of Less Than 10 People

Please note that while each of the sections described above permits an individual to request nondisclosure of personal information in lists of 10 or more individuals, none of these sections seeks to regulate the disclosure of personal identifiers of requests for information regarding *less than* 10 individuals. Such requests may be presumed to be controlled by s. 19.35, Stats., commonly referred to as the "Open Records Law."

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

DWS:wu