



The Hamilton Consulting Group

Legislative, Regulatory & Information Services

Memorandum

To: Interested Clients & Colleagues
From: Amy Boyer
Date: December 6, 2002
Re: **Analysis of Rep. Mark Gundrum's Identity Theft Proposal**

Background: A Wisconsin financial institution had an employee who was stealing certain customer's personal information and using the information in a fraudulent manner. It took the financial institution about 8 months to notify the approximately 250 customers that were victims of the fraud. Rep. Gundrum is attempting to address this type of situation.

This draft bill (WLC: 0012/3) makes changes to the identity theft statute.

The bill, which is still in the drafting process, creates language that requires an entity, who knows of the unauthorized use or attempted use of personal identifying information that was obtained while in the custody of the entity shall notify each person of unauthorized use or attempted use no later than 5 business days after the unauthorized use or attempted use was discovered. Notice must be given both in person or by telephone and in writing or by e-mail or other computerized communication system.

Penalties, which were part of an earlier draft, have since been removed. The bill instead reads that compliance with the aforementioned language is not an affirmative defense to a claim of negligence in a civil action or proceeding. Conversely, failure to comply with this section does not constitute negligence per se.

"Entity" is defined in the current draft as a person other than an individual that in the ordinary course of business maintains personal identifying information.

"Personal information" has the meaning given in s. 943.201 (1) (b) Wis. Stats. That definition includes and individuals name, address, telephone number, drivers license number, social security number, employer information, an identifying number assigned by an employer, mothers maiden name, and identifying numbers of a depository account.

This draft bill is broad and disclosure provisions cover all businesses, not just those covered under the document disposal law, which includes financial institutions, medical businesses and tax preparation businesses.

Other provisions of the bill pertain to the liability of the person who possesses, uses or attempts to use the personal information of an individual or entity. Liability provisions also pertain to persons who make false statements to financial institutions, which include a bank, savings bank, savings and loan association, credit union, insurance company, trust company, a securities broker or dealer, a pawn broker, a telegraph company or dealer in precious metals, stones or jewels.

Another issue, which will be addressed at the next meeting relates to utility service to victims. At the last meeting, there was discussion about including a provision that would require a utility to clear a credit report after an affidavit or forgery, and report that to law enforcement. That language was not included in this draft, but may be included in subsequent drafts. The impetus of this is a concern that victims of identity theft may have a more difficult time getting utility service if debt entries are made on their credit statement after accounts are opened for persons using stolen personal identifying information, which then go delinquent.

Rep. Gundrum's Task Force, which is comprised of legislators, law enforcement and business leaders, is next set to meet on Wednesday, December 11 at 11:00 a.m. in Room 300 NE. Rep. Gundrum intends to have a bill ready for introduction early next session.