

05hr\_SC-JCP\_sb0581\_pt01



(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Judiciary, Corrections and  
Privacy...

### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (July 2012)



May 4, 2006

Failed to pass pursuant to Senate Joint Resolution 1.

---

Kimber Liedl  
Committee Clerk





State of Wisconsin  
Jim Doyle, Governor

---

Department of Agriculture, Trade and Consumer Protection  
Rod Nilsestuen, Secretary

February 14, 2006

The Honorable David Zien, Chair  
Committee on Judiciary, Corrections and Privacy

**Re: SB 581**

Dear Senator Zien:

Thank you for permitting the Department of Agriculture, Trade & Consumer Protection the opportunity to testify in support of SB 581. We applaud the spirit of the bill which recognizes that identity theft is an increasingly alarming problem.

This bill has many attributes that are a positive for Wisconsin consumers.

- The bill has significant penalties which are important to deter prohibited conduct.
- The fee structure under section 3 of the bill, which restricts access to credit reports, is reasonable and fair thus allowing all consumers access to this valuable tool.
- The bill allows individuals to bring an action for actual damages or \$10,000, whichever is greater; also significant because it is difficult and costly for consumers to prove damages in these cases.

However, we would like the committee to consider two amendments.

First, section 1 of SB 581 prohibits discrimination against someone who refuses to give out his/her social security number with respect to the terms and conditions of sale of goods. DATCP would have the ability to seek an injunction to enforce the discrimination ban and, under current law, a violation of the section would also be a crime (misdemeanor) under Sec. 100.26 (1), Stats. Only DAs can prosecute criminal violations and in our experience, many DAs fail to prosecute these types of crimes given other, higher priorities. Thus, it might be more effective to make this offense subject to a civil forfeiture. We can certainly propose forfeiture language if that is desired.

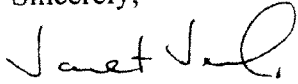
Finally, the bill gives the Division of Banking enforcement authority for section 3, which permits consumers to restrict access to credit reports. It is our understanding that Department of Financial Institutions has suggested this section be moved to Chapter 100 under the authority of the Department of Agriculture, Trade and Consumer Protection. We would like the committee to know we encourage and support such an amendment.

*Agriculture generates \$51.5 billion for Wisconsin*

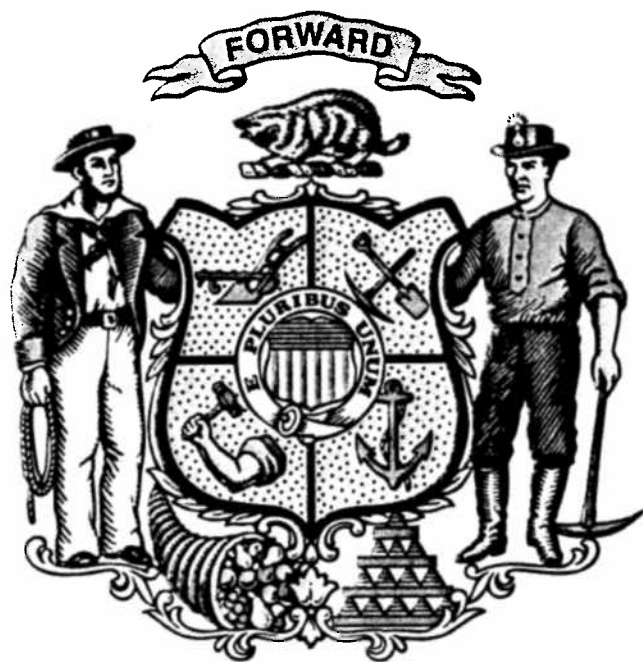
2811 Agriculture Drive • PO Box 8911 • Madison, WI 53708-8911 • Wisconsin.gov

We thank the Committee for the opportunity to support SB 581.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janet Jenkins".

Janet Jenkins  
Administrator  
Division of Trade & Consumer Protection





STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

PEGGY A. LAUTENSCHLAGER  
ATTORNEY GENERAL

Daniel P. Bach  
Deputy Attorney General

114 East, State Capitol  
P.O. Box 7857  
Madison, WI 53707-7857  
608/266-1221  
TTY 1-800-947-3529

STATE OF WISCONSIN LEGISLATURE  
BEFORE THE  
SENATE JUDICIARY, CORRECTIONS, AND PRIVACY COMMITTEE

WRITTEN TESTIMONY OF  
WISCONSIN ATTORNEY GENERAL PEG LAUTENSCHLAGER  
IN THE MATTER OF SENATE BILL 581

FEBRUARY 14, 2006

Thank you for the opportunity to testify on this important legislation to protect consumers against identity theft. Senate Bill 581 will strengthen Wisconsin law by helping consumers prevent the theft of their personal and financial information.

Identity theft is the fastest growing financial crime in the country. In 2004, 2,646 Wisconsin consumers contacted the Federal Trade Commission (FTC) and reported they were victims of identity theft. The Department of Justice has received reports that over 1,000 Wisconsin consumers were among those affected by recent security breaches – and although all the people impacted did not necessarily become ID theft victims, many people were rightly concerned that they could be victimized.

While Wisconsin does have an ID theft law on the books, improvements are needed to combat the fastest growing crime in the state and country. Tougher penalties are needed to protect the most vulnerable, the elderly and children. According to the FTC, children are the fastest growing age group to become victims of identity theft.

Senate Bill 581 would allow Wisconsin consumers to “freeze” their credit reports with national credit reporting agencies. A security freeze enables a consumer to control who receives a copy of credit reports, making it more difficult for criminals to use the consumer’s personal information and open an account in that person’s name. In addition, the bill would allow consumers to later “thaw” their credit and allow release of their credit reports to third parties. Credit freeze laws currently exist in California, Colorado, Connecticut, Illinois, Louisiana, Maine, Nevada, New Jersey, North Carolina, Texas, Vermont and Washington.

The freeze provision is particularly important because it is the only anti-ID theft tool that empowers consumers – it is a proactive measure consumers can take to control access to their credit. Often, identity theft victims who are aware their personal information is already in the



hands of a criminal fear they could become victimized again – at any time. This provision is much more powerful than fraud prevention alerts that currently exist.

Senate Bill 581 also aims to combat identity theft by limiting how businesses and employers can collect and use Social Security numbers. The prevalence of the use of Social Security numbers is one of the many ways ID thieves get victims' personal information. This legislation imposes reasonable requirements on employers to do a better job protecting the social security numbers of their employees.

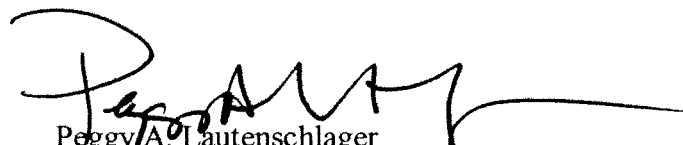
The bill would make it unlawful for a business to discriminate against individuals who refuse to disclose their Social Security numbers. It would also restrict an employer's use of employee Social Security numbers as identifiers where such use is unnecessary.

Additionally, SB 581 includes enhanced penalties for crimes of identity theft against the elderly, disabled or minors, and increases the penalty for mail theft, one of the easiest and most common ways to gain access to an individual's personal information. The bill contains a provision making mail theft a Class I felony punishable by up to three years in prison and/or a fine of up to \$10,000.

The Wisconsin Department of Justice is often contacted by identity theft victims desperately trying to fix their destroyed credit. They can lose hundreds of dollars and a great deal of time addressing the problem, and often are still unable to get mortgages, car loans or other credit because their credit is destroyed. Experts note that victims of identity theft often spend a great deal of time and money to repair the damage. The emotional impact of identity theft is often compared to that of a victim of violent crime – victims feel embarrassed, afraid, and experience a sense of loss of control.

Senate Bill 581 is a comprehensive approach to combating identity theft. Law enforcement will have stronger means to fight and prosecute these cases; employers will be required to implement better practices; the Attorney General's Office will have the authority to enforce the proposed Social Security provisions; and consumers will have the most effective tool yet to protect themselves from identity theft.

Please support Senate Bill 581. Thank you.

  
Peggy A. Lautenschlager  
Attorney General





**Russ Decker**  
State Senator

February 23, 2006

Senator Dave Zien, Chair  
Senate Committee on Judiciary, Corrections and Privacy  
15 South, Capitol

Dear Chairman Zien,

Thank you for holding a hearing on SB 581.

I appreciated the Department of Agriculture, Trade and Consumer Protection providing testimony on the bill and their subsequent assistance in having an amendment drafted to meet the concerns of the Department.

LRBa2423/1 does two things. First, it addresses the concern the Department had with the Division of Banking being provided with enforcement authority relative to the credit freeze provisions in the bill. The amendment places enforcement authority in the hands of the Department.

Secondly, DATCP noted businesses will be committing a crime (misdemeanor) if they discriminate against individuals who refuse to provide their social security numbers. The Department suggested the bill would be more effective if an offense was subject to a civil forfeiture. I've incorporated their suggestion into this amendment.

I've also listened to the concerns the Department of Transportation had in regard to performing criminal history checks on applicants for State Trooper positions.

The second amendment, LRBa2434/1, addresses the concerns that employers have when they need to complete criminal history checks on prospective employees. Under this amendment an employer would be able to obtain the SSN of an applicant for employment – provided the applicant is to be hired contingent on the background check not disclosing information that would disqualify the applicant.

This bill is about providing law enforcement with the tools they need to go after mail theft and the identity thieves who are increasingly viewing children, senior citizens and disabled people as easy targets while, at the same time, providing each of us the ability to take steps to protect ourselves.

It is my understanding that your committee will be holding an executive session on Wednesday, March 1<sup>st</sup>. I would ask that this bill be included on the executive hearing schedule for that day so that it can move forward in the time left this session.

Sincerely,

Russ Decker  
Senator, 29<sup>th</sup> Senate District



**Hogan, John**

---

**From:** John Metcalf [jmetcalf@wmc.org]  
**Sent:** Monday, February 27, 2006 10:27 AM  
**To:** Hogan, John  
**Subject:** FW: Social Security numbers in employment

-----Original Message-----

**From:** John Metcalf  
**Sent:** Monday, February 27, 2006 10:25 AM  
**To:** 'john.hogan@legis.wi.us'  
**Subject:** FW: Social Security numbers in employment

John, we are getting a lot of strong feedback from our members that this provision of SB 581 restricting the ability of employers to request social security numbers would be very problematic for them. This email is a good example. Also, the SA 2 that Decker has introduced appears to make the provision even more restrictive and problematic. If you think you may move the bill this session, we would like to have a conversation with you and the Senator about it. I apologize that I missed the hearing on the bill—it kind of slipped by me—but this is a pretty significant issue for our members. Thanks!!

-----Original Message-----

**From:** jmwerra@earthlink.net [mailto:jmwerra@earthlink.net]  
**Sent:** Saturday, February 25, 2006 7:55 AM  
**To:** John Metcalf  
**Subject:** Social Security numbers in employment

John:

You may be familiar with my retained fee Executive Search consulting practice.

When executive candidates are arranging to meet with us to interview for executive positions with our client firms we request SS# in two places...a release allowing us to investigate their educational credentials and other claims, along with credit, criminal and civil cases...in addition, we request SS# on our Personal History Form, so that verifications at schools (who often will not access an alum's record with our SS# or Birthdate) can be conducted.

You may recall our "Liars Index", where since 1995 we have tracked the percentage of people who lie about their academic claims...the percentage of such liars has ranged from over 6% to nearly 25% over the years, and currently is running at about 15%...Other resume claims are harder to measure.

If SS# is only accessible at the point of offer, as appears to be required in Senate Bill 581, then prevaricators will be able to inflate their credentials without concern...in this Talent War era, at the end of a search, few candidates are remaining...employers will be inclined to choose between starting a search over, or hiring the liar...or failing to check such basic credentials, and then firing the person later when the fraud is uncovered.

Requiring the confidential storage of SS# information should be sufficient to protect people...

There is a real problem with not allowing employers and their consultants access to SS#s, because fraud needs to be detected early in the screening process, in order to avoid unnecessary costs, wasted time and professional time...valuable and scarce resources.

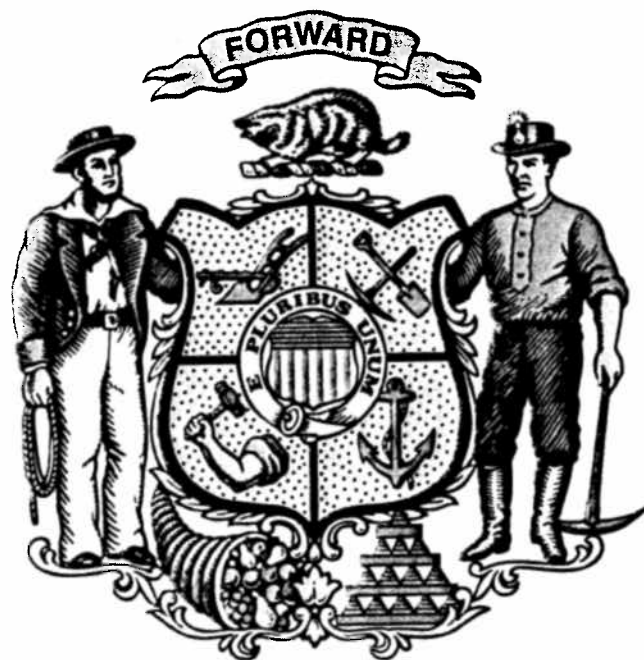
I will be happy to discuss this issue with you at any time, and will be happy to forward our research information supporting the extent of resume fraud...

02/28/2006

Other national organizations that do background checks will confirm these same sentiments, I reckon.

Jude M. Werra CMC  
President  
Jude M. Werra & Associates LLC

(262)797-9166, ext. 531



**Hogan, John**

---

**From:** John Metcalf [jmetcalf@wmc.org]  
**Sent:** Tuesday, February 28, 2006 9:00 AM  
**To:** Hogan, John  
**Subject:** SB581-Senate Judiciary Cmte

John, here is WMC's analysis of the original bill and SA 2. The problematic provision is contained in Section 2 of the bill. Our thought would be to remove that provision of the bill entirely, and stay away from this whole employment area. James and I will be up around the Senate later this morning, and perhaps we can have a few minutes of conversatin with you on this. Thanks!!

---

**TO:** Wisconsin State Senate Committee on Judiciary, Corrections and Privacy  
**FROM:** John Metcalf, Director, Human Resources Policy  
**DATE:** February 27, 2006  
**RE:** Opposition to SB 581 – Prohibition on Employers Requesting Applicants' Social Security Numbers

**Use of Social Security Numbers in Employment Applications**

This bill prohibits an employer from soliciting from any applicant for employment the applicant's social security number unless the employer makes a conditional offer of employment to the applicant. This social security information is vital in order for an employer to conduct a thorough professional background check on an applicant. The social security number is the only identifier used by most governmental agencies and educational institutions in releasing educational and other pertinent information on job applicants.

Further, requiring a conditional offer of employment in order to look into the credentials of a job applicant is at best cumbersome and is not workable in most employment settings where an employer is interviewing multiple candidates for employment in a position.

**Senate Amendment 2 to SB 581**

Proposed Senate Amendment 2 to SB 581 is equally problematic. It appears to focus this provision of SB 581 on circumstances where a conditional offer of employment is contingent upon the completion of a criminal background check of the applicant.

However, under the amendment once an employer seeks to obtain a criminal background check, and makes a conditional offer of employment, the employer cannot refuse to hire the employee **unless** the employer can prove that a criminal offense committed by the applicant comes under the "job related" exception of the Wisconsin Fair Employment Act Arrest and Conviction Statute.

Wisconsin has among the most restrictive Fair employment laws in the nation providing protection from discrimination for persons with arrest and conviction records. Therefore, under this amendment, in most circumstances once an employer has made a conditional offer of employment to an applicant in order to obtain a social security number in order to conduct a criminal background check, the employer would be required to hire the applicant.

**WMC Opposition**

WMC is strongly opposed to this provision of the original legislation, as well as Senate Amendment 2 to the bill.

The original provision will make it difficult and cumbersome to conduct meaningful background checks on job applicants in a timely manner. Particularly, in a growing and robust economy when it is essential that businesses



fill positions in a timely manner with qualified candidates, this provision would become an impediment to businesses expanding employment in Wisconsin.

Senate Amendment 2 expands this legislation into one of the more complex and controversial areas of Wisconsin employment law – the arrest and conviction protection of the Wisconsin Fair Employment Act. Many employers find that it is difficult to predict the circumstances in which the “job related” exception to the WFEA’s arrest and conviction exception will be applied by administrative agencies and courts. Senate Amendment 2 to SB 581 will further complicate the analysis that an employer must undertake in conducting a criminal background check in the context of the WFEA. Further, it will also add to the potential legal liability of an employer who chooses or must conduct criminal background checks.

**Conclusion – Oppose SB 581 and Senate Amendment 2**

For these reasons, WMC strongly urges the Committee to reject Senate Amendment 2 to Senate Bill 581, and further to remove those provisions of SB 581 that would restrict Wisconsin employers from requesting social security numbers for purposes of conducting legitimate work related background checks.