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# Budget Briefs

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## “DUMPSTER DIVING”

The biennial state budget act (1999 Wisconsin Act 9), passed by the legislature and signed by Governor Tommy Thompson on October 27, 1999, requires certain businesses that possess personal financial or medical information to properly dispose of client or patient records. Section 895.505, Wisconsin Statutes, called the “dumpster diving law” by the media, takes effect on February 1, 2000.

### BACKGROUND

This law is designed to combat the fraudulent or illegal use of financial or medical information obtained from trash discarded by certain businesses. Two particular problems are identity theft and unauthorized use of a person’s physical or mental health records. Identity theft is the unauthorized use of personal information to fraudulently obtain credit, money, goods, services, or anything of value. 1997 Wisconsin Act 101 created Section 943.201, Wisconsin Statutes, which makes identity theft a crime punishable by a fine of up to \$10,000 or imprisonment for up to 5 years, or both. (See LRB Legislative Brief 98-14.)

### BUSINESSES AND INFORMATION AFFECTED

#### **Businesses covered under the law:**

- Financial institutions including banks, savings banks, saving and loan associations, credit unions, investment companies, and any issuers of credit cards.
- Medical businesses, whether for profit or not for profit, that possess information relating to a person’s physical or mental health, medical history, or medical treatment.
- Tax preparation businesses that prepare or provide counsel about individual federal, state, or local tax returns for a fee.

#### **Types of information covered under the law:**

- Personally identifiable data about an individual’s medical condition, if the data are not considered to be public knowledge (patient medical records).
- Personally identifiable data that contain information related to an individual’s account or transaction with a financial institution, such as an individual’s account or customer number, account balance, balance owing, credit balance, or credit limit.
- Personally identifiable data provided by an individual to a financial institution upon opening an account or applying for a loan or credit.
- Personally identifiable data about an individual’s federal, state, or local tax returns.

Act 9 defines a “record” as “any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or char-

acteristics.” This definition covers paper documents, video or audio tapes, compact discs, or any other data storage medium. The act defines “personally identifiable” as “capable of being associated with a particular individual through one or more identifiers or other information or circumstances.” This would include the individual’s social security number.

## **DISPOSAL REQUIREMENTS**

A business covered by Act 9 may not dispose of a record containing personal information unless it (or a contractor):

- Shreds the record.
- Erases the personal information contained in the record.
- Modifies the record to make the personal information unreadable or unretrievable.
- Takes action that it reasonably believes will ensure that no unauthorized person will have access to the personal information contained in the record for the period between the record’s disposal and its destruction.

## **PENALTIES AND CIVIL LIABILITY**

A business that fails to properly dispose of a record is subject to a civil forfeiture of not more than \$1,000. The business is also civilly liable in a lawsuit brought by a harmed individual for the amount of damages resulting from the violation.

A person who possesses a record that was improperly disposed of by a business and who intends to use personal information contained in the record for any purpose may be fined not more than \$1,000 or imprisoned for not more than 90 days, or both. An exemption is provided in cases where someone possesses a record with the permission of the person whose personal information is contained in the record. In addition, a person who uses personal information gained from improper record disposal is civilly liable for damages incurred by the person who is the subject of the record and the business that disposed of it.

## **FURTHER INFORMATION**

1999 Wisconsin Act 9 can be found on the Internet at <http://www.legis.state.wi.us/bill-text/acts/99acts.html>, and Legislative Reference Bureau Budget Briefs and other publications are available at <http://www.legis.state.wi.us/lrb/pubs/index.html>. Copies of these items may also be obtained by contacting the LRB at (608) 266-0342.