

W I S C O N S I N

Office of Privacy Protection

Safeguarding Information for Your Future

Wisconsin's Data Breach Notification Law

On March 16, 2006, Governor Jim Doyle signed into law 2005 Wisconsin Act 138 which became effective on March 31, 2006. The new law requires most businesses operating in Wisconsin that maintain personal information about individuals who reside in Wisconsin to notify those individuals if an unauthorized person has acquired their personal information. This law also applies to a Wisconsin state government agency and to cities, towns, villages, and counties.

The new law is set forth in Section 134.98 of the Wisconsin Statutes and became effective on March 31, 2006.

What Personal Information Is Covered

The law defines personal information to mean an individual's last name and the individual's first name or first initial in combination with any of the individual's following information:

- Social security number.
- Driver's license number or state identification number.
- 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.
- DNA profile.
- Any unique biometric data including fingerprint, voiceprint, retina or iris image.

If any of the personal information described above is publicly available and is encrypted, redacted or altered in a manner that makes the information unreadable, it is not considered "personal information" for purposes of this law.

Who Is Required To Give Notice

Among those required to give notice are:

- Businesses that conduct business in the state and maintain personal information in the ordinary course of business.
- Businesses that license personal information in the state.

- Businesses that maintain a depository account for Wisconsin residents.
- Businesses that lend money to Wisconsin residents.
- The state and any office, department, independent agency, authority, institution, association, society or other body in state government created or authorized by Wisconsin law including the courts and the legislature.
- A city, village, town or county.

Certain financial institutions that are subject to and in compliance with the privacy and security requirements of federal law, as well as businesses that have contractual arrangements with such institutions and have a policy in effect regarding security breaches, are exempt from Wisconsin's law. Similarly, certain health plans and health care providers are not covered by Wisconsin's law.

When Is Notice Required

Generally, the law requires the business or governmental entity to notify an individual whenever personal information held by the business or governmental entity is acquired by an unauthorized person. However, no notice is required if the unauthorized acquisition does not create a material risk of identity theft or fraud, or if the information was acquired in good faith by an employee or agent and is used for a lawful purpose of the entity.

What Notice Is Required

In general, any entity that is required to give notice of the unauthorized acquisition of personal information must provide notice of that fact to persons whose information was acquired. The notice must be given within a reasonable time, not to exceed 45 days after the entity learns of the unauthorized acquisition. The notice must be given by mail or by a method that the entity has previously used to communicate with the subject of the information. For example, if a business has communicated with a customer by email, notice may be given by email. Upon written request of the person whose information was acquired, the entity must also identify the nature of the personal information acquired.

If an entity cannot determine the mailing address of the person whose information was acquired, and if the entity has not previously communicated with that person, the entity must give notice in a manner that is reasonably calculated to provide notice. Such methods might include notice in the newspaper or on television or radio.

In cases where the personal information of more than 1,000 individuals was acquired at one time, the entity from which the information was required must also give notice to all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis. This would include the major credit reporting agencies.

A law enforcement agency may request that an entity not provide notice in order to protect an investigation or homeland security. In such cases, the entity may not provide notice until permitted by the law enforcement agency.

If you have any questions please contact the Wisconsin Office of Privacy Protection at (800) 422-7128 or e-mail us at DATCPWisconsinPrivacy@Wisconsin.gov. You can also visit our website for more information at www.privacy.wi.gov.