



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRBa0497/1  
KP:emw

**SENATE AMENDMENT 1,  
TO ASSEMBLY BILL 123**

May 10, 2017 - Offered by Senators CARPENTER, HANSEN, VINEHOUT, WIRCH and  
RISSER.

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

2 **1.** Page 1, line 11: delete the material beginning with “and making” and ending  
3 with “appropriations” on line 12 and substitute “privacy and security of customer  
4 information obtained by a broadband Internet access service provider, making  
5 appropriations, and providing a criminal penalty”.

6 **2.** Page 9, line 20: after that line insert:

7 “**SECTION 21m.** 100.70 of the statutes is created to read:

8 **100.70 Privacy and security of information obtained by an Internet**  
9 **service provider. (1) DEFINITIONS.** In this section:

10 (a) “Breach of security” means any instance in which a person, without  
11 authorization or exceeding authorization, has gained access to, used, or disclosed  
12 customer proprietary information.

1           (b) 1. “Broadband Internet access service” means a mass-market retail service  
2 by wire or radio that provides the capability to transmit data and receive data from  
3 all or substantially all Internet endpoints, including any capabilities that are  
4 incidental to and enable the operation of the service, but excluding dial-up Internet  
5 access service.

6           2. “Broadband Internet access service” includes any service that the  
7 department finds is a functional equivalent of the service specified in subd. 1. or is  
8 used to evade the requirements under this section.

9           (c) “Customer” means any of the following:

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

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

16          (d) “Customer proprietary information” means any of the following  
17 information:

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

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

24          3. Content of a customer’s communications.

1 (e) “Material change” means any change that a customer, acting reasonably  
2 under the circumstances, would consider important to his or her decisions  
3 concerning his or her privacy, including any change to information required to be  
4 presented in the notice required under sub. (2) (b).

5 (f) “Non-sensitive customer proprietary information” means customer  
6 proprietary information that is not sensitive customer proprietary information.

7 (g) “Opt-in approval” means the method for obtaining customer consent in  
8 which a provider obtains from the customer affirmative, express consent after the  
9 customer is provided appropriate notification of the provider’s request for consent.

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

14 (i) “Prospective customer” means an applicant for broadband Internet access  
15 service who resides in this state.

16 (j) “Sensitive customer proprietary information” means customer proprietary  
17 information that is any of the following:

- 18 1. Financial information.
- 19 2. Health information.
- 20 3. Information pertaining to a child.
- 21 4. A social security number.
- 22 5. Precise geo-location information.
- 23 6. Content of communications.
- 24 7. Web browsing history, smart phone or tablet computer application usage  
25 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.

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.

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:

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.

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.

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) For any violation of this section, the department of justice, after consulting  
23 with the department, or the district attorney of the county where the violation occurs,  
24 upon informing the department, may commence an action in the name of the state

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

3 (d) A person who intentionally, as defined in s. 939.23 (3), violates this section  
4 shall be fined not more than \$1,000, or imprisoned in the county jail for not more than  
5 90 days or both.”

6 (END)