

State of Wisconsin



1999 Assembly Bill 428

Date of enactment: **April 21, 2000**

Date of publication*: **May 5, 2000**

1999 WISCONSIN ACT 79

AN ACT *to renumber* 146.84 (2) (a) to (c); *to renumber and amend* 51.30 (10), 146.84 (2) (intro.) and 610.70 (7); *to amend* 51.30 (9) (a) and (b), 51.30 (10) (bm), 146.84 (1) (a), 146.84 (1) (b), 146.84 (2) (c), 252.15 (8) (a), 252.15 (9) and 895.85 (2); *to repeal and recreate* 252.15 (9); and *to create* 51.30 (9) (title), 51.30 (10) (b), 51.30 (10) (bm), 146.84 (1) (bm), 146.84 (2) (b), 146.84 (2) (c), 252.15 (10) and 610.70 (7) (b) of the statutes; **relating to:** penalties and damages for violations of confidentiality laws for patient health care records, mental health court and treatment records, human immunodeficiency virus test results and insurer personal medical information.

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

SECTION 1. 51.30 (9) (title) of the statutes is created to read:

51.30 (9) (title) ACTIONS FOR VIOLATIONS; DAMAGES; INJUNCTION.

SECTION 2. 51.30 (9) (a) and (b) of the statutes are amended to read:

51.30 (9) (a) Any person, including the state or any political subdivision of the state, violating this section shall be liable to any person damaged as a result of the violation for such damages as may be proved, together with exemplary damages of not less more than \$200 \$1,000 for each violation and such costs and reasonable actual attorney fees as may be incurred by the person damaged. A custodian of records incurs no liability under this paragraph for the release of records in accordance with this section while acting in good faith.

(b) In any action brought under par. (a) in which the court determines that the violator acted in a manner that was knowing and wilful, the violator shall be liable for such damages as may be proved together with exemplary damages of not less more than \$1,000 \$25,000 for each

violation, together with costs and reasonable actual attorney fees as may be incurred. It is not a prerequisite to an action under this subsection that the plaintiff suffer or be threatened with actual damages.

SECTION 3. 51.30 (10) of the statutes is renumbered 51.30 (10) (a), and 51.30 (10) (a) (intro.), as renumbered, is amended to read:

51.30 (10) (a) (intro.) Whoever does any of the following may be fined not more than ~~\$1,000~~ \$25,000 or imprisoned for not more than ~~6~~ 9 months or both:

SECTION 4. 51.30 (10) (b) of the statutes is created to read:

51.30 (10) (b) Whoever negligently discloses confidential information under this section is subject to a forfeiture of not more than \$1,000 for each violation.

SECTION 4g. 51.30 (10) (bm) of the statutes is created to read:

51.30 (10) (bm) Whoever intentionally discloses confidential information under this section, knowing that the information is confidential, and discloses the information for pecuniary gain may be fined not more than \$100,000 or imprisoned not more than 3 years and 6 months, or both.

* Section 991.11, WISCONSIN STATUTES 1997-98: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

SECTION 4h. 51.30 (10) (bm) of the statutes, as created by 1999 Wisconsin Act (this act), is amended to read:

51.30 (10) (bm) Whoever intentionally discloses confidential information under this section, knowing that the information is confidential, and discloses the information for pecuniary gain ~~may be fined not more than \$100,000 or imprisoned not more than 3 years and 6 months, or both~~ is guilty of a Class I felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (i), the person may be fined not more than \$100,000.

SECTION 5. 146.84 (1) (a) of the statutes is amended to read:

146.84 (1) (a) A custodian of records incurs no liability under ~~this paragraph par. (bm)~~ for the release of records in accordance with s. 146.82 or 146.83 while acting in good faith.

SECTION 6. 146.84 (1) (b) of the statutes is amended to read:

146.84 (1) (b) Any person, including the state or any political subdivision of the state, who violates s. 146.82 or 146.83 in a manner that is knowing and wilful shall be liable to any person injured as a result of the violation for actual damages to that person; ~~exemplary damages of \$1,000 in an action under this paragraph~~ not more than \$25,000 and costs and reasonable actual attorney fees.

SECTION 7. 146.84 (1) (bm) of the statutes is created to read:

146.84 (1) (bm) Any person, including the state or any political subdivision of the state, who negligently violates s. 146.82 or 146.83 shall be liable to any person injured as a result of the violation for actual damages to that person, exemplary damages of not more than \$1,000 and costs and reasonable actual attorney fees.

SECTION 8. 146.84 (2) (intro.) of the statutes is renumbered 146.84 (2) (a) (intro.) and amended to read:

146.84 (2) (a) (intro.) Whoever does any of the following may be fined not more than ~~\$1,000~~ \$25,000 or imprisoned for not more than ~~6~~ 9 months or both:

SECTION 9. 146.84 (2) (a) to (c) of the statutes are renumbered 146.84 (2) (a) 1. to 3.

SECTION 10. 146.84 (2) (b) of the statutes is created to read:

146.84 (2) (b) Whoever negligently discloses confidential information in violation of s. 146.82 is subject to a forfeiture of not more than \$1,000 for each violation.

SECTION 10g. 146.84 (2) (c) of the statutes is created to read:

146.84 (2) (c) Whoever intentionally discloses confidential information in violation of s. 146.82, knowing that the information is confidential, and discloses the information for pecuniary gain may be fined not more than \$100,000 or imprisoned not more than 3 years and 6 months, or both.

SECTION 10h. 146.84 (2) (c) of the statutes, as created by 1999 Wisconsin Act (this act), is amended to read:

146.84 (2) (c) Whoever intentionally discloses confidential information in violation of s. 146.82, knowing that the information is confidential, and discloses the information for pecuniary gain ~~may be fined not more than \$100,000 or imprisoned not more than 3 years and 6 months, or both~~ is guilty of a Class I felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (i), the person may be fined not more than \$100,000.

SECTION 11. 252.15 (8) (a) of the statutes is amended to read:

252.15 (8) (a) Any person violating sub. (2), (5) (a), (5m), (6) or (7) (c) is liable to the subject of the test for actual damages ~~and~~ and costs and reasonable actual attorney fees, plus exemplary damages of up to \$1,000 for a negligent violation and up to ~~\$5,000~~ \$25,000 for an intentional violation.

SECTION 12. 252.15 (9) of the statutes is amended to read:

252.15 (9) ~~CRIMINAL PENALTY PENALTIES.~~ Whoever intentionally discloses the results of a blood test in violation of sub. (2) (a) 7m., (5) (a) or (5m) and thereby causes bodily harm or psychological harm to the subject of the test may be fined not more than \$10,000 \$25,000 or imprisoned not more than 9 months or both. ~~Whoever negligently discloses the results of a blood test in violation of sub. (2) (a) 7m., (5) (a) or (5m) is subject to a forfeiture of not more than \$1,000 for each violation. Whoever intentionally discloses the results of a blood test in violation of sub. (2) (a) 7m., (5) (a) or (5m), knowing that the information is confidential, and discloses the information for pecuniary gain may be fined not more than \$100,000 or imprisoned not more than 3 years and 6 months, or both.~~

SECTION 12g. 252.15 (9) of the statutes, as affected by 1999 Wisconsin Act (this act), is repealed and re-created to read:

252.15 (9) PENALTIES. Whoever intentionally discloses the results of a blood test in violation of sub. (2) (a) 7m., (5) (a) or (5m) and thereby causes bodily harm or psychological harm to the subject of the test may be fined not more than \$25,000 or imprisoned not more than 9 months or both. Whoever negligently discloses the results of a blood test in violation of sub. (2) (a) 7m., (5) (a) or (5m) is subject to a forfeiture of not more than \$1,000 for each violation. Whoever intentionally discloses the results of a blood test in violation of sub. (2) (a) 7m., (5) (a) or (5m), knowing that the information is confidential, and discloses the information for pecuniary gain is guilty of a Class I felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (i), the person may be fined not more than \$100,000.

SECTION 13. 252.15 (10) of the statutes is created to read:

252.15 (10) DISCIPLINE OF EMPLOYEES. Any employe of the state or a political subdivision of the state who vio-

lates this section may be discharged or suspended without pay.

SECTION 14. 610.70 (7) of the statutes, as created by [1997 Wisconsin Act 231](#), is renumbered 610.70 (7) (a) and amended to read:

610.70 (7) (a) Any person who knowingly and willfully obtains information about an individual from an insurer or insurance support organization under false pretenses may be fined not more than ~~\$10,000~~ \$25,000 or imprisoned for not more than ~~one year in the county jail~~ 9 months or both.

SECTION 15. 610.70 (7) (b) of the statutes is created to read:

610.70 (7) (b) Any person who knowingly and willfully obtains information about an individual from an insurer or insurance support organization under false pretenses shall be liable to the individual for actual damages to that individual, exemplary damages of not more than \$25,000 and costs and reasonable actual attorney fees.

SECTION 16. 895.85 (2) of the statutes is amended to read:

895.85 (2) SCOPE. This section does not apply to awards of double damages or treble damages, or to the award of exemplary damages under ss. 46.90 (6) (c), 51.30 (9), 51.61 (7), 103.96 (2), 134.93 (5), 146.84 (1) (b) and (bm), 153.85, 252.14 (4), 252.15 (8) (a), 610.70 (7) (b), 943.245 (2) and (3) and 943.51 (2) and (3).

SECTION 16d. Nonstatutory provisions.

(1r) RECONCILIATION PROVISION. The amendment of section 51.30 (10) (bm) of the statutes, as created by this act, and section 146.84 (2) (c) of the statutes, as created

by this act, and the repeal and recreation of section 252.15 (9) of the statutes, as affected by this act, are void unless the treatment of section 939.50 (1) (i) and (3) (i) of the statutes by 1999 Assembly Bill 465 is enacted into law before July 1, 2000, in exactly the same form as it appears in sections 237 and 246 of 1999 Assembly Bill 465, as passed by the assembly.

SECTION 4s. Effective dates. This act takes effect on the day after publication, except as follows:

(1g) If 1999 Assembly Bill 465 has been enacted on or before the day after publication of this act and the day after publication of this act is on or before December 31, 1999, the amendment of sections 51.30 (10) (bm) and 146.84 (2) (c) of the statutes and the repeal and recreation of section 252.15 (9) of the statutes take effect on December 31, 1999.

(2h) If 1999 Assembly Bill 465 has been enacted on or before the day after publication of this act and the day after publication of this act is after December 31, 1999, the amendment of sections 51.30 (10) (bm) and 146.84 (2) (c) of the statutes and the repeal and recreation of section 252.15 (9) of the statutes take effect on the day after publication of this act.

(3i) If 1999 Assembly Bill 465 is enacted after the day after publication of this act but before July 1, 2000, the amendment of sections 51.30 (10) (bm) and 146.84 (2) (c) of the statutes and the repeal and recreation of section 252.15 (9) of the statutes take effect on December 31, 1999, or on the date that the treatment of section 939.50 (1) (i) and (3) (i) of the statutes by 1999 Assembly Bill 465 takes effect, whichever is later.