



2005 ASSEMBLY BILL 738

October 11, 2005 - Introduced by Representatives SCHNEIDER, PARISI, ALBERS, GRONEMUS, ZIEGELBAUER and FREESE, cosponsored by Senator CARPENTER. Referred to Committee on Criminal Justice and Homeland Security.

1 **AN ACT** *to renumber* 19.37 (4); *to amend* 59.20 (3) (d) and 59.43 (1) (intro.); and
2 *to create* 19.36 (13), 19.36 (14), 19.37 (4) (b) and (c), 59.43 (1m), 100.53,
3 103.135, 134.44, 138.25 and 230.16 (12) of the statutes; **relating to:** prohibiting
4 use of social security numbers on state civil service examinations, prohibiting
5 requests by merchants for customers' social security numbers, requiring notice
6 of unauthorized acquisitions of computerized personal information, posting
7 certain personal information in government records on the Internet and
8 accessing certain public records and employer records containing the social
9 security numbers of individuals, prohibiting a register of deeds from recording
10 certain instruments that contain more than a partial social security number,

ASSEMBLY BILL 738

1 prohibiting number of credit inquiries as factor in credit reports, granting
2 rule-making authority, and providing penalties.

Analysis by the Legislative Reference Bureau***Use of social security numbers on state civil service exams***

The bill prohibits an applicant's social security number from being used for the purpose of identifying the applicant on any examination for a position in the state civil service system.

Notification of unauthorized acquisitions of computerized personal information

This bill requires notification of the unauthorized acquisition of personal information that is stored on a computer or other electronic medium (unauthorized acquisition). Under the bill, personal information includes an individual's social security number, medical data, and data relating to financial accounts or transactions, but not information that is available to the public.

Under the bill, if a person that owns or licenses computerized personal information knows or has reason to know of an unauthorized acquisition, the person must give notice to the individual who is the subject of the information that was acquired and to at least three major credit reporting agencies. The bill requires that the notice to the individual contain certain information, including a warning that an unauthorized acquisition may adversely affect the individual's credit rating, an advisory to monitor the individual's credit information, and telephone numbers and addresses for at least three major credit reporting agencies. The notice must be in writing, except that, if a person is required to give notice to more than one individual as a result of a single unauthorized acquisition and the cost of giving written notice to all individuals would exceed \$250,000, notice may be given by doing all of the following: 1) sending an electronic mail message to the individuals; 2) posting a notice on the Internet; and 3) notifying news media. The bill requires that a notice to credit reporting agencies include the name of the individual who is the subject of the unauthorized disclosure and a general identification of the type of information that was acquired.

Also under the bill, if a person that maintains computerized personal information owned or licensed by another knows or has reason to know that the information has been acquired by a person not authorized to do so by the owner or licensee of the information, that person must notify the owner or licensee.

The bill provides that the Department of Justice or the district attorney may bring an action for an injunction against a person who violates the provisions of the bill. The bill also permits an individual injured by a violation to bring an action against the violator, including the state or any body in state government, for damages.

ASSEMBLY BILL 738***Requests by merchants for customers' social security numbers***

Current law generally does not prohibit a seller from requesting that a customer disclose his or her social security number. This bill prohibits a seller of goods at retail from making such a request unless the seller is required to do so in issuing fish and game approvals as an agent of the Department of Natural Resources (DNR). Under current law, DNR is required to obtain the social security number from an applicant for a fish and game approval so that the state may determine whether the applicant is delinquent in the payment of certain state taxes or in the payment of child support or other court-ordered family support or birth expenses. If an applicant is delinquent or fails to provide his or her social security number, the agent must deny the application for the approval.

Posting of personal information in government records on the Internet

This bill provides that no state or local government officer or agency that maintains an Internet site may post on that site any public record containing the name of an individual together with any of the following information: 1) the individual's birth date; 2) the number of a driver's license issued to the individual by the Department of Transportation; 3) the telephone number at the individual's place of employment; and 4) the unpublished home telephone number of the individual. The prohibition does not apply to publication or electronic posting of a telephone number at an individual's place of employment by a governmental unit that is the employer of the individual. In addition, the prohibition does not apply to the posting of information that is required to be provided as a part of the sex offender registry program.

Currently, state and local government officers and agencies may post information in public records on the Internet unless access to that information is required to be withheld by law.

Access to certain public records containing social security numbers

Currently, the custodian of the records of any state or local governmental unit must provide access to any public record in his or her custody unless otherwise authorized or required by law or unless the custodian demonstrates that the public interest in withholding access to the record outweighs the strong public interest in providing access to that record. Federal law prohibits state and local governmental units from disclosing social security numbers under certain conditions.

This bill provides that, if a new record containing the social security number of an individual, together with information revealing the identity of that individual, is kept by a state or local governmental unit on or after January 1, 2007, or if a record in the custody of a state or local governmental unit is modified to insert the social security number of an individual on or after January 1, 2007, and the record contains information revealing the identity of that individual, the custodian of the record must delete the social security number before permitting access to the record by any person other than an officer or employee of the governmental unit, unless the person who requests access to the record is specifically authorized by federal or state law or by the subject individual to have access to the social security number.

The bill, however, permits the requester of a record to have access to the social security number of an individual, unless otherwise restricted by law, if:

ASSEMBLY BILL 738

1. The record pertains to that individual alone, to the marital or parental rights or responsibilities of that individual and his or her spouse or former spouse, to the property of that individual held jointly or in common with one or more other individuals, or to a civil lawsuit in which the individual is a specifically named party, and the individual provides appropriate identification; or

2. The requester is an authorized representative of an insurer or an organization that performs investigations for insurers and the social security number is relevant to an investigation of suspected, anticipated, or actual insurance fraud.

The bill provides that, if any person misrepresents his or her identity for the purpose of obtaining access to the social security number of another individual, the person is subject to a forfeiture (civil penalty) of not more than \$1,000 for each social security number obtained by means of misrepresentation. In addition, under the bill, if any insurer or other person obtains a social security number and uses that number for purposes other than an investigation of suspected, anticipated, or actual insurance fraud, the person is subject to a forfeiture of not more than \$1,000 for each social security number used by the person for unauthorized purposes.

The bill also provides that no state or local governmental unit may provide access to any record to which access is restricted that contains the social security number of an individual, together with information revealing the identity of that individual, to any officer or employee of the unit other than the custodian of the record or an employee working under the immediate supervision of the custodian unless the officer's or employee's official responsibilities require the officer or employee to have access to the number or the officer or employee is authorized by the subject individual to have access to the number.

Access to employer records containing social security numbers

In addition, the bill prohibits an employer from providing access to any record that contains the social security number of an employee of the employer, together with information revealing the identity of that employee, to any person unless the number is redacted; the person is authorized by federal or state law or by the employee who is the subject of the record to have access to the number; or the person is an officer, employee, or agent of the employer and his or her official responsibilities require him or her to have access to the number.

Register of deeds; prohibition on recording certain documents; social security numbers

Generally, under current law, a register of deeds is required to record in his or her office any document that is authorized by law to be so recorded. Documents that are recorded in a register of deeds' office include deeds, mortgages, real estate conveyances, documents relating to certain security interests, and certain financial documents. In addition, a register of deeds is required under current law to make and deliver on demand, to any person who pays the required fees, a copy of any record, paper, or file in the register's office.

Under this bill, a register of deeds may not record any instrument offered for recording if the instrument contains more than the last four characters of the social security number of an individual. If a register of deeds is presented with an

ASSEMBLY BILL 738

instrument that contains more than the last four characters of the social security number of an individual, and if the register of deeds records the instrument but does not discover the error until after the instrument is recorded, the register of deeds may not be held liable for the instrument drafter's placement of the social security number on the instrument and may remove or obscure enough of the social security number so that no more than the last four characters of the number are discernable on the instrument.

Also under this bill, if a register of deeds records an instrument that contains an entire social security number, the instrument drafter is liable to the individual whose social security number appears in the instrument for damages of not more than \$5,000, plus actual damages.

The changes to current law made in the bill do not apply to federal tax liens.

The bill also prohibits credit reporting agencies from using the number of creditor inquiries as a factor in any credit scoring methodology used in preparing credit reports.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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

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

1 **SECTION 1.** 19.36 (13) of the statutes is created to read:

2 **19.36 (13) ACCESS TO CERTAIN RECORDS ON INTERNET SITES.** (a) Except as provided
3 in par. (b), no authority that maintains an Internet site may post on that site any
4 record containing the name of an individual, together with any of the following
5 information pertaining to that individual:

6 1. The individual's birth date.

7 2. The number of an operator's license issued to the individual under ch. 343.

8 3. Except as provided in par. (b), the telephone number at the individual's place
9 of employment.

10 4. The unpublished home telephone number of the individual.

11 (b) This subsection does not apply to any of the following:

ASSEMBLY BILL 738**SECTION 1**

1 1. The publication or electronic posting of the telephone number at an
2 individual's place of employment by an authority that is the employer of the
3 individual.

4 2. The posting of any information that is required to be provided under s. 301.45
5 (2).

6 **SECTION 2.** 19.36 (14) of the statutes is created to read:

7 **19.36 (14) SOCIAL SECURITY NUMBERS.** (a) In this subsection, "employee"
8 includes an individual holding a local public office or a state public office.

9 (b) Except as provided in par. (c), if a new record containing a social security
10 number of an individual, together with information revealing the identity of that
11 individual, is kept by an authority on or after January 1, 2007, or if a record in the
12 custody of an authority is modified to insert the social security number of an
13 individual on or after January 1, 2007, and the record contains information revealing
14 the identity of that individual, the authority shall delete the social security number
15 before permitting access to the record to any person other than an officer or employee
16 of the authority, unless the requester is specifically authorized by federal or state law
17 or by the record subject to have access to the number.

18 (c) Unless otherwise provided by federal or state law, including common law
19 principles, a requester may have access to a record containing the social security
20 number of an individual if any of the following applies:

21 1. The record pertains to that individual alone, to the marital or parental rights
22 or responsibilities of that individual and his or her spouse or former spouse, to
23 property of that individual held jointly or in common tenancy with one or more other
24 individuals, or to a civil legal action or proceeding in which the individual is a

ASSEMBLY BILL 738

1 specifically named party, and the individual provides appropriate identification to
2 the custodian.

3 2. The requester is an authorized representative of an insurer or an
4 organization that performs investigations for insurers and the social security
5 number is relevant to an investigation of suspected, anticipated, or actual insurance
6 fraud.

7 (d) No authority may provide access under s. 19.35 (1) to any record to which
8 access is restricted under par. (b) that contains the social security number of an
9 individual, together with information revealing the identity of that individual, to any
10 officer or employee of the authority other than the legal custodian or an employee
11 working under the immediate supervision of the custodian unless the number is
12 redacted, the officer's or employee's official responsibilities require the officer or
13 employee to have access to the number, or the officer or employee is authorized by
14 the record subject to have access to the number.

15 **SECTION 3.** 19.37 (4) of the statutes is renumbered 19.37 (4) (a).

16 **SECTION 4.** 19.37 (4) (b) and (c) of the statutes are created to read:

17 19.37 (4) (b) If any person misrepresents his or her identity for the purpose of
18 obtaining access to the social security number of another individual under s. 19.36
19 (14) (c), the person may be required to forfeit not more than \$1,000 for each social
20 security number obtained by the person by means of such misrepresentation.

21 (c) If an insurer or other person obtains a social security number under s. 19.36
22 (14) (c) and uses that number for purposes other than an investigation as provided
23 in that paragraph, the person may be required to forfeit not more than \$1,000 for
24 each social security number used by the person for such unauthorized purposes.

25 **SECTION 5.** 59.20 (3) (d) of the statutes is amended to read:

ASSEMBLY BILL 738**SECTION 5**

1 59.20 (3) (d) Any register of deeds who in good faith makes an erroneous
2 determination as to the accessibility of a portion of a record, to members of the public
3 under s. 19.36 (6), is not subject to any penalty for denial of access to the record under
4 s. 19.37 (4) (a).

5 **SECTION 6.** 59.43 (1) (intro.) of the statutes is amended to read:

6 59.43 (1) REGISTER OF DEEDS; DUTIES. (intro.) The Subject to sub. (1m), the
7 register of deeds shall:

8 **SECTION 7.** 59.43 (1m) of the statutes is created to read:

9 59.43 (1m) RESTRICTIONS ON RECORDING INSTRUMENTS WITH SOCIAL SECURITY
10 NUMBERS. (a) Except as otherwise provided in this subsection, a register of deeds may
11 not record any instrument offered for recording if the instrument contains more than
12 the last 4 characters of the social security number of an individual.

13 (b) If a register of deeds is presented with an instrument for recording that
14 contains more than the last 4 numbers of an individual's social security number, and
15 if the register of deeds records the instrument but does not discover that the
16 instrument contains more than the last 4 numbers of an individual's social security
17 number until after the instrument is recorded, the register of deeds may not be held
18 liable for the instrument drafter's placement of more than the last 4 numbers of an
19 individual's social security number on the instrument and the register of deeds may
20 remove or obscure characters from the social security number such that no more than
21 the last 4 characters of the social security number are discernable on the instrument.

22 (c) If a register of deeds records an instrument that contains the complete social
23 security number of an individual, the instrument drafter is liable to the individual
24 whose social security number appears in the recorded public document for damages
25 of not more than \$5,000, plus any actual damages resulting from the instrument

ASSEMBLY BILL 738

1 being recorded. A person may not be held liable for actual damages under this
2 paragraph unless the individual harmed paid or incurred any costs as a result of the
3 instrument being recorded.

4 (d) Paragraphs (a) to (c) do not apply to a federal income tax lien.

5 **SECTION 8.** 100.53 of the statutes is created to read:

6 **100.53 Notice of unauthorized disclosure of computerized personal**
7 **information. (1) DEFINITIONS.** In this section:

8 (a) "Computerized personal information" means personal information that is
9 stored on a computer or on an optical, electromagnetic, or other electronic medium.

10 (b) "Major credit reporting agencies" means firms, as determined by the
11 department, most actively engaged in the business of collecting and dispensing
12 financial information regarding individuals, including information regarding
13 creditworthiness.

14 (c) "Personal information" means an individual's social security number and
15 any of the information specified in s. 895.505 (1) (e), except that it does not include
16 information that is available to the public.

17 **(2) NOTIFICATION OF UNAUTHORIZED ACQUISITION.** (a) If a person that owns
18 computerized personal information or licenses computerized personal information
19 from another knows or has reason to know that the computerized personal
20 information has been acquired by a person who is not authorized to do so by the
21 individual who is the subject of the computerized personal information, the person
22 shall, as soon as practicable, do all of the following:

23 1. Provide written notice under sub. (3) (a) to the individual who is the subject
24 of the computerized personal information that has been acquired.

ASSEMBLY BILL 738**SECTION 8**

1 2. Provide notice under sub. (3) (b) to not less than 3 major credit reporting
2 agencies.

3 (b) If a person that maintains computerized personal information owned or
4 licensed by another knows or has reason to know that the computerized personal
5 information has been acquired by a person who has not been authorized to do so by
6 the owner or licensee of the computerized personal information, the person shall
7 notify as soon as practicable the owner or licensee of the computerized personal
8 information.

9 **(3) CONTENT AND FORM OF NOTICE.** (a) Notice under sub. (2) (a) 1. shall be given
10 in writing and contain all of the following:

11 1. A statement that computerized personal information pertaining to the
12 individual and owned or licensed by the person giving notice has been acquired by
13 a person who is not authorized to do so by the individual.

14 2. A description of the personal information that has been acquired and the
15 date when the acquisition occurred.

16 3. A warning that the unauthorized acquisition of personal information may
17 adversely affect the individual's credit rating, and an advisory to monitor the
18 individual's credit information.

19 4. Telephone numbers and mailing addresses for not less than 3 major credit
20 reporting agencies.

21 (b) Notice under sub. (2) (a) 2. shall be given in writing and contain all of the
22 following:

23 1. A statement that computerized personal information pertaining to an
24 individual and owned or licensed by the person giving notice has been acquired by

ASSEMBLY BILL 738

1 a person who is not authorized to do so by the individual who is the subject of the
2 personal information.

3 2. The name of the individual who is the subject of the personal information.

4 3. A general identification of the type of personal information that has been
5 acquired.

6 4. The date when the personal information was acquired.

7 (c) If a person is required give notice under sub. (2) (a) 1. to more than one
8 individual as a result of a single acquisition of computerized personal information
9 and the cost of giving written notice to all individuals would exceed \$250,000, the
10 person may give notice by doing all of the following:

11 1. Sending an electronic mail message to an individual's electronic mail
12 address.

13 2. Conspicuously posting notice at the person's Internet Web site.

14 3. Notifying news media in this state in a manner reasonably calculated to
15 provide media notice of the acquisition of personal information to all individuals who
16 are the subject of the acquisition.

17 (4) ENFORCEMENT. (a) The department of justice or any district attorney may
18 commence an action in circuit court in the name of the state to restrain by temporary
19 or permanent injunction any violation of this section.

20 (b) Any person who is injured by a violation of this section may bring an action
21 against the violator for damages, injunctive relief, or both. An action under this
22 subsection may be brought against a county, town, city, or village, or against the state
23 or any office, department, independent agency, authority, institution, association,
24 society, or other body in state government created or authorized to be created by the
25 constitution or any law, including the legislature and the courts. Notwithstanding

ASSEMBLY BILL 738**SECTION 8**

1 s. 814.04 (1), in an action under this subsection, the court shall award a prevailing
2 plaintiff reasonable attorney fees.

3 **SECTION 9.** 103.135 of the statutes is created to read:

4 **103.135 Records containing social security numbers of employees. (1)**

5 DEFINITION. In this section, “officer” means an officer of a governmental body, an
6 officer or director of a corporation, a member or manager of a limited liability
7 company, a partner of a partnership or a joint venture, or an owner of a sole
8 proprietorship.

9 **(2) ACCESS PROHIBITED; EXCEPTIONS.** No employer may provide access to any
10 record that contains the social security number of an employee of that employer,
11 together with information revealing the identity of that employee, to any person
12 unless any of the following applies:

13 (a) The number is redacted.

14 (b) The person is authorized by federal or state law or by the employee who is
15 the subject of the record to have access to the number.

16 (c) The person is an officer, employee, or agent of the employer and the official
17 responsibilities of the officer, employee, or agent require him or her to have access
18 to the number.

19 **SECTION 10.** 134.44 of the statutes is created to read:

20 **134.44 Requests by retailers for social security numbers. (1)** No seller
21 of goods at retail may request that a customer disclose the customer’s social security
22 number.

23 **(2)** Subsection (1) does not apply to an agent of the department of natural
24 resources appointed under s. 29.024 (6) (a) 3. who requests a customer’s social
25 security number if the customer is applying to the agent for an approval, as defined

ASSEMBLY BILL 738

1 in s. 29.001 (12), and the customer's social security number is required under s.
2 29.024 (2g) or (2r).

3 **(3)** Any seller who violates sub. (1) shall be fined not more than \$100.

4 **SECTION 11.** 138.25 of the statutes is created to read:

5 **138.25 Credit scores. (1) DEFINITIONS.** In this section:

6 (a) "Credit report" means means any written, oral, or other communication of
7 any information by a credit reporting agency bearing on an individual's
8 creditworthiness, credit standing, or credit capacity, which is used or is expected to
9 be used, or collected in whole or in part, for a purpose specified in 15 USC 1681b or
10 for the purpose of serving as a factor in establishing the individual's eligibility for any
11 of the following:

- 12 1. Credit to be used primarily for personal, family, or household purposes.
- 13 2. Employment, promotion, reassignment, or retention as an employee.
- 14 3. Rental of a residential dwelling unit.

15 (b) "Credit reporting agency" means any person who, for fees, dues, or other
16 compensation, or on a cooperative nonprofit basis, regularly engages in whole or in
17 part in the business of assembling or evaluating credit or other information on
18 individuals for the purpose of preparing credit reports that the credit reporting
19 agency furnishes to 3rd parties, but does not include any governmental agency whose
20 records are maintained primarily for traffic safety, law enforcement, or licensing
21 purposes.

22 **(2) PROHIBITION.** No credit reporting agency may use the number of creditor
23 inquiries as a factor in any credit scoring methodology used by the credit reporting
24 agency in preparing credit reports.

25 **(3) ENFORCEMENT.** The division of banking shall enforce this section.

