

## Publications

June 01, 2014

SECURITY BREACH NOTIFICATION CHART - Wisconsin

### Wis. Stat. § 134.98

S.B. 164 (signed into law March 16, 2006, Act 138)

Effective March 31, 2006

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**Application.** Any Entity that maintains or licenses PI in WI or that knows that PI pertaining to a resident of WI has been acquired by a person whom the Entity has not authorized to acquire the PI. "Entity" includes the state of WI and any office, department, independent agency, authority, institution, association, society, or other body in state government created or authorized to be created by the constitution or any law, including the legislature and the courts; a city, village, town, or county; and a person, other than an individual, that does any of the following:

- Conducts business in WI and maintains PI in the ordinary course of business;
- Licenses PI in WI;
- Maintains for a resident of WI a depository account; or
- Lends money to a resident of WI.

**Security Breach Definition.** When an Entity whose principal place of business is located in WI or an Entity that maintains or licenses PI in WI knows that PI in the Entity's possession has been acquired by a person whom the Entity has not authorized to acquire the PI, or, in the case of an Entity whose principal place of business is not located in WI, when it knows that PI pertaining to a resident of WI has been acquired by a person whom the Entity has not authorized to acquire the PI.

**Notification Obligation.** Any Entity to which the statute applies shall make reasonable efforts to notify each subject of the PI.

- An Entity is not required to provide notice of the acquisition of PI if the acquisition of PI does not create a material risk of identity theft or fraud to the subject of the PI or if the PI was acquired in good faith by an employee or agent of the Entity, if the PI is used for a lawful purpose of the Entity.

**Notification to Consumer Reporting Agencies.** If, as the result of a single incident, an Entity is required to notify 1,000 or more individuals that PI pertaining to the individuals has been acquired, the Entity shall without unreasonable delay notify all nationwide consumer reporting agencies of the timing, distribution, and content of the notices sent to the individuals.

**Third-Party Data Notification.** If an Entity that stores PI pertaining to a resident of WI, but does not own or license the PI, knows that the PI has been acquired by a person whom the person storing the PI has not authorized to acquire the PI, and the person storing the PI has not entered into a contract with the person that owns or licenses the PI, the person storing the PI shall notify the person that owns or licenses the PI of the acquisition as soon as practicable.

**Timing of Notification.** An Entity shall provide the notice within a reasonable time, not to exceed 45 days after the Entity learns of the acquisition of PI. A determination as to reasonableness shall include consideration of the number of notices that an Entity must provide and the methods of communication available to the Entity.

**Personal Information Definition.** An individual's last name and the individual's first name or first initial, in combination with and linked to any of the following elements, if the element is not publicly available information and is not encrypted, redacted, or altered in a manner that renders the element unreadable:

- Social Security number;
- Driver's license number or state identification number;
- Account number, credit card number, or debit card number, or any security code, access code, or password that would permit access to the individual's financial account;
- DNA profile; or
- Unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation.

An element is publicly available if the Entity reasonably believes that it was lawfully made widely available through any media or lawfully made available to the general public from federal, state, or local government records or disclosures to the general public that are required to be made by federal, state, or local law.

**Notice Required.** The notice shall indicate that the Entity knows of the unauthorized acquisition of PI pertaining to the resident of WI who is the subject of the PI. Notice may be provided by one of the following methods:

- Mail; or
- A method the Entity has previously employed to communicate with the subject of the PI.

**Substitute Notice Available.** If an Entity cannot with reasonable diligence determine the mailing address of the subject of the PI, and if the Entity has not previously communicated with the subject of the PI, the Entity shall provide notice by a method reasonably calculated to provide actual notice to the subject of the PI.

**Exception: Compliance with Other Laws.**

- **Gramm-Leach-Bliley Act.** An Entity that is subject to, and in compliance with, the privacy and security requirements of Title V of the Gramm-Leach-Bliley Act, or a person that has a contractual obligation to such an Entity, if the Entity or person has in effect a policy concerning breaches of information security.
- **HIPAA-Covered Entities.** A health plan, health care clearinghouse, or health care provider who transmits any health information in electronic form, if the Entity complies with the requirements of 45 C.F.R. pt. 164.

**Other Key Provisions:**

- **Delay for Law Enforcement.** A law enforcement agency may, to protect an investigation or homeland security, ask an Entity not to provide a required notice for any period of time. If an Entity receives such a request, the Entity may not provide notice of or publicize an unauthorized acquisition of PI, except as authorized by the law enforcement agency that made the request.