

**2017 DRAFTING REQUEST**

**Bill**

For: **Terese Berceau (608) 266-3784** Drafter: **kpaczusk**

By: **Zach** Secondary Drafters:

Date: **4/24/2017** May Contact:

Same as LRB:

Submit via email: **YES**  
 Requester's email: **Rep.Berceau@legis.wisconsin.gov**  
 Carbon copy (CC) to: **mary.pfotenhauer@legis.wisconsin.gov**  
**Konrad.Paczuski@legis.wisconsin.gov**  
**Zach.Ramirez@legis.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

Internet service provider privacy of web browsing history

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kpaczusk 4/24/2017	anienaja 4/24/2017			
/P1	kpaczusk 4/25/2017	kfollett 4/25/2017	lparisi 4/24/2017		State
/1			lparisi 4/25/2017	hkohn 5/11/2017	State

FE Sent For: **<END>**

*at 2  
intro*

## **Paczuski, Konrad**

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**From:** Ramirez, Zach

**Sent:** Monday, April 24, 2017 11:08 AM

**To:** Paczuski, Konrad <Konrad.Paczuski@legis.wisconsin.gov>; Norsetter, Julia <Julia.Norsetter@legis.wisconsin.gov>

**Subject:** FW: Internet Privacy

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Good morning Konrad,

I have a rush drafting request in the name of Representative Berceau.

The request is for a preliminary draft that is identical to LRB-2859/P2 **PLUS** the addition of the provisions in the attached Word document.

Representative Berceau would like to have the draft by the end of the day today.

Thanks for your work on this!

Please let me know if you have any questions.

Thanks,  
Zach

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## Privacy Bill: Enforcement Provision

### **(6) REMEDIES AND PENALTIES.**

#### **(a)**

1. If a provider fails to comply with this section, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief, including damages, injunctive relief and rescission.

2. A person or class of persons entitled to relief under subd. 1. is also entitled to recover costs including attorneys fees.

3. A person or class of persons who has a claim under subd. 1. may sue the violator directly in any court of competent jurisdiction.

#### **(b)**

1. The department; the department of justice, after consulting with the department of agriculture, trade and consumer protection; or any district attorney upon informing the department of agriculture, trade and consumer protection, may commence an action in circuit court to restrain by temporary or permanent injunction any violation of this section. Before entry of final judgment, the court may make such orders or judgments as may be necessary to restore to any person any pecuniary loss suffered because of the acts or practices involved in the action if proof of these acts or practices is submitted to the satisfaction of the court.

(c) Any person who violates this section is subject to a forfeiture of not to exceed \$50,000 for a first offense and not to exceed \$100,000 for a second or subsequent offence. For (3) (a) and (3) (b), each unlawful use, disclosure, or permission of access of an individual customer's information is a separate violation of this section.

1. Forfeitures under this paragraph shall be enforced by the department of justice, after consulting with the department of agriculture, trade and consumer protection, or, upon informing the department, by the district attorney of the county where the violation occurs.



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

SA✓

IN: 4/24/2017  
OUT: TODAY

INSERT

Regen✓

- 1 AN ACT *to create* 100.70 of the statutes; **relating to:** privacy and security of
  - 2 customer information obtained by an Internet access service provider. *and providing a penalty*
- 

***Analysis by the Legislative Reference Bureau***

This bill generally prohibits a broadband Internet access service provider (“provider”) from using, disclosing, or permitting access to a customer’s proprietary information unless the customer grants approval to the provider to use, disclose, or permit access to that information. The bill defines “customer” as 1) a current or former subscriber to broadband Internet access service who resides in this state; or 2) a person who resides in this state and uses broadband Internet access service that is provided under an agreement between a current or former subscriber who resides in this state and a provider. With certain exceptions described below, the bill requires different types of approval for sensitive and non-sensitive customer proprietary information. For sensitive information, the customer must grant express, affirmative consent after receiving a notification that is required to accompany a provider’s request to use, disclose, or permit access to that information. Sensitive information includes the following: 1) financial information; 2) health information; 3) information pertaining to a child; 4) a social security number; 5) precise geo-location information; 6) content of communications; and 7) web browsing history and smart phone or tablet computer application usage history.

For non-sensitive information, the customer must object to the provider’s request to use, disclose, or permit access to that information after the customer receives a notification that is required to accompany the provider’s request. Under the bill, non-sensitive information is the following information that is not sensitive

information: 1) information that is linked or reasonably able to be linked to an individual or a device; or 2) information that identifies an individual and that relates to the quantity, technical configuration, type, destination, location, or amount of use of broadband Internet access service.

Also, under the bill, a provider is prohibited from refusing to provide broadband Internet access service because a customer or prospective customer does not grant approval to the provider to use, disclose, or permit access to proprietary information.

The bill allows a provider to use, disclose, or permit access to both sensitive and non-sensitive customer proprietary information without receiving the customer's approval only for the following purposes: 1) to provide the broadband Internet access service from which the information is derived; 2) to initiate, render, bill, or collect for broadband Internet access service; 3) to protect the rights or property of a provider or to protect users against fraudulent, abusive, or unlawful use of the service; 4) to provide certain services to a customer during a real-time interaction with the provider initiated by the customer; 5) to provide location information or non-sensitive information in emergencies; or 6) as otherwise required or authorized by law.

Under the bill, when a provider requests approval to use, disclose, or permit access to a customer's proprietary information, the provider's request must accompany a notice that includes a specific description of the following: 1) the types of customer proprietary information that the provider will collect from providing broadband Internet access service, and how it will use the information; 2) the circumstances under which the provider discloses or permits access to each type of customer proprietary information that it collects; 3) the categories of entities to which the provider discloses or permits to access the customer's proprietary information and the purposes for which that information will be used by each category of entity; and 4) the customer's rights to grant, deny, or withdraw approval concerning the customer's proprietary information. The notice must also include access to a mechanism that the customer can use to grant, deny, or withdraw approval at any time.

The bill requires that when a provider makes a material change to its policies concerning the privacy of customer proprietary information, the provider must give to each customer a similar notice that also includes a specific description of the changes made to the privacy policies. The bill also requires that all notices and mechanisms used for granting, denying, or withdrawing approval be translated into the language that the provider uses to transact business with a customer.

The bill requires providers to take reasonable security measures to protect customer proprietary information from unauthorized use, disclosure, or access. Further, when a breach of the provider's security occurs, the provider is required to notify each affected customer within 30 days after learning of the breach unless the provider reasonably determines that no harm to the customer is reasonably likely to occur as a result. The notification must describe the information that is reasonably believed to have been involved in the security breach and include information about how to contact the provider to inquire about the security breach and how to contact relevant government agencies. If the security breach creates a risk of financial harm,

the notification must also include information about steps that the customer can take to guard against identity theft.

The bill also requires a provider to notify the Department of Agriculture, Trade and Consumer Protection and the Department of Justice within seven business days of learning about a breach of security affecting 5,000 or more customers unless the provider reasonably determines that no harm to customers is reasonably likely to occur as a result of the breach. If a breach of security affects fewer than 5,000 customers, the bill requires a provider to notify DATCP within 30 days after learning about the breach. Under the bill, a provider is required to maintain records for two years that contain information about the notifications made to customers about a breach of security.

INS A

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

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

1           **SECTION 1.** 100.70 of the statutes is created to read:

2           **100.70 Privacy and security of information obtained by an Internet**  
3 **service provider. (1) DEFINITIONS.** In this section:

4           (a) "Breach of security" means any instance in which a person, without  
5 authorization or exceeding authorization, has gained access to, used, or disclosed  
6 customer proprietary information.

7           (b) 1. "Broadband Internet access service" means a mass-market retail service  
8 by wire or radio that provides the capability to transmit data and receive data from  
9 all or substantially all Internet endpoints, including any capabilities that are  
10 incidental to and enable the operation of the service, but excluding dial-up Internet  
11 access service.

12           2. "Broadband Internet access service" includes any service that the  
13 department finds is a functional equivalent of the service specified in subd. 1. or is  
14 used to evade the requirements under this section.

15           (c) "Customer" means any of the following:

1           1. A current or former subscriber to broadband Internet access service who  
2 resides in this state.

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\*\*\*\*NOTE: Because the draft defines "customer" to include former subscribers, provisions in the draft that require a broadband Internet access service provider to give certain notices to "customers" would also require providers to give those notices to former subscribers.

3           2. A person who resides in this state and uses or has used broadband Internet  
4 access service that is provided under an agreement between a current or former  
5 subscriber who resides in this state and a broadband Internet access service  
6 provider.

7           (d) "Customer proprietary information" means any of the following  
8 information:

9           1. Individually identifiable information that relates to the quantity, technical  
10 configuration, type, destination, location, or amount of use of a broadband Internet  
11 access service subscribed to by a customer of a provider of that service, and that is  
12 made available to the provider by the customer.

13           2. Any information that is linked or reasonably able to be linked to an  
14 individual or a device.

15           3. Content of a customer's communications.

16           (e) "Material change" means any change that a customer, acting reasonably  
17 under the circumstances, would consider important to his or her decisions  
18 concerning his or her privacy, including any change to information required to be  
19 presented in the notice required under sub. (2) (b).

20           (f) "Non-sensitive customer proprietary information" means customer  
21 proprietary information that is not sensitive customer proprietary information.

1 (g) "Opt-in approval" means the method for obtaining customer consent in  
2 which a provider obtains from the customer affirmative, express consent after the  
3 customer is provided appropriate notification of the provider's request for consent.

4 (h) "Opt-out approval" means the method for obtaining customer consent in  
5 which a customer is deemed to have consented if the customer has failed to object to  
6 a provider's request after the customer is provided with appropriate notification of  
7 the provider's request for consent.

8 (i) "Prospective customer" means an applicant for broadband Internet access  
9 service who resides in this state.

10 (j) "Sensitive customer proprietary information" means customer proprietary  
11 information that is any of the following:

- 12 1. Financial information.
- 13 2. Health information.
- 14 3. Information pertaining to a child.
- 15 4. A social security number.
- 16 5. Precise geo-location information.
- 17 6. Content of communications.
- 18 7. Web browsing history, smart phone or tablet computer application usage  
19 history, and the functional equivalents of either.

20 (k) "Subscriber" means a person who enters into an agreement for the provision  
21 of broadband Internet access services with a provider of broadband Internet access  
22 services. "Subscriber" does not include a person who resells services.

23 (2) NOTICE REQUIREMENTS. (a) *When notice required.* 1. A broadband Internet  
24 access service provider shall make a notice available at all times to customers about



1 its policies concerning the privacy of the information that the provider obtains about  
2 customers.

3 2. A broadband Internet access service provider shall notify a prospective  
4 customer, at the point of sale, prior to a purchase of service, about its policies  
5 concerning the privacy of information that the provider obtains about customers.

6 (b) *Contents.* A broadband Internet access service provider shall include all of  
7 the following in the notice provided to customers under par. (a):

8 1. A specific description of the types of customer proprietary information that  
9 the broadband Internet access service provider collects from providing broadband  
10 Internet access service and how it uses that information.

11 2. A specific description of the circumstances under which the broadband  
12 Internet access service provider discloses or permits access to each type of customer  
13 proprietary information that it collects.

14 3. A specific description of the categories of entities to which the broadband  
15 Internet access service provider discloses or permits to access customer proprietary  
16 information and the purposes for which that information will be used by each  
17 category of entities.

18 4. A specific description of the customer's rights to grant, deny, or withdraw  
19 approval concerning the customer's proprietary information, including each of the  
20 following:

21 a. A statement that the customer's denial or withdrawal of approval to use,  
22 disclose, or permit access to customer proprietary information will not affect the  
23 provision of any broadband Internet access services to the customer.

1           b. A statement that any grant, denial, or withdrawal of approval for the use,  
2 disclosure, or permission of access to customer proprietary information is valid until  
3 the customer affirmatively revokes the grant, denial, or withdrawal.

4           c. A statement that the customer has the right to deny or withdraw approval  
5 to use, disclose, or permit access to customer proprietary information at any time.

6           5. Access to a mechanism required under sub. (3) (d) 3.

7           (c) *Material changes to a privacy policy.* A broadband Internet access service  
8 provider shall provide a notice, through electronic mail or another means of prompt  
9 communication agreed upon by the customer, to a customer of a material change to  
10 its policies concerning the privacy of information that the provider obtains about the  
11 customer. The notice shall include all of the following:

12           1. A specific description of the changes made to the provider's privacy policies,  
13 including any changes to what customer proprietary information the provider  
14 collects; how the provider uses, discloses, or permits access to that information; the  
15 categories of entities to which it discloses or permits access to customer proprietary  
16 information; and which, if any, changes are retroactive.

17           2. The description required under par. (b) 4.

18           3. Access to a mechanism required under sub. (3) (d) 3.

19           (d) *When translation required.* If a broadband Internet access service provider  
20 transacts business with a customer in a language other than English, the provider  
21 shall translate the contents of the notices required under pars. (b) and (c) into the  
22 language through which the provider transacts business with the customer.

23           **(3) CUSTOMER APPROVAL.** (a) *Opt-in approval required.* Except as provided  
24 under par. (c), a broadband Internet access service provider may not do any of the  
25 following unless the provider obtains opt-in approval from the customer:

1           1. Use, disclose, or permit access to any of the customer's sensitive customer  
2           proprietary information.

3           2. Use, disclose, or permit access to any of the customer's proprietary  
4           information previously collected by the provider for which the customer has not  
5           previously granted approval under this paragraph or par. (b).

6           (b) *Opt-out approval required.* 1. Except as provided under subd. 2. or par. (c),  
7           a broadband Internet access service provider may not use, disclose, or permit access  
8           to any of a customer's non-sensitive customer proprietary information unless the  
9           provider obtains opt-out approval from the customer.

10          2. A broadband Internet access service provider may obtain opt-in approval  
11          from a customer to use, disclose, or permit access to any of the customer's  
12          non-sensitive customer proprietary information.

13          (c) *Permissible use without customer approval.* A broadband Internet access  
14          service provider may use, disclose, or permit access to customer proprietary  
15          information without approval from the customer under par. (a) or (b) only for the  
16          following purposes:

17           1. To provide the broadband Internet access service from which the information  
18           is derived, or in its provision of services necessary to, or used in, the provision of that  
19           service.

20           2. To initiate, render, bill, or collect for broadband Internet access service.

21           3. To protect the rights or property of the broadband Internet access service  
22           provider, or to protect users of the broadband Internet access service and other  
23           providers from fraudulent, abusive, or unlawful use of the service.

1           4. To provide any marketing, referral, or administrative services to a customer  
2 for the duration of a real-time interaction if the interaction was initiated by the  
3 customer.

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4           5. To provide location information or non-sensitive customer proprietary  
5 information to any of the following:

6           a. A public safety answering point, as defined in s. 256.35 (1) (gm), emergency  
7 medical service provider, emergency dispatch provider, public safety official, fire  
8 service official, law enforcement official, or hospital emergency or trauma care  
9 facility, in order to respond to the user's request for emergency services.

10          b. The user's legal guardian or a member of the user's immediate family, to  
11 inform about the user's location in an emergency situation that involves the risk of  
12 death or serious physical harm.

13          c. A provider of information or database management services only for the  
14 purpose of assisting in the delivery of emergency services in response to an  
15 emergency.

16          6. As otherwise required or authorized by law.

17          (d) *Solicitation and exercise of customer approval.* 1. A broadband Internet  
18 access service provider shall request the approval required under par. (a) or (b) at the  
19 point of sale to a customer and at the time the provider makes a material change to  
20 its policies concerning the privacy of information that the provider obtains about a  
21 customer.

22          2. A broadband Internet access service provider shall request customer  
23 approval clearly and conspicuously, in language that is readily understandable and  
24 not misleading, and each request shall include all of the following:

1 a. A disclosure of the types of customer proprietary information for which the  
2 provider is seeking customer approval to use, disclose, or permit access to.

3 b. A disclosure of the purposes for which the customer's proprietary  
4 information will be used.

5 c. A disclosure of the categories of entities to which the provider intends to  
6 disclose or permit access to the customer proprietary information.

7 d. A means to easily access the notice required under sub. (2) (a) or (c).

8 e. A means to easily access the mechanism required under subd. 3.

9 3. A broadband Internet access service provider shall make available, at no  
10 additional cost to the customer, a mechanism for a customer to grant, deny, or  
11 withdraw opt-in approval or opt-out approval, or both, at any time.

12 4. A broadband Internet access service provider shall give effect to a customer's  
13 grant, denial, or withdrawal of approval promptly, and the grant, denial, or  
14 withdrawal of approval shall remain in effect until the customer revokes or limits the  
15 grant, denial, or withdrawal of approval.

16 5. If a broadband Internet access service provider transacts business with a  
17 customer in a language other than English, the provider shall translate the contents  
18 required under subd. 2. and the instructions for using the mechanism required under  
19 subd. 3. into the language through which the provider transacts business with the  
20 customer.

21 **(4) DATA SECURITY.** (a) A broadband Internet access service provider shall take  
22 reasonable security measures to protect customer proprietary information from  
23 unauthorized use, disclosure, or access.

1 (b) In implementing reasonable security measures under par. (a), a broadband  
2 Internet access service provider shall appropriately take into account each of the  
3 following factors:

- 
- 4 1. The nature and scope of the provider's activities.
  - 5 2. The sensitivity of the data it collects.
  - 6 3. The size of the provider.
  - 7 4. The technical feasibility of implementing the security measures.

8 **(5) DATA BREACH NOTIFICATION.** (a) *Customer notification.* 1. Except as provided  
9 in subd. 4., a broadband Internet access service provider shall, without unreasonable  
10 delay, notify a customer about any breach of security involving customer proprietary  
11 information pertaining to that customer within 30 days after the provider reasonably  
12 determines that a breach of security has occurred unless the provider reasonably  
13 determines that no harm to the customer is reasonably likely to occur as a result of  
14 the breach of security.

15 2. A broadband Internet access service provider shall notify a customer about  
16 a breach of security under subd. 1. by at least one of the following methods:

17 a. A written notification sent to either the customer's electronic mail address  
18 or the postal address of record of the customer, or, for former customers, to the last  
19 postal address ascertainable after reasonable investigation using commonly  
20 available sources.

21 b. Other electronic means of prompt communication agreed upon by the  
22 customer for contacting that customer for breach of security notification purposes.

23 3. A broadband Internet access service provider shall provide all of the  
24 following information in a notice required under subd. 1.:

- 25 a. The date, estimated date, or estimated date range of the breach of security.

1           b. A description of the customer proprietary information that was involved in  
2 the breach of security or reasonably believed to have been involved in the breach of  
3 security.

4           c. Information that the customer may use to contact the provider to inquire  
5 about the breach of security and the customer proprietary information that the  
6 provider maintains about that customer.

7           d. Information about how to contact the department and any federal agencies  
8 relevant to the service provided to the customer.

9           e. If the breach of security creates a risk of financial harm, information about  
10 the national credit-reporting agencies and the steps customers can take to guard  
11 against identity theft, including any credit monitoring, credit reporting, credit  
12 freezes, or other consumer protections that the provider is offering customers  
13 affected by the breach of security, including security freezes under s. 100.54.

14           4. Upon the request of a law enforcement agency, a broadband Internet access  
15 service provider shall not disclose a breach of security to a customer.

16           (b) *Notification to government agencies.* 1. Except as provided in subd. 3., a  
17 broadband Internet access service provider shall notify the department and the  
18 department of justice of any breach of security affecting 5,000 or more customers no  
19 later than 7 business days after the provider reasonably determines that a breach  
20 of security has occurred and at least 3 business days before notifying the affected  
21 customers under par. (a) 1.

22           2. Except as provided in subd. 3., a broadband Internet access service provider  
23 shall, without unreasonable delay, notify the department of any breach of security  
24 affecting fewer than 5,000 customers within 30 days after the provider reasonably  
25 determines that a breach of security has occurred.

1           3. A broadband Internet access service provider is not required to notify the  
2 department under subd. 1. or 2. if it reasonably determines that no harm to  
3 customers is reasonably likely to occur as a result of the breach of security.

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4           (c) *Record keeping.* 1. Except as provided in subd. 3., a broadband Internet  
5 access service provider shall maintain a record, electronically or in some other  
6 manner, of each breach of security and the notifications made to customers under  
7 par. (a) 1. regarding that breach. The record shall include all of the following:

8           a. The date that the provider first determines that the breach of security  
9 occurred.

10           b. The date that customers were notified.

11           c. A written copy of all customer notifications.

12           2. A broadband Internet access service provider shall retain the record required  
13 under subd. 1. for at least 2 years from the date on which the provider first  
14 determines that the breach of security occurred.

15           3. A broadband Internet access service provider is not required to maintain a  
16 record under subd. 1. if it reasonably determines that no harm to customers is  
17 reasonably likely to occur as a result of the breach of security.

18           **(6) INTERNET ACCESS SERVICE OFFERS CONDITIONED ON WAIVER OF PRIVACY.** (a) A  
19 broadband Internet access service provider may not refuse to provide broadband  
20 Internet access service because a customer or prospective customer does not provide  
21 approval required under sub. (3) (a) or (b).

22           (b) A broadband Internet access service provider that offers a financial  
23 incentive program, such as lower rates, in exchange for a customer's approval to use,  
24 disclose, or permit access to the customer's proprietary information shall do all of the  
25 following:



**SECTION 1**

1           1. Provide a notice explaining the terms of the financial incentive program that  
2 includes all of the following:

3           a. An explanation that the program requires opt-in approval from the  
4 customer to use, disclose, or permit access to the customer's proprietary information.

5           b. Information about what customer proprietary information the provider will  
6 collect, how it will be used, and the categories of entities with which it will be shared  
7 and for what purposes.

8           c. Information, prominently displayed, about the equivalent service plan that  
9 does not necessitate the use, disclosure, or access to customer proprietary  
10 information beyond that required or permitted under sub. (3) (c).

11          2. Obtain opt-in approval from the customer for consent to participate in the  
12 financial incentive program.

13          3. Provide the notice required under subd. 1. at the time the program is offered  
14 to a customer and at the time that a customer elects to participate in the program.

15          4. Make the notice required under subd. 1. easily accessible and available  
16 separate from any other privacy notifications, including the notifications required  
17 under sub. (2) (a) or (c).

18          5. If the provider transacts business with a customer in a language other than  
19 English, translate the contents required under subd. 1. into the language through  
20 which the provider transacts business with the customer.

21          6. If the customer grants the opt-in approval required under subd. 2., a  
22 broadband Internet access service provider shall make available a mechanism for  
23 the customer to withdraw approval for participation in the financial incentive  
24 program under this paragraph at any time.

25 (END)

*INS 14-24*

1 INS A

A broadband Internet access service provider that violates the bill is subject to a civil forfeiture of up to \$50,000 for the first violation, and up to \$100,000 for each subsequent violation. Additionally, under the bill, any person or class of persons that is adversely affected by a violation by a broadband Internet access service provider can sue the provider for appropriate relief. The bill also authorizes 1) DATCP; 2) DOJ, after consulting with DATCP; or 3) any district attorney, upon informing DATCP, to bring an action to restrain by temporary or permanent injunction any violation of the bill.

2

3 END INS A

4 INS 14-24

5 (7) REMEDIES AND PENALTIES. (a) 1. A person or class of persons adversely  
6 affected by a broadband Internet access service provider's violation of this section  
7 has a claim for appropriate relief, including damages, injunctive relief, and  
8 rescission and may bring an action in circuit court against the broadband Internet  
9 access service provider.

10 2. Notwithstanding s. 814.04 (1), a person or class of persons entitled to relief  
11 under subd. 1 may recover costs, disbursements, and reasonable attorney fees.

12 (b) 1. Any of the following may bring an action in circuit court in the name of  
13 the state to restrain by temporary or permanent injunction any violation of this  
14 section:

15 a. The department.

16 b. The department of justice, after consulting with the department.

17 c. Any district attorney, upon informing the department.

18 2. Before entry of final judgment, the court may make any order or judgment  
19 necessary to restore to any person any pecuniary loss suffered because of a violation

1 that is the subject of the action under subd. 1., if proof of the violation is submitted  
2 to the satisfaction of the court.

3 (c) 1. For any violation of this section, the department of justice, after  
4 consulting with the department, or the district attorney of the county <sup>of</sup> where the  
5 violation occurs, upon informing the department, may commence an action in the  
6 name of the state to recover a forfeiture of not more than \$50,000 for the first  
7 violation and not more than \$100,000 for each subsequent violation.

8 2. Each occasion that a broadband Internet access service provider uses,  
9 discloses, or permits access to an individual customer's proprietary information in  
10 violation of sub. (3) (a) or (b) constitutes a separate violation.

11 END INS 14-24



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-3246/P1 *De 1*  
KP:wlj/ae/amn

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

*IN: 4/25/2017*  
*OUT: TODAY BY NOON*

- 1 **AN ACT** *to create* 100.70 of the statutes; **relating to:** privacy and security of  
2 customer information obtained by a broadband Internet access service provider  
3 and providing a penalty.

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***Analysis by the Legislative Reference Bureau***

This bill generally prohibits a broadband Internet access service provider (“provider”) from using, disclosing, or permitting access to a customer’s proprietary information unless the customer grants approval to the provider to use, disclose, or permit access to that information. The bill defines “customer” as 1) a current or former subscriber to broadband Internet access service who resides in this state; or 2) a person who resides in this state and uses broadband Internet access service that is provided under an agreement between a current or former subscriber who resides in this state and a provider. With certain exceptions described below, the bill requires different types of approval for sensitive and non-sensitive customer proprietary information. For sensitive information, the customer must grant express, affirmative consent after receiving a notification that is required to accompany a provider’s request to use, disclose, or permit access to that information. Sensitive information includes the following: 1) financial information; 2) health information; 3) information pertaining to a child; 4) a social security number; 5) precise geo-location information; 6) content of communications; and 7) web browsing history and smart phone or tablet computer application usage history.

For non-sensitive information, the customer must object to the provider’s request to use, disclose, or permit access to that information after the customer receives a notification that is required to accompany the provider’s request. Under

the bill, non-sensitive information is the following information that is not sensitive information: 1) information that is linked or reasonably able to be linked to an individual or a device; or 2) information that identifies an individual and that relates to the quantity, technical configuration, type, destination, location, or amount of use of broadband Internet access service.

Also, under the bill, a provider is prohibited from refusing to provide broadband Internet access service because a customer or prospective customer does not grant approval to the provider to use, disclose, or permit access to proprietary information.

The bill allows a provider to use, disclose, or permit access to both sensitive and non-sensitive customer proprietary information without receiving the customer's approval only for the following purposes: 1) to provide the broadband Internet access service from which the information is derived; 2) to initiate, render, bill, or collect for broadband Internet access service; 3) to protect the rights or property of a provider or to protect users against fraudulent, abusive, or unlawful use of the service; 4) to provide certain services to a customer during a real-time interaction with the provider initiated by the customer; 5) to provide location information or non-sensitive information in emergencies; or 6) as otherwise required or authorized by law.

Under the bill, when a provider requests approval to use, disclose, or permit access to a customer's proprietary information, the provider's request must accompany a notice that includes a specific description of the following: 1) the types of customer proprietary information that the provider will collect from providing broadband Internet access service, and how it will use the information; 2) the circumstances under which the provider discloses or permits access to each type of customer proprietary information that it collects; 3) the categories of entities to which the provider discloses or permits to access the customer's proprietary information and the purposes for which that information will be used by each category of entity; and 4) the customer's rights to grant, deny, or withdraw approval concerning the customer's proprietary information. The notice must also include access to a mechanism that the customer can use to grant, deny, or withdraw approval at any time.

The bill requires that when a provider makes a material change to its policies concerning the privacy of customer proprietary information, the provider must give to each customer a similar notice that also includes a specific description of the changes made to the privacy policies. The bill also requires that all notices and mechanisms used for granting, denying, or withdrawing approval be translated into the language that the provider uses to transact business with a customer.

The bill requires providers to take reasonable security measures to protect customer proprietary information from unauthorized use, disclosure, or access. Further, when a breach of the provider's security occurs, the provider is required to notify each affected customer within 30 days after learning of the breach unless the provider reasonably determines that no harm to the customer is reasonably likely to occur as a result. The notification must describe the information that is reasonably believed to have been involved in the security breach and include information about how to contact the provider to inquire about the security breach and how to contact

relevant government agencies. If the security breach creates a risk of financial harm, the notification must also include information about steps that the customer can take to guard against identity theft.

The bill also requires a provider to notify the Department of Agriculture, Trade and Consumer Protection and the Department of Justice within seven business days of learning about a breach of security affecting 5,000 or more customers unless the provider reasonably determines that no harm to customers is reasonably likely to occur as a result of the breach. If a breach of security affects fewer than 5,000 customers, the bill requires a provider to notify DATCP within 30 days after learning about the breach. Under the bill, a provider is required to maintain records for two years that contain information about the notifications made to customers about a breach of security.

A broadband Internet access service provider that violates the bill is subject to a civil forfeiture of up to \$50,000 for the first violation, and up to \$100,000 for each subsequent violation. Additionally, under the bill, any person or class of persons that is adversely affected by a violation by a broadband Internet access service provider can sue the provider for appropriate relief. The bill also authorizes 1) DATCP; 2) DOJ, after consulting with DATCP; or 3) any district attorney, upon informing DATCP, to bring an action to restrain by temporary or permanent injunction any violation of the bill.

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

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

1           **SECTION 1.** 100.70 of the statutes is created to read:

2           **100.70 Privacy and security of information obtained by an Internet**  
3 **service provider. (1) DEFINITIONS.** In this section:

4           (a) "Breach of security" means any instance in which a person, without  
5 authorization or exceeding authorization, has gained access to, used, or disclosed  
6 customer proprietary information.

7           (b) 1. "Broadband Internet access service" means a mass-market retail service  
8 by wire or radio that provides the capability to transmit data and receive data from  
9 all or substantially all Internet endpoints, including any capabilities that are

1 incidental to and enable the operation of the service, but excluding dial-up Internet  
2 access service.

3 2. "Broadband Internet access service" includes any service that the  
4 department finds is a functional equivalent of the service specified in subd. 1. or is  
5 used to evade the requirements under this section.

6 (c) "Customer" means any of the following:

7 1. A current or former subscriber to broadband Internet access service who  
8 resides in this state.

\*\*\*\*NOTE: Because the draft defines "customer" to include former subscribers,  
provisions in the draft that require a broadband Internet access service provider to give  
certain notices to "customers" would also require providers to give those notices to former  
subscribers.

9 2. A person who resides in this state and uses or has used broadband Internet  
10 access service that is provided under an agreement between a current or former  
11 subscriber who resides in this state and a broadband Internet access service  
12 provider.

13 (d) "Customer proprietary information" means any of the following  
14 information:

15 1. Individually identifiable information that relates to the quantity, technical  
16 configuration, type, destination, location, or amount of use of a broadband Internet  
17 access service subscribed to by a customer of a provider of that service, and that is  
18 made available to the provider by the customer.

19 2. Any information that is linked or reasonably able to be linked to an  
20 individual or a device.

21 3. Content of a customer's communications.

22 (e) "Material change" means any change that a customer, acting reasonably  
23 under the circumstances, would consider important to his or her decisions

1 concerning his or her privacy, including any change to information required to be  
2 presented in the notice required under sub. (2) (b).

3 (f) "Non-sensitive customer proprietary information" means customer  
4 proprietary information that is not sensitive customer proprietary information.

5 (g) "Opt-in approval" means the method for obtaining customer consent in  
6 which a provider obtains from the customer affirmative, express consent after the  
7 customer is provided appropriate notification of the provider's request for consent.

8 (h) "Opt-out approval" means the method for obtaining customer consent in  
9 which a customer is deemed to have consented if the customer has failed to object to  
10 a provider's request after the customer is provided with appropriate notification of  
11 the provider's request for consent.

12 (i) "Prospective customer" means an applicant for broadband Internet access  
13 service who resides in this state.

14 (j) "Sensitive customer proprietary information" means customer proprietary  
15 information that is any of the following:

- 16 1. Financial information.
- 17 2. Health information.
- 18 3. Information pertaining to a child.
- 19 4. A social security number.
- 20 5. Precise geo-location information.
- 21 6. Content of communications.
- 22 7. Web browsing history, smart phone or tablet computer application usage  
23 history, and the functional equivalents of either.



1 (k) "Subscriber" means a person who enters into an agreement for the provision  
2 of broadband Internet access services with a provider of broadband Internet access  
3 services. "Subscriber" does not include a person who resells services.

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4 (2) NOTICE REQUIREMENTS. (a) *When notice required.* 1. A broadband Internet  
5 access service provider shall make a notice available at all times to customers about  
6 its policies concerning the privacy of the information that the provider obtains about  
7 customers.

8 2. A broadband Internet access service provider shall notify a prospective  
9 customer, at the point of sale, prior to a purchase of service, about its policies  
10 concerning the privacy of information that the provider obtains about customers.

11 (b) *Contents.* A broadband Internet access service provider shall include all of  
12 the following in the notice provided to customers under par. (a):

13 1. A specific description of the types of customer proprietary information that  
14 the broadband Internet access service provider collects from providing broadband  
15 Internet access service and how it uses that information.

16 2. A specific description of the circumstances under which the broadband  
17 Internet access service provider discloses or permits access to each type of customer  
18 proprietary information that it collects.

19 3. A specific description of the categories of entities to which the broadband  
20 Internet access service provider discloses or permits to access customer proprietary  
21 information and the purposes for which that information will be used by each  
22 category of entities.

23 4. A specific description of the customer's rights to grant, deny, or withdraw  
24 approval concerning the customer's proprietary information, including each of the  
25 following:

1           a. A statement that the customer's denial or withdrawal of approval to use,  
2           disclose, or permit access to customer proprietary information will not affect the  
3           provision of any broadband Internet access services to the customer.

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4           b. A statement that any grant, denial, or withdrawal of approval for the use,  
5           disclosure, or permission of access to customer proprietary information is valid until  
6           the customer affirmatively revokes the grant, denial, or withdrawal.

7           c. A statement that the customer has the right to deny or withdraw approval  
8           to use, disclose, or permit access to customer proprietary information at any time.

9           5. Access to a mechanism required under sub. (3) (d) 3.

10          (c) *Material changes to a privacy policy.* A broadband Internet access service  
11          provider shall provide a notice, through electronic mail or another means of prompt  
12          communication agreed upon by the customer, to a customer of a material change to  
13          its policies concerning the privacy of information that the provider obtains about the  
14          customer. The notice shall include all of the following:

15           1. A specific description of the changes made to the provider's privacy policies,  
16           including any changes to what customer proprietary information the provider  
17           collects; how the provider uses, discloses, or permits access to that information; the  
18           categories of entities to which it discloses or permits access to customer proprietary  
19           information; and which, if any, changes are retroactive.

20           2. The description required under par. (b) 4.

21           3. Access to a mechanism required under sub. (3) (d) 3.

22          (d) *When translation required.* If a broadband Internet access service provider  
23          transacts business with a customer in a language other than English, the provider  
24          shall translate the contents of the notices required under pars. (b) and (c) into the  
25          language through which the provider transacts business with the customer.

1           **(3) CUSTOMER APPROVAL.** (a) *Opt-in approval required.* Except as provided  
2 under par. (c), a broadband Internet access service provider may not do any of the  
3 following unless the provider obtains opt-in approval from the customer:

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4           1. Use, disclose, or permit access to any of the customer's sensitive customer  
5 proprietary information.

6           2. Use, disclose, or permit access to any of the customer's proprietary  
7 information previously collected by the provider for which the customer has not  
8 previously granted approval under this paragraph or par. (b).

9           (b) *Opt-out approval required.* 1. Except as provided under subd. 2. or par. (c),  
10 a broadband Internet access service provider may not use, disclose, or permit access  
11 to any of a customer's non-sensitive customer proprietary information unless the  
12 provider obtains opt-out approval from the customer.

13           2. A broadband Internet access service provider may obtain opt-in approval  
14 from a customer to use, disclose, or permit access to any of the customer's  
15 non-sensitive customer proprietary information.

16           (c) *Permissible use without customer approval.* A broadband Internet access  
17 service provider may use, disclose, or permit access to customer proprietary  
18 information without approval from the customer under par. (a) or (b) only for the  
19 following purposes:

20           1. To provide the broadband Internet access service from which the information  
21 is derived, or in its provision of services necessary to, or used in, the provision of that  
22 service.

23           2. To initiate, render, bill, or collect for broadband Internet access service.

1           3. To protect the rights or property of the broadband Internet access service  
2 provider, or to protect users of the broadband Internet access service and other  
3 providers from fraudulent, abusive, or unlawful use of the service.

4           4. To provide any marketing, referral, or administrative services to a customer  
5 for the duration of a real-time interaction if the interaction was initiated by the  
6 customer.

7           5. To provide location information or non-sensitive customer proprietary  
8 information to any of the following:

9           a. A public safety answering point, as defined in s. 256.35 (1) (gm), emergency  
10 medical service provider, emergency dispatch provider, public safety official, fire  
11 service official, law enforcement official, or hospital emergency or trauma care  
12 facility, in order to respond to the user's request for emergency services.

13           b. The user's legal guardian or a member of the user's immediate family, to  
14 inform about the user's location in an emergency situation that involves the risk of  
15 death or serious physical harm.

16           c. A provider of information or database management services only for the  
17 purpose of assisting in the delivery of emergency services in response to an  
18 emergency.

19           6. As otherwise required or authorized by law.

20           (d) *Solicitation and exercise of customer approval.* 1. A broadband Internet  
21 access service provider shall request the approval required under par. (a) or (b) at the  
22 point of sale to a customer and at the time the provider makes a material change to  
23 its policies concerning the privacy of information that the provider obtains about a  
24 customer.

**SECTION 1**

1           2. A broadband Internet access service provider shall request customer  
2 approval clearly and conspicuously, in language that is readily understandable and  
3 not misleading, and each request shall include all of the following:

4           a. A disclosure of the types of customer proprietary information for which the  
5 provider is seeking customer approval to use, disclose, or permit access to.

6           b. A disclosure of the purposes for which the customer's proprietary  
7 information will be used.

8           c. A disclosure of the categories of entities to which the provider intends to  
9 disclose or permit access to the customer proprietary information.

10          d. A means to easily access the notice required under sub. (2) (a) or (c).

11          e. A means to easily access the mechanism required under subd. 3.

12          3. A broadband Internet access service provider shall make available, at no  
13 additional cost to the customer, a mechanism for a customer to grant, deny, or  
14 withdraw opt-in approval or opt-out approval, or both, at any time.

15          4. A broadband Internet access service provider shall give effect to a customer's  
16 grant, denial, or withdrawal of approval promptly, and the grant, denial, or  
17 withdrawal of approval shall remain in effect until the customer revokes or limits the  
18 grant, denial, or withdrawal of approval.

19          5. If a broadband Internet access service provider transacts business with a  
20 customer in a language other than English, the provider shall translate the contents  
21 required under subd. 2. and the instructions for using the mechanism required under  
22 subd. 3. into the language through which the provider transacts business with the  
23 customer.

1           (4) DATA SECURITY. (a) A broadband Internet access service provider shall take  
2 reasonable security measures to protect customer proprietary information from  
3 unauthorized use, disclosure, or access.

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4           (b) In implementing reasonable security measures under par. (a), a broadband  
5 Internet access service provider shall appropriately take into account each of the  
6 following factors:

- 7           1. The nature and scope of the provider's activities.
- 8           2. The sensitivity of the data it collects.
- 9           3. The size of the provider.
- 10          4. The technical feasibility of implementing the security measures.

11          (5) DATA BREACH NOTIFICATION. (a) *Customer notification*. 1. Except as provided  
12 in subd. 4., a broadband Internet access service provider shall, without unreasonable  
13 delay, notify a customer about any breach of security involving customer proprietary  
14 information pertaining to that customer within 30 days after the provider reasonably  
15 determines that a breach of security has occurred unless the provider reasonably  
16 determines that no harm to the customer is reasonably likely to occur as a result of  
17 the breach of security.

18          2. A broadband Internet access service provider shall notify a customer about  
19 a breach of security under subd. 1. by at least one of the following methods:

20          a. A written notification sent to either the customer's electronic mail address  
21 or the postal address of record of the customer, or, for former customers, to the last  
22 postal address ascertainable after reasonable investigation using commonly  
23 available sources.

24          b. Other electronic means of prompt communication agreed upon by the  
25 customer for contacting that customer for breach of security notification purposes.

1           3. A broadband Internet access service provider shall provide all of the  
2 following information in a notice required under subd. 1.:

3           a. The date, estimated date, or estimated date range of the breach of security.

4           b. A description of the customer proprietary information that was involved in  
5 the breach of security or reasonably believed to have been involved in the breach of  
6 security.

7           c. Information that the customer may use to contact the provider to inquire  
8 about the breach of security and the customer proprietary information that the  
9 provider maintains about that customer.

10          d. Information about how to contact the department and any federal agencies  
11 relevant to the service provided to the customer.

12          e. If the breach of security creates a risk of financial harm, information about  
13 the national credit-reporting agencies and the steps customers can take to guard  
14 against identity theft, including any credit monitoring, credit reporting, credit  
15 freezes, or other consumer protections that the provider is offering customers  
16 affected by the breach of security, including security freezes under s. 100.54.

17          4. Upon the request of a law enforcement agency, a broadband Internet access  
18 service provider shall not disclose a breach of security to a customer.

19          (b) *Notification to government agencies.* 1. Except as provided in subd. 3., a  
20 broadband Internet access service provider shall notify the department and the  
21 department of justice of any breach of security affecting 5,000 or more customers no  
22 later than 7 business days after the provider reasonably determines that a breach  
23 of security has occurred and at least 3 business days before notifying the affected  
24 customers under par. (a) 1.

1           2. Except as provided in subd. 3., a broadband Internet access service provider  
2 shall, without unreasonable delay, notify the department of any breach of security  
3 affecting fewer than 5,000 customers within 30 days after the provider reasonably  
4 determines that a breach of security has occurred.

5           3. A broadband Internet access service provider is not required to notify the  
6 department under subd. 1. or 2. if it reasonably determines that no harm to  
7 customers is reasonably likely to occur as a result of the breach of security.

8           (c) *Record keeping.* 1. Except as provided in subd. 3., a broadband Internet  
9 access service provider shall maintain a record, electronically or in some other  
10 manner, of each breach of security and the notifications made to customers under  
11 par. (a) 1. regarding that breach. The record shall include all of the following:

12           a. The date that the provider first determines that the breach of security  
13 occurred.

14           b. The date that customers were notified.

15           c. A written copy of all customer notifications.

16           2. A broadband Internet access service provider shall retain the record required  
17 under subd. 1. for at least 2 years from the date on which the provider first  
18 determines that the breach of security occurred.

19           3. A broadband Internet access service provider is not required to maintain a  
20 record under subd. 1. if it reasonably determines that no harm to customers is  
21 reasonably likely to occur as a result of the breach of security.

22           **(6) INTERNET ACCESS SERVICE OFFERS CONDITIONED ON WAIVER OF PRIVACY.** (a) A  
23 broadband Internet access service provider may not refuse to provide broadband  
24 Internet access service because a customer or prospective customer does not provide  
25 approval required under sub. (3) (a) or (b).



1 (b) A broadband Internet access service provider that offers a financial  
2 incentive program, such as lower rates, in exchange for a customer's approval to use,  
3 disclose, or permit access to the customer's proprietary information shall do all of the  
4 following:

5 1. Provide a notice explaining the terms of the financial incentive program that  
6 includes all of the following:

7 a. An explanation that the program requires opt-in approval from the  
8 customer to use, disclose, or permit access to the customer's proprietary information.

9 b. Information about what customer proprietary information the provider will  
10 collect, how it will be used, and the categories of entities with which it will be shared  
11 and for what purposes.

12 c. Information, prominently displayed, about the equivalent service plan that  
13 does not necessitate the use, disclosure, or access to customer proprietary  
14 information beyond that required or permitted under sub. (3) (c).

15 2. Obtain opt-in approval from the customer for consent to participate in the  
16 financial incentive program.

17 3. Provide the notice required under subd. 1. at the time the program is offered  
18 to a customer and at the time that a customer elects to participate in the program.

19 4. Make the notice required under subd. 1. easily accessible and available  
20 separate from any other privacy notifications, including the notifications required  
21 under sub. (2) (a) or (c).

22 5. If the provider transacts business with a customer in a language other than  
23 English, translate the contents required under subd. 1. into the language through  
24 which the provider transacts business with the customer.

1           6. If the customer grants the opt-in approval required under subd. 2., a  
2 broadband Internet access service provider shall make available a mechanism for  
3 the customer to withdraw approval for participation in the financial incentive  
4 program under this paragraph at any time.

5           **(7) REMEDIES AND PENALTIES.** (a) 1. A person or class of persons adversely  
6 affected by a broadband Internet access service provider's violation of this section  
7 has a claim for appropriate relief, including damages, injunctive relief, and  
8 rescission and may bring an action in circuit court against the broadband Internet  
9 access service provider.

10           2. Notwithstanding s. 814.04 (1), a person or class of persons entitled to relief  
11 under subd. 1 may recover costs, disbursements, and reasonable attorney fees.

12           (b) 1. Any of the following may bring an action in circuit court in the name of  
13 the state to restrain by temporary or permanent injunction any violation of this  
14 section:

- 15           a. The department.  
16           b. The department of justice, after consulting with the department.  
17           c. Any district attorney, upon informing the department.

18           2. Before entry of final judgment, the court may make any order or judgment  
19 necessary to restore to any person any pecuniary loss suffered because of a violation  
20 that is the subject of the action under subd. 1., if proof of the violation is submitted  
21 to the satisfaction of the court.

22           (c) 1. For any violation of this section, the department of justice, after  
23 consulting with the department, or the district attorney for the county where the  
24 violation occurs, upon informing the department, may commence an action in the

**SECTION 1**

1 name of the state to recover a forfeiture of not more than \$50,000 for the first  
2 violation and not more than \$100,000 for each subsequent violation.

3 2. Each occasion that a broadband Internet access service provider uses,  
4 discloses, or permits access to an individual customer's proprietary information in  
5 violation of sub. (3) (a) or (b) constitutes a separate violation.

6 (END)

**Kohn, Hanna**

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**From:** Broberg2, Jennifer  
**Sent:** Thursday, May 11, 2017 9:00 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -3246/1

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Please Jacket LRB -3246/1 for the ASSEMBLY.