



*Jim Doyle, Governor*  
*John A. Scocos, Secretary*

**STATE OF WISCONSIN, DEPARTMENT OF VETERANS AFFAIRS**

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DATE: February 19, 2004  
TO: Anthony Hardie, Executive Assistant  
FROM: John Rosinski, Chief Legal Counsel  
RE: AB 817

This memorandum identifies the legal issues raised by the analysis and language of AB 817.

The forfeiture is assessed against the "person" who violates the applicable confidentiality provision. However, the term is not defined in the bill. Under s. 990.01 (26), the term "person" would therefore include all partnerships, associations, and bodies politic or corporate. The bill should clarify whether the forfeiture may be assessed against the governmental entity employing the individual who releases the information, the individual, or both. See, for example, s. 19.37, relative to the penalty provisions for failure to comply with the open records law.

The bill does not identify who may enforce the forfeiture provision and to whom the forfeiture will be paid. Contrast the AB 817 language with that contained in s. 19.37. The latter identifies who may enforce the forfeiture provision and to whom the forfeiture is paid.

The bill does not require any level of culpability, gross negligence or bad faith on the part of the individual prior to the assessment of a forfeiture. For example, s. 19.37(4) requires that the authority's or custodian's action be arbitrary and capricious in order to justify a forfeiture. AB 817 would allow a forfeiture even if the person acted prudently prior to releasing the record. The attorney general has opined that a forfeiture against an employee is not reimbursable by the employing governmental agency. The financial risk that this bill may personally impose upon an employee acting in good faith within his or her scope of employment seems excessive.

Section 2 of AB 817 applies to all information and records held by the department of veterans affairs and county veterans service offices (not identified in the analysis); not just to separation documents. Under s. 45.36 and VA 1.10, the administrative rule that the department promulgated under s. 45.36 (6), the department and county veterans service offices must evaluate each request, determining whether the information or records is "confidential" under those particular circumstances. Certain information may be confidential under some circumstances and not others. A definition of the term "confidential" would be helpful.



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March 23, 2004

Representative Bob Turner  
Wisconsin State Assembly  
State Capitol 219 North  
Madison, WI 53708

**RE: 2003 Assembly Bill 817**

Dear Representative Turner,

On behalf of the Wisconsin Department of Veterans Affairs and Secretary John Scocos, thank you again for your continued efforts on behalf of Wisconsin's veterans and for your work on 2003 Assembly Bill 817.

As we discussed, and as WDVA reaffirmed in a March 19, 2004 memo to you, WDVA is fully supportive of the bill's intent and your excellent efforts, and will be fully supportive of the bill's language upon amendment of the bill to address WDVA's particular concerns outline in that memo.

For your convenience, attached are two memorandums from WDVA's chief legal counsel. The first (dated Mar. 22, 2004) provides proposed language to amend AB 817 to meet the concerns detailed in WDVA's Feb. 19 legal memo; the second (dated Mar. 23, 2004) provides a discussion of the proposed amendment language. In short, WDVA would be fully supportive of AB 817 if it included the attached amendments.

Again, thank you for your consistent leadership and legislative advocacy on behalf of Wisconsin's veterans. We look forward to working with you on this bill should it come before the consideration of the Senate.

Sincerely,  
DEPARTMENT OF VETERANS AFFAIRS

  
ANTHONY D. HARDIE  
Executive Assistant

✓ Cc: Senator Ron Brown



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DATE: March 22, 2004  
TO: Anthony Hardie, Executive Assistant  
FROM: John Rosinski, Chief Legal Counsel  
RE: Amendment - AB 817

The following amendment addresses several issues raised by the department in response to the initial bill. First, it limits the department's or CVSO office's employee's potential liability to the release of information in separation documents, similar to the register of deed's liability. Second, it identifies who may enforce the forfeiture, similar to the mechanism in place for violations of the public records law. Since the original legislation doesn't contain any authorization for the subject of the improper release of information to receive damages, I've not added that capability. Third, it identifies a level of culpability on the individual against whom the forfeiture may be assessed. Fourth, it limits liability to the individual who releases the confidential information.

AMENDMENT TO AB 817

At the locations indicated, amend the bill as follows:

1. Page 2, line 13: delete lines 13 to 16 and substitute "1919, is legalized Any individual who arbitrarily and capriciously or who knowingly releases a certificate of discharge or release recorded with the register of deeds or any confidential information regarding a veteran included in that certificate or release in violation of this section is subject to a forfeiture of not more than \$1,000 for each violation. Forfeitures under this section shall be enforced by action on behalf of the state by the attorney general or by the district attorney of any county where a violation occurs. In actions brought by the attorney general, the court shall award any forfeiture recovered together with reasonable costs to the state. In actions brought by the district attorney, the court shall award any forfeiture recovered together with reasonable costs to the county.

2. Page 2, line 18: delete lines 18 to 21 and substitute " 45.36 (7) PENALTY. Any individual who arbitrarily and capriciously or who knowingly releases a separation document or any confidential information included in that document, in violation of sub. (2), is subject to a forfeiture of not more than

\$1,000 for each violation. Forfeitures under this section shall be enforced by action on behalf of the state by the attorney general or by the district attorney of any county where a violation occurs. In actions brought by the attorney general, the court shall award any forfeiture recovered together with reasonable costs to the state. In actions brought by the district attorney, the court shall award any forfeiture recovered together with reasonable costs to the county.



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DATE: March 23, 2004  
TO: Anthony Hardie, Executive Assistant  
FROM: John Rosinski, Chief Legal Counsel  
RE: Amendment - AB 817

On February 19, 2004 I provided you a memo in which I identified certain concerns relative to the initial version of AB 817. I have attached a proposed amendment to that legislation that addresses those concerns. In this memo I will identify each concern and indicate the language in the amendment that resolves the concern.

The first concern identified was that the original bill assesses the forfeiture against the "person" who releases the information. That term can mean either the individual that releases the information or the governmental agency that employs the individual. In order to clarify that the forfeiture is against the individual who releases the confidential information and not the governmental agency, I deleted the term "person" and substituted the term "individual" in both sections of the bill. Inasmuch as a register of deeds may release information to a county veterans service office, it is important that the individual subject to the forfeiture (and the enforcement mechanism identified in the next paragraph) be consistent.

The second concern was that there was no enforcement procedure identified in the original bill. I remedied that problem by including the following language in both sections of the bill: "Forfeitures under this section shall be enforced by action on behalf of the state by the attorney general or by the district attorney of any county where a violation occurs. In actions brought by the attorney general, the court shall award any forfeiture recovered together with reasonable costs to the state. In actions brought by the district attorney, the court shall award any forfeiture recovered together with reasonable costs to the county." This enforcement language is identical to the language for forfeiture assessment procedures under s. 19.37 (4) of the statutes, the provision dealing with penalties under the public records law.

The third concern was that the forfeiture could be assessed against an individual in the original bill even though the individual was acting in good faith. To remedy that concern, I incorporated the standards of "arbitrary and capricious" or "knowingly" in both sections of the amendment. Again, the "arbitrary and capricious" language was modeled after the language in s. 19.37 (4) of the statutes. It would cover the situation where the individual released the information without using due diligence to determine whether the party was entitled to receive the information. The "knowingly" standard was included to cover the

situation where the individual was actually aware that the release was in violation of the applicable statute.

The final concern raised in my prior memo was that the creation of s. 45.36 (7) in the original bill applied to every type of information on file with the department and county veterans service offices. The original bill did not contain a definition as to what information would be confidential and thus subject to the forfeiture. To remedy that concern, I included the language "a confidential and privileged document in the possession of the department or service office or any confidential and privileged information included in that document, in violation of sub. (2)," in the section dealing with the creation of s. 45.36 (7) of the statutes. That language provides a specific statutory reference to the information that is subject to the forfeiture. In effect, it includes the same type of information subject to the register of deeds forfeiture provision.