



Legislative Briefs

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NEW LAWS RELATING TO PERSONAL DATA PRIVACY

The Wisconsin Legislature recently passed and Governor Jim Doyle signed three new laws on data privacy and identity theft.

On March 16, 2006, Governor Doyle signed 2005 Senate Bill 164 and Assembly Bills 536 and 912, which became 2005 Wisconsin Acts 138, 139, and 140, respectively. The new laws address some of the factors that make people vulnerable to identity theft and other types of fraudulent activity when an individual's personal information is fraudulently used to open credit or other accounts or to commit other crimes in the victim's name.

2005 WISCONSIN ACT 138

Businesses and other entities often maintain large and detailed databases of what would otherwise be personal, confidential information on millions of people. Act 138 is intended to respond to the problems of identity theft which can occur when security breaches, such as those often referred to as "hacking," lead to unauthorized access to the personal information maintained by those businesses.

The act generally requires various entities doing business in Wisconsin or with Wisconsin residents, and that maintain or license personal information, to make reasonable efforts within a reasonable time (not to exceed 45 days) to notify each affected person in the event of unauthorized access. This is intended to allow victims more opportunity to limit damages than would be possible if they were left unaware that their personal information had been compromised.

"Personal information" includes a person's last name and first name or first initial

in combination with or linked to any of the following types of information:

- Social Security number;
- driver's license or state identification number;
- financial account numbers or any security codes, access codes, or passwords; or
- DNA profile, biometric data, or other unique physical representation.

The entities subject to the act are those other than individuals that:

- conduct business in Wisconsin and maintain personal information in the course of business;
- license personal information;
- maintain depository accounts for Wisconsin residents;
- lend money to Wisconsin residents;
- are entities of, or were created by, state, county, city, village, or town governments; or
- have a principal place of business not located in Wisconsin, but know of unauthorized acquisition of a Wisconsin resident's personal information.

Furthermore, a business or other entity that stores but does not own or license personal information pertaining to a Wisconsin resident must, in the event of a security breach, notify the person that does own or license the information.

If, as a result of a single incident, an entity is required to notify 1,000 or more individuals of acquisition of personal information, then the entity must also notify all consumer reporting agencies that compile and maintain files on a nationwide basis.

Reporting is not required if the unauthorized acquisition of personal

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information does not create a material risk of identity theft or fraud to the subject. Nor is reporting required if the personal information was acquired in good faith by an employee or agent of the entity and is used for a lawful purpose.

Financial institutions and health care plans and providers are not subject to the notification requirements if they are in compliance with the applicable federal laws dealing with disclosure and privacy of personal information. Law enforcement agencies may ask an entity to defer making the required notifications for a specified period of time in order to protect an investigation.

Failure to comply with notification provisions is not negligence or breach of duty, but may be considered *evidence* of negligence or a breach of legal duty in a civil claim.

2005 WISCONSIN ACT 139

With limited exceptions, Act 139 prohibits a register of deeds from recording an instrument if it contains the Social Security number of an individual. If a register of deeds is presented with an instrument that contains a Social Security number, the register of deeds may remove or obscure characters so that the number is not discernable.

If a register of deeds does not discover a Social Security number until after recording an instrument, it is the instrument drafter rather than the register of deeds who is liable for any actual damages to the individual whose Social Security number appears in the recorded public document.

2005 WISCONSIN ACT 140

Act 140 allows an individual to place a "security freeze" on his or her consumer credit report with a consumer reporting agency as a way of reducing the risk of identity theft and other credit fraud by preventing release of information to unauthorized persons. The bill

was based on a California law, and other states have also enacted similar legislation.

For a fee of up to \$10, a consumer reporting agency must give an individual requesting a security freeze a personal identification number, password, or other device to authorize release of a consumer report. The security freeze, in effect, "locks" the individual's credit report and credit score from being released to extend credit unless the individual specifically authorizes it.

Act 140 specifies that an individual with a security freeze may authorize release of a consumer credit report when he or she wishes to apply for credit by contacting the consumer reporting agency, providing proper identification and password, specifying the time period for which the release is authorized, and, if applicable, paying another fee not to exceed \$10. (Act 140 also authorizes a fee for removal of a security freeze.) The reporting agency is not required to release the report sooner than three business days following the request. Until the report is released, a third party requesting it may treat the application for credit as incomplete.

A security freeze does not apply to information an entity may request with respect to an individual's existing accounts or contracts with that entity.

A reporting agency or other entity that fails to comply with the provisions of the act is liable for any actual damages sustained as a result of the failure and the costs of the action, including reasonable attorney's fees.

EFFECTIVE DATES

2005 Wisconsin Acts 138 and 139 are effective March 31, 2006. Act 140 is effective January 1, 2007.

FOR ADDITIONAL INFORMATION

View a copy of these acts at <http://www.legis.state.wi.us>.