

## 2005 SENATE BILL 164

April 8, 2005 – Introduced by Senators KANAVAS, STEPP, A. LASEE, DARLING, KEDZIE and OLSEN, cosponsored by Representatives J. FITZGERALD, GUNDRUM, DAVIS, NISCHKE, LOEFFELHOLZ, JENSEN, BIES, HINES, OTT, VRAKAS, BALLWEG, KLEEFISCH, OWENS, FREESE, HUNDERTMARK, McCORMICK and CULLEN.

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

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### *Analysis by the Legislative Reference Bureau*

This bill 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 bill'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 bill, personal information includes any of the following information about an individual, if accompanied by the name of the individual to whom the information pertains: electronic mail address; driver's license number; social security number; employer or place of employment; mother's maiden name; depository account number and certain other financial information; deoxyribonucleic acid (DNA) profile; and any other information about an individual that can be associated with an individual through identifiers or other information. Personal information does not include information that is lawfully available to the public.

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 bill requires the entity to make reasonable efforts to

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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 bill requires the entity to make reasonable efforts to notify the subject.

An entity required to notify a subject must, within 15 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 bill, if a law enforcement agency requests an entity to delay a required notice for any period of time, the entity must begin the notification process after the requested delay period.

The bill provides that compliance with the bill's requirements is not a defense to civil claims. A failure to comply is not negligence or a breach of a legal duty, but may be evidence of negligence or a breach of a legal duty.

For further information see the *state and local* 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.** 895.507 of the statutes is created to read:

2           **895.507 Notice of unauthorized use of personal identifying**  
3 **information. (1) DEFINITIONS.** In this section:

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

6           a. Conducts business in this state and maintains personal information in the  
7 ordinary course of business.

8           b. Stores personal information in this state.

9           c. Maintains for a resident of this state a depository account as defined in s.  
10 815.18 (2) (e).

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

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

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1           a. The state and any office, department, independent agency, authority,  
2 institution, association, society, or other body in state government created or  
3 authorized to be created by the constitution or any law, including the legislature and  
4 the courts.

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

6           (b) Except as provided in par. (c), “personal information” means any of the  
7 following information, if the information is accompanied by the name of the  
8 individual to whom the information pertains and is not publicly available:

9           1. An individual’s electronic mail address.

10          2. Any of the information specified in s. 943.201 (1) (b) 4. to 15.

11          (c) “Publicly available information” means any information that an entity  
12 reasonably believes is one of the following:

13          1. Information that is lawfully made widely available through any media.

14          2. Information that is lawfully made available to the general public from  
15 federal, state, or local government records or disclosures to the general public that  
16 are required to be made by federal, state, or local law.

17          **(2) NOTICE REQUIRED.** (a) If an entity whose principal place of business is  
18 located in this state or an entity that stores personal information in this state knows  
19 that personal information in the entity’s possession has been obtained by a person  
20 whom the entity has not authorized to obtain the personal information, the entity  
21 shall make reasonable efforts to notify each individual who is the subject of the  
22 personal information. The notice shall indicate that the entity knows of the  
23 unauthorized use of personal information pertaining to the individual.

24          (b) If an entity whose principal place of business is not located in this state  
25 knows that personal information pertaining to a resident of this state has been

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1 obtained by a person whom the entity has not authorized to obtain the personal  
2 information, the entity shall make reasonable efforts to notify each resident of this  
3 state who is the subject of the personal information. The notice shall indicate that  
4 the entity knows of the unauthorized use of personal information pertaining to the  
5 individual.

6 **(3) TIMING AND MANNER OF NOTICE.** (a) Subject to sub. (5), an entity shall provide  
7 the notice required under sub. (2) within a reasonable time, not to exceed 15 business  
8 days after the entity learns of the acquisition of personal information. A  
9 determination as to reasonableness under this paragraph shall include  
10 consideration of the number of notices that an entity must provide and the methods  
11 of communication available to the entity.

12 (b) An entity shall provide the notice required under sub. (2) by mail or by a  
13 method the entity has previously employed to communicate with the subject of the  
14 personal information. If an entity cannot with reasonable diligence determine the  
15 mailing address of the subject of the personal information, and if the entity has not  
16 previously communicated with the subject of the personal information, the entity  
17 shall provide notice by a method reasonably calculated to provide actual notice to the  
18 subject of the personal information.

19 **(4) EFFECT ON CIVIL CLAIMS.** Compliance with this section is not a defense to a  
20 claim in a civil action or proceeding. Failure to comply with this section is not  
21 negligence or a breach of any duty, but may be evidence of negligence or a breach of  
22 a legal duty.

23 **(5) REQUEST BY LAW ENFORCEMENT NOT TO NOTIFY.** If a law enforcement agency  
24 asks an entity not to provide a notice that is otherwise required under sub. (2) for any

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1 period of time, the notification process required under sub. (2) shall begin at the end  
2 of that time period.

3 (END)