



State of Wisconsin
2005 - 2006 LEGISLATURE

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CTS:all:ch

**SENATE SUBSTITUTE AMENDMENT 3,
TO 2005 SENATE BILL 164**

November 1, 2005 - Offered by Senator KANAVAS.

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

Analysis by the Legislative Reference Bureau

This substitute amendment 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 substitute amendment'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.

Under the substitute amendment, personal information includes any of the following information about an individual, if accompanied by the name of the individual to whom the information pertains: driver's license number; social security number; depository account number and certain other financial information; deoxyribonucleic acid (DNA) profile and other biometric data; and certain other information that can be used to obtain money, goods, or services, or other things of value. Personal information does not include information that is lawfully available to the public or information that is encrypted.

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 substitute amendment requires the entity to make reasonable efforts to 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 substitute amendment requires the entity to make reasonable efforts to notify the subject. An entity is not required to give notice if the acquisition of personal information does not compromise the security, confidentiality, or integrity of the personal information, or if the personal information was acquired in good faith by an employee of the entity and the personal information is used for a lawful purpose of the entity.

Under the substitute amendment, an entity required to notify a subject must, within a reasonable time not to exceed 30 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 substitute amendment, a law enforcement agency may request an entity to delay a required notice for any period of time in order to protect an investigation or homeland security. An entity that receives such a request must begin the notification process after the requested delay period.

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

The substitute amendment provides that failure to comply with the substitute amendment's requirements is not negligence or a breach of a legal duty, but may be evidence of negligence or a breach of a legal duty.

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

- 1 **SECTION 1.** 895.507 of the statutes is created to read:
- 2 **895.507 Notice of unauthorized acquisition of personal information.**
- 3 **(1) DEFINITIONS.** In this section:

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

3 a. Conducts business in this state and maintains personal information in the
4 ordinary course of business.

5 b. Stores personal information in this state.

6 c. Maintains for a resident of this state a depository account as defined in s.
7 815.18 (2) (e).

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

9 2. "Entity" includes all of the following:

10 a. The state and any office, department, independent agency, authority,
11 institution, association, society, or other body in state government created or
12 authorized to be created by the constitution or any law, including the legislature and
13 the courts.

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

15 (am) "Name" means an individual's last name combined with the individual's
16 first name or first initial.

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

19 1. The information is accompanied by the name of the individual to whom the
20 information pertains.

21 2. The information is not publicly available.

22 3. The information is not encrypted.

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

25 1. Lawfully made widely available through any media.

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

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

11 (b) If an entity whose principal place of business is not located in this state
12 knows that personal information pertaining to a resident of this state has been
13 acquired by a person whom the entity has not authorized to acquire the personal
14 information, the entity shall make reasonable efforts to notify each resident of this
15 state who is the subject of the personal information. The notice shall indicate that
16 the entity knows of the unauthorized acquisition of personal information pertaining
17 to the resident of this state who is the subject of the personal information.

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

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

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

24 **(3) TIMING AND MANNER OF NOTICE.** (a) Subject to sub. (5), an entity shall provide
25 the notice required under sub. (2) within a reasonable time, not to exceed 30 business

1 days after the entity learns of the acquisition of personal information. A
2 determination as to reasonableness under this paragraph shall include
3 consideration of the number of notices that an entity must provide and the methods
4 of communication available to the entity.

5 (b) An entity shall provide the notice required under sub. (2) by mail or by a
6 method the entity has previously employed to communicate with the subject of the
7 personal information. If an entity cannot with reasonable diligence determine the
8 mailing address of the subject of the personal information, and if the entity has not
9 previously communicated with the subject of the personal information, the entity
10 shall provide notice by a method reasonably calculated to provide actual notice to the
11 subject of the personal information.

12 **(3m) REGULATED ENTITIES EXEMPT.** This section does not apply to any of the
13 following:

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

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

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

22 **(5) REQUEST BY LAW ENFORCEMENT NOT TO NOTIFY.** A law enforcement agency
23 may, in order to protect an investigation or homeland security, ask an entity not to
24 provide a notice that is otherwise required under sub. (2) for any period of time and
25 the notification process required under sub. (2) shall begin at the end of that time

1 period. Notwithstanding subs. (2) and (3), if an entity receives such a request, the
2 entity may not provide notice of or publicize an unauthorized acquisition of personal
3 information, except as authorized by the law enforcement agency that made the
4 request.

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

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

15 **(END)**