



State of Wisconsin
2017 - 2018 LEGISLATURE

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2017 ASSEMBLY BILL 788

December 27, 2017 - Introduced by Representatives BERCEAU, SUBECK, FIELDS, HEBL, BOWEN, C. TAYLOR, OHNSTAD, POPE, YOUNG, SHANKLAND and VRUWINK, cosponsored by Senators RISSER, CARPENTER and VINEHOUT. Referred to Committee on Science and Technology.

AUTHORS SUBJECT TO CHANGE

- 1 **AN ACT** *to create* 100.70 of the statutes; **relating to:** privacy and security of
2 customer information obtained by a broadband Internet access service provider
3 and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill generally prohibits a broadband Internet access service provider (“provider”) from using, disclosing, or permitting access to a customer’s proprietary information unless the customer grants approval to the provider to use, disclose, or permit access to that information. The bill defines “customer” as 1) a current or former subscriber to broadband Internet access service who resides in this state; or 2) a person who resides in this state and uses broadband Internet access service that is provided under an agreement between a current or former subscriber who resides in this state and a provider. With certain exceptions described below, the bill requires different types of approval for sensitive and non-sensitive customer proprietary information. For sensitive information, the customer must grant express, affirmative consent after receiving a notification that is required to accompany a provider’s request to use, disclose, or permit access to that information. Sensitive information includes the following: 1) financial information; 2) health information; 3) information pertaining to a child; 4) a social security number; 5) precise geo-location information; 6) content of communications; and 7) web browsing history and smart phone or tablet computer application usage history.

For non-sensitive information, the customer must object to the provider’s request to use, disclose, or permit access to that information after the customer

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receives a notification that is required to accompany the provider's request. Under the bill, non-sensitive information is the following information that is not sensitive information: 1) information that is linked or reasonably able to be linked to an individual or a device; or 2) information that identifies an individual and that relates to the quantity, technical configuration, type, destination, location, or amount of use of broadband Internet access service.

Also, under the bill, a provider is prohibited from refusing to provide broadband Internet access service because a customer or prospective customer does not grant approval to the provider to use, disclose, or permit access to proprietary information.

The bill allows a provider to use, disclose, or permit access to both sensitive and non-sensitive customer proprietary information without receiving the customer's approval only for the following purposes: 1) to provide the broadband Internet access service from which the information is derived; 2) to initiate, render, bill, or collect for broadband Internet access service; 3) to protect the rights or property of a provider or to protect users against fraudulent, abusive, or unlawful use of the service; 4) to provide certain services to a customer during a real-time interaction with the provider initiated by the customer; 5) to provide location information or non-sensitive information in emergencies; or 6) as otherwise required or authorized by law.

Under the bill, when a provider requests approval to use, disclose, or permit access to a customer's proprietary information, the provider's request must accompany a notice that includes a specific description of the following: 1) the types of customer proprietary information that the provider will collect from providing broadband Internet access service, and how it will use the information; 2) the circumstances under which the provider discloses or permits access to each type of customer proprietary information that it collects; 3) the categories of entities to which the provider discloses or permits to access the customer's proprietary information and the purposes for which that information will be used by each category of entity; and 4) the customer's rights to grant, deny, or withdraw approval concerning the customer's proprietary information. The notice must also include access to a mechanism that the customer can use to grant, deny, or withdraw approval at any time.

The bill requires that when a provider makes a material change to its policies concerning the privacy of customer proprietary information, the provider must give to each customer a similar notice that also includes a specific description of the changes made to the privacy policies. The bill also requires that all notices and mechanisms used for granting, denying, or withdrawing approval be translated into the language that the provider uses to transact business with a customer.

The bill requires providers to take reasonable security measures to protect customer proprietary information from unauthorized use, disclosure, or access. Further, when a breach of the provider's security occurs, the provider is required to notify each affected customer within 30 days after learning of the breach unless the provider reasonably determines that no harm to the customer is reasonably likely to occur as a result. The notification must describe the information that is reasonably believed to have been involved in the security breach and include information about

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how to contact the provider to inquire about the security breach and how to contact relevant government agencies. If the security breach creates a risk of financial harm, the notification must also include information about steps that the customer can take to guard against identity theft.

The bill also requires a provider to notify the Department of Agriculture, Trade and Consumer Protection and the Department of Justice within seven business days of learning about a breach of security affecting 5,000 or more customers unless the provider reasonably determines that no harm to customers is reasonably likely to occur as a result of the breach. If a breach of security affects fewer than 5,000 customers, the bill requires a provider to notify DATCP within 30 days after learning about the breach. Under the bill, a provider is required to maintain records for two years that contain information about the notifications made to customers about a breach of security.

A broadband Internet access service provider that violates the bill is subject to a civil forfeiture of up to \$50,000 for the first violation, and up to \$100,000 for each subsequent violation. Additionally, under the bill, any person or class of persons that is adversely affected by a violation by a broadband Internet access service provider can sue the provider for appropriate relief. The bill also authorizes 1) DATCP; 2) DOJ, after consulting with DATCP; or 3) any district attorney, upon informing DATCP, to bring an action to restrain by temporary or permanent injunction any violation of the bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 100.70 of the statutes is created to read:

2 **100.70 Privacy and security of information obtained by an Internet**
3 **service provider. (1) DEFINITIONS.** In this section:

4 (a) “Breach of security” means any instance in which a person, without
5 authorization or exceeding authorization, has gained access to, used, or disclosed
6 customer proprietary information.

7 (b) 1. “Broadband Internet access service” means a mass-market retail service
8 by wire or radio that provides the capability to transmit data and receive data from
9 all or substantially all Internet endpoints, including any capabilities that are

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1 incidental to and enable the operation of the service, but excluding dial-up Internet
2 access service.

3 2. "Broadband Internet access service" includes any service that the
4 department finds is a functional equivalent of the service specified in subd. 1. or is
5 used to evade the requirements under this section.

6 (c) "Customer" means any of the following:

7 1. A current or former subscriber to broadband Internet access service who
8 resides in this state.

9 2. A person who resides in this state and uses or has used broadband Internet
10 access service that is provided under an agreement between a current or former
11 subscriber who resides in this state and a broadband Internet access service
12 provider.

13 (d) "Customer proprietary information" means any of the following
14 information:

15 1. Individually identifiable information that relates to the quantity, technical
16 configuration, type, destination, location, or amount of use of a broadband Internet
17 access service subscribed to by a customer of a provider of that service, and that is
18 made available to the provider by the customer.

19 2. Any information that is linked or reasonably able to be linked to an
20 individual or a device.

21 3. Content of a customer's communications.

22 (e) "Material change" means any change that a customer, acting reasonably
23 under the circumstances, would consider important to his or her decisions
24 concerning his or her privacy, including any change to information required to be
25 presented in the notice required under sub. (2) (b).

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1 (f) “Non-sensitive customer proprietary information” means customer
2 proprietary information that is not sensitive customer proprietary information.

3 (g) “Opt-in approval” means the method for obtaining customer consent in
4 which a provider obtains from the customer affirmative, express consent after the
5 customer is provided appropriate notification of the provider’s request for consent.

6 (h) “Opt-out approval” means the method for obtaining customer consent in
7 which a customer is deemed to have consented if the customer has failed to object to
8 a provider’s request after the customer is provided with appropriate notification of
9 the provider’s request for consent.

10 (i) “Prospective customer” means an applicant for broadband Internet access
11 service who resides in this state.

12 (j) “Sensitive customer proprietary information” means customer proprietary
13 information that is any of the following:

14 1. Financial information.

15 2. Health information.

16 3. Information pertaining to a child.

17 4. A social security number.

18 5. Precise geo-location information.

19 6. Content of communications.

20 7. Web browsing history, smart phone or tablet computer application usage
21 history, and the functional equivalents of either.

22 (k) “Subscriber” means a person who enters into an agreement for the provision
23 of broadband Internet access services with a provider of broadband Internet access
24 services. “Subscriber” does not include a person who resells services.

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1 **(2) NOTICE REQUIREMENTS.** (a) *When notice required.* 1. A broadband Internet
2 access service provider shall make a notice available at all times to customers about
3 its policies concerning the privacy of the information that the provider obtains about
4 customers.

5 2. A broadband Internet access service provider shall notify a prospective
6 customer, at the point of sale, prior to a purchase of service, about its policies
7 concerning the privacy of information that the provider obtains about customers.

8 (b) *Contents.* A broadband Internet access service provider shall include all of
9 the following in the notice provided to customers under par. (a):

10 1. A specific description of the types of customer proprietary information that
11 the broadband Internet access service provider collects from providing broadband
12 Internet access service and how it uses that information.

13 2. A specific description of the circumstances under which the broadband
14 Internet access service provider discloses or permits access to each type of customer
15 proprietary information that it collects.

16 3. A specific description of the categories of entities to which the broadband
17 Internet access service provider discloses or permits to access customer proprietary
18 information and the purposes for which that information will be used by each
19 category of entities.

20 4. A specific description of the customer's rights to grant, deny, or withdraw
21 approval concerning the customer's proprietary information, including each of the
22 following:

23 a. A statement that the customer's denial or withdrawal of approval to use,
24 disclose, or permit access to customer proprietary information will not affect the
25 provision of any broadband Internet access services to the customer.

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1 b. A statement that any grant, denial, or withdrawal of approval for the use,
2 disclosure, or permission of access to customer proprietary information is valid until
3 the customer affirmatively revokes the grant, denial, or withdrawal.

4 c. A statement that the customer has the right to deny or withdraw approval
5 to use, disclose, or permit access to customer proprietary information at any time.

6 5. Access to a mechanism required under sub. (3) (d) 3.

7 (c) *Material changes to a privacy policy.* A broadband Internet access service
8 provider shall provide a notice, through electronic mail or another means of prompt
9 communication agreed upon by the customer, to a customer of a material change to
10 its policies concerning the privacy of information that the provider obtains about the
11 customer. The notice shall include all of the following:

12 1. A specific description of the changes made to the provider's privacy policies,
13 including any changes to what customer proprietary information the provider
14 collects; how the provider uses, discloses, or permits access to that information; the
15 categories of entities to which it discloses or permits access to customer proprietary
16 information; and which, if any, changes are retroactive.

17 2. The description required under par. (b) 4.

18 3. Access to a mechanism required under sub. (3) (d) 3.

19 (d) *When translation required.* If a broadband Internet access service provider
20 transacts business with a customer in a language other than English, the provider
21 shall translate the contents of the notices required under pars. (b) and (c) into the
22 language through which the provider transacts business with the customer.

23 **(3) CUSTOMER APPROVAL.** (a) *Opt-in approval required.* Except as provided
24 under par. (c), a broadband Internet access service provider may not do any of the
25 following unless the provider obtains opt-in approval from the customer:

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1 1. Use, disclose, or permit access to any of the customer's sensitive customer
2 proprietary information.

3 2. Use, disclose, or permit access to any of the customer's proprietary
4 information previously collected by the provider for which the customer has not
5 previously granted approval under this paragraph or par. (b).

6 (b) *Opt-out approval required.* 1. Except as provided under subd. 2. or par. (c),
7 a broadband Internet access service provider may not use, disclose, or permit access
8 to any of a customer's non-sensitive customer proprietary information unless the
9 provider obtains opt-out approval from the customer.

10 2. A broadband Internet access service provider may obtain opt-in approval
11 from a customer to use, disclose, or permit access to any of the customer's
12 non-sensitive customer proprietary information.

13 (c) *Permissible use without customer approval.* A broadband Internet access
14 service provider may use, disclose, or permit access to customer proprietary
15 information without approval from the customer under par. (a) or (b) only for the
16 following purposes:

17 1. To provide the broadband Internet access service from which the information
18 is derived, or in its provision of services necessary to, or used in, the provision of that
19 service.

20 2. To initiate, render, bill, or collect for broadband Internet access service.

21 3. To protect the rights or property of the broadband Internet access service
22 provider, or to protect users of the broadband Internet access service and other
23 providers from fraudulent, abusive, or unlawful use of the service.

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1 4. To provide any marketing, referral, or administrative services to a customer
2 for the duration of a real-time interaction if the interaction was initiated by the
3 customer.

4 5. To provide location information or non-sensitive customer proprietary
5 information to any of the following:

6 a. A public safety answering point, as defined in s. 256.35 (1) (gm), emergency
7 medical service provider, emergency dispatch provider, public safety official, fire
8 service official, law enforcement official, or hospital emergency or trauma care
9 facility, in order to respond to the user's request for emergency services.

10 b. The user's legal guardian or a member of the user's immediate family, to
11 inform about the user's location in an emergency situation that involves the risk of
12 death or serious physical harm.

13 c. A provider of information or database management services only for the
14 purpose of assisting in the delivery of emergency services in response to an
15 emergency.

16 6. As otherwise required or authorized by law.

17 (d) *Solicitation and exercise of customer approval.* 1. A broadband Internet
18 access service provider shall request the approval required under par. (a) or (b) at the
19 point of sale to a customer and at the time the provider makes a material change to
20 its policies concerning the privacy of information that the provider obtains about a
21 customer.

22 2. A broadband Internet access service provider shall request customer
23 approval clearly and conspicuously, in language that is readily understandable and
24 not misleading, and each request shall include all of the following:

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1 a. A disclosure of the types of customer proprietary information for which the
2 provider is seeking customer approval to use, disclose, or permit access to.

3 b. A disclosure of the purposes for which the customer's proprietary
4 information will be used.

5 c. A disclosure of the categories of entities to which the provider intends to
6 disclose or permit access to the customer proprietary information.

7 d. A means to easily access the notice required under sub. (2) (a) or (c).

8 e. A means to easily access the mechanism required under subd. 3.

9 3. A broadband Internet access service provider shall make available, at no
10 additional cost to the customer, a mechanism for a customer to grant, deny, or
11 withdraw opt-in approval or opt-out approval, or both, at any time.

12 4. A broadband Internet access service provider shall give effect to a customer's
13 grant, denial, or withdrawal of approval promptly, and the grant, denial, or
14 withdrawal of approval shall remain in effect until the customer revokes or limits the
15 grant, denial, or withdrawal of approval.

16 5. If a broadband Internet access service provider transacts business with a
17 customer in a language other than English, the provider shall translate the contents
18 required under subd. 2. and the instructions for using the mechanism required under
19 subd. 3. into the language through which the provider transacts business with the
20 customer.

21 **(4) DATA SECURITY.** (a) A broadband Internet access service provider shall take
22 reasonable security measures to protect customer proprietary information from
23 unauthorized use, disclosure, or access.

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1 (b) In implementing reasonable security measures under par. (a), a broadband
2 Internet access service provider shall appropriately take into account each of the
3 following factors:

- 4 1. The nature and scope of the provider's activities.
- 5 2. The sensitivity of the data it collects.
- 6 3. The size of the provider.
- 7 4. The technical feasibility of implementing the security measures.

8 **(5) DATA BREACH NOTIFICATION.** (a) *Customer notification.* 1. Except as provided
9 in subd. 4., a broadband Internet access service provider shall, without unreasonable
10 delay, notify a customer about any breach of security involving customer proprietary
11 information pertaining to that customer within 30 days after the provider reasonably
12 determines that a breach of security has occurred unless the provider reasonably
13 determines that no harm to the customer is reasonably likely to occur as a result of
14 the breach of security.

15 2. A broadband Internet access service provider shall notify a customer about
16 a breach of security under subd. 1. by at least one of the following methods:

17 a. A written notification sent to either the customer's electronic mail address
18 or the postal address of record of the customer, or, for former customers, to the last
19 postal address ascertainable after reasonable investigation using commonly
20 available sources.

21 b. Other electronic means of prompt communication agreed upon by the
22 customer for contacting that customer for breach of security notification purposes.

23 3. A broadband Internet access service provider shall provide all of the
24 following information in a notice required under subd. 1.:

- 25 a. The date, estimated date, or estimated date range of the breach of security.

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1 b. A description of the customer proprietary information that was involved in
2 the breach of security or reasonably believed to have been involved in the breach of
3 security.

4 c. Information that the customer may use to contact the provider to inquire
5 about the breach of security and the customer proprietary information that the
6 provider maintains about that customer.

7 d. Information about how to contact the department and any federal agencies
8 relevant to the service provided to the customer.

9 e. If the breach of security creates a risk of financial harm, information about
10 the national credit-reporting agencies and the steps customers can take to guard
11 against identity theft, including any credit monitoring, credit reporting, credit
12 freezes, or other consumer protections that the provider is offering customers
13 affected by the breach of security, including security freezes under s. 100.54.

14 4. Upon the request of a law enforcement agency, a broadband Internet access
15 service provider shall not disclose a breach of security to a customer.

16 (b) *Notification to government agencies.* 1. Except as provided in subd. 3., a
17 broadband Internet access service provider shall notify the department and the
18 department of justice of any breach of security affecting 5,000 or more customers no
19 later than 7 business days after the provider reasonably determines that a breach
20 of security has occurred and at least 3 business days before notifying the affected
21 customers under par. (a) 1.

22 2. Except as provided in subd. 3., a broadband Internet access service provider
23 shall, without unreasonable delay, notify the department of any breach of security
24 affecting fewer than 5,000 customers within 30 days after the provider reasonably
25 determines that a breach of security has occurred.

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1 3. A broadband Internet access service provider is not required to notify the
2 department under subd. 1. or 2. if it reasonably determines that no harm to
3 customers is reasonably likely to occur as a result of the breach of security.

4 (c) *Record keeping.* 1. Except as provided in subd. 3., a broadband Internet
5 access service provider shall maintain a record, electronically or in some other
6 manner, of each breach of security and the notifications made to customers under
7 par. (a) 1. regarding that breach. The record shall include all of the following:

8 a. The date that the provider first determines that the breach of security
9 occurred.

10 b. The date that customers were notified.

11 c. A written copy of all customer notifications.

12 2. A broadband Internet access service provider shall retain the record required
13 under subd. 1. for at least 2 years from the date on which the provider first
14 determines that the breach of security occurred.

15 3. A broadband Internet access service provider is not required to maintain a
16 record under subd. 1. if it reasonably determines that no harm to customers is
17 reasonably likely to occur as a result of the breach of security.

18 **(6) INTERNET ACCESS SERVICE OFFERS CONDITIONED ON WAIVER OF PRIVACY.** (a) A
19 broadband Internet access service provider may not refuse to provide broadband
20 Internet access service because a customer or prospective customer does not provide
21 approval required under sub. (3) (a) or (b).

22 (b) A broadband Internet access service provider that offers a financial
23 incentive program, such as lower rates, in exchange for a customer's approval to use,
24 disclose, or permit access to the customer's proprietary information shall do all of the
25 following:

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1 1. Provide a notice explaining the terms of the financial incentive program that
2 includes all of the following:

3 a. An explanation that the program requires opt-in approval from the
4 customer to use, disclose, or permit access to the customer's proprietary information.

5 b. Information about what customer proprietary information the provider will
6 collect, how it will be used, and the categories of entities with which it will be shared
7 and for what purposes.

8 c. Information, prominently displayed, about the equivalent service plan that
9 does not necessitate the use, disclosure, or access to customer proprietary
10 information beyond that required or permitted under sub. (3) (c).

11 2. Obtain opt-in approval from the customer for consent to participate in the
12 financial incentive program.

13 3. Provide the notice required under subd. 1. at the time the program is offered
14 to a customer and at the time that a customer elects to participate in the program.

15 4. Make the notice required under subd. 1. easily accessible and available
16 separate from any other privacy notifications, including the notifications required
17 under sub. (2) (a) or (c).

18 5. If the provider transacts business with a customer in a language other than
19 English, translate the contents required under subd. 1. into the language through
20 which the provider transacts business with the customer.

21 6. If the customer grants the opt-in approval required under subd. 2., a
22 broadband Internet access service provider shall make available a mechanism for
23 the customer to withdraw approval for participation in the financial incentive
24 program under this paragraph at any time.

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1 **(7) REMEDIES AND PENALTIES.** (a) 1. A person or class of persons adversely
2 affected by a broadband Internet access service provider's violation of this section
3 has a claim for appropriate relief, including damages, injunctive relief, and
4 rescission and may bring an action in circuit court against the broadband Internet
5 access service provider.

6 2. Notwithstanding s. 814.04 (1), a person or class of persons entitled to relief
7 under subd. 1 may recover costs, disbursements, and reasonable attorney fees.

8 (b) 1. Any of the following may bring an action in circuit court in the name of
9 the state to restrain by temporary or permanent injunction any violation of this
10 section:

11 a. The department.

12 b. The department of justice, after consulting with the department.

13 c. Any district attorney, upon informing the department.

14 2. Before entry of final judgment, the court may make any order or judgment
15 necessary to restore to any person any pecuniary loss suffered because of a violation
16 that is the subject of the action under subd. 1., if proof of the violation is submitted
17 to the satisfaction of the court.

18 (c) 1. For any violation of this section, the department of justice, after
19 consulting with the department, or the district attorney for the county where the
20 violation occurs, upon informing the department, may commence an action in the
21 name of the state to recover a forfeiture of not more than \$50,000 for the first
22 violation and not more than \$100,000 for each subsequent violation.

