



**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2005 Senate Bill 164

**Assembly Substitute
Amendment 1 and Assembly
Amendment 1 to the Substitute
Amendment**

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Assembly Substitute Amendment 1 provides that, if an entity knows that personal information in the entity's possession has been acquired by a person whom the entity has not authorized to acquire the personal information, the entity must make reasonable efforts to notify each subject of the personal information within 45 days of learning of the unauthorized acquisition.

Under the substitute amendment, the requirements of the bill apply to entities that: (a) conduct business in Wisconsin and maintain personal information in the course of business; (b) license personal information in Wisconsin; (c) maintain for a Wisconsin resident a depository account; or (d) lend money to a resident of Wisconsin. An "entity" also includes: (a) the state and any office, department, independent agency, authority, institution, association, society, or other body in state government created or authorized to be created by the constitution or any law, including the Legislature and the courts; and (b) a city, village, town, or county.

"Personal information" means an individual's last name and the individual's first name or first initial, *in combination with and linked to* any of the following elements, if the element is not publicly available information and is not encrypted, redacted, or altered in any manner that renders the element unreadable: (a) the individual's Social Security number; (b) the individual's driver's license number or state identification number; (c) the number of the individual's financial account, including a credit or debit card account number, or any security code, access code, or password that would permit access to the individual's financial account; (d) the individual's DNA profile; and (e) the individual's unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical characteristic.

An entity is *not* required to provide notice, as described above, if: (a) the acquisition of personal information does not create a material risk of identity theft or fraud to the subject of the personal information; or (b) the personal information was acquired in good faith by an employee or agent of the

entity, if the personal information is used for a lawful purpose of the entity. In addition, certain financial institutions and health care providers that are in compliance with federal privacy laws are exempt.

Assembly Substitute Amendment 1 makes the following changes to Senate Bill 164:

- The notification requirements apply to entities that *license* personal information instead of *store* personal information, along with other specified entities.
- Under the substitute amendment, “personal information” must be an individual’s last name and the individual’s first name or first initial, *in combination with and linked to* a specified element (e.g., the individual’s Social Security number), if the element is not publicly available information and is not *encrypted, redacted, or altered* in a manner that renders the element unreadable. The bill defines “personal information” as specific information (e.g., a Social Security number) that is *accompanied* by the name of the individual to whom the information pertains, is not publicly available, and is not *encrypted*.
- The substitute amendment includes in the definition of “personal information” an individual’s financial account number, including a credit or debit card account number, or any security code, access code, or password that would permit access to the individual’s financial account. The bill includes an individual’s code or account number or any other means of account access if it can be used, alone or in conjunction with any access device, to obtain money, goods, services, or any other thing of value or benefit, or if it can be used to initiate a transfer of funds.
- The substitute amendment adds a provision that requires a person, other than an individual, that stores personal information pertaining to a Wisconsin resident, but does not own or license the information, to notify the person that owns or licenses the information if the person storing the information knows that it has been acquired by a person whom the person storing the information has not authorized to acquire the information.
- Under the substitute amendment, an entity is not required to provide notice of the acquisition of personal information if the acquisition *does not create a material risk of identity theft or fraud* to the subject of the personal information. Under the bill, an entity is not required to provide notice if the acquisition *does not compromise the security, confidentiality, or integrity of the personal information* in the entity’s possession.
- The substitute amendment requires an entity to provide notice of an unauthorized acquisition of personal information within *45 days* after the entity learns of the acquisition. The bill requires notice within *30 business days* of learning of the unauthorized acquisition.
- The substitute amendment adds a provision under which an entity that provides notice of an unauthorized acquisition of personal information must identify the personal information that was acquired upon written request of the person who has received a notice.

Assembly Amendment 1 to Assembly Substitute Amendment 1 adds a provision. Under the amendment if, as a result of a single incident, an entity is required to notify 1,000 or more individuals that personal information pertaining to the individuals has been acquired, the entity must without

unreasonable delay notify all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis of the timing, distribution, and content of the notices sent to the individuals.

Legislative History

Assembly Substitute Amendment 1 and Assembly Amendment 1 to the substitute amendment were offered by the Assembly Committee on State Affairs. On February 21, 2006, the committee voted unanimously to recommend adoption of Assembly Amendment 1 to the substitute amendment and Assembly Substitute Amendment 1, as amended, and voted unanimously to recommend concurrence in the bill, as amended.

AS:jal