



State of Wisconsin
2023 - 2024 LEGISLATURE

LRBa0513/1
MDE:skw

**ASSEMBLY AMENDMENT 1,
TO ASSEMBLY BILL 466**

October 10, 2023 – Offered by Representative ZIMMERMAN.

- 1 At the locations indicated, amend the bill as follows:
- 2 **1.** Page 1, line 1: after “protection” insert “, granting rule-making authority,”.
- 3 **2.** Page 3, line 1: delete “134.985” and substitute “100.75”.
- 4 **3.** Page 3, line 2: delete “**134.985**” and substitute “**100.75**”.
- 5 **4.** Page 3, line 12: after “rights” insert “, or is an individual with authority to
- 6 exercise such rights of a consumer,”.
- 7 **5.** Page 3, line 17: after “therefrom” insert “unless such data is generated to
- 8 identify a specific individual”.
- 9 **6.** Page 4, line 4: after “action.” insert ““Consent” does not include any of the
- 10 following:

1 1. Acceptance of a general terms-of-use document or similar document that
2 contains descriptions of personal data processing along with other, unrelated
3 information.

4 2. Hovering over, muting, pausing, or closing a given piece of content.

5 3. Agreements obtained by using dark patterns.”.

6 **7.** Page 4, line 12: after that line insert:

7 “(jd) “Dark pattern” means a user interface designed or manipulated with the
8 substantial effect of subverting or impairing user autonomy, decision making, or
9 choice.”.

10 **8.** Page 4, line 21: after “indirectly” insert “, in particular by reference to an
11 identifier such as a name, an identification number, specific geolocation data, or an
12 online identifier”.

13 **9.** Page 6, line 14: after “monetary” insert “or other valuable”.

14 **10.** Page 6, line 20: after that line insert:

15 “2m. The disclosure of personal data based on the consumer directing the
16 controller to disclose the personal data or intentionally using the controller to
17 interact with a 3rd party.”.

18 **11.** Page 7, line 12: after “obtained” insert “or inferred”.

19 **12.** Page 8, line 5: after “consumer” insert “or a consumer’s authorized agent”.

20 **13.** Page 9, line 3: after “consumer.” insert “A consumer may exercise the
21 consumer’s rights through user-enabled global privacy controls, such as a browser
22 plugin or privacy setting, device setting, or other mechanism, that communicate or

1 signal the consumer's choice to opt out of processing for the purpose of targeted
2 advertising or sale of the consumer's personal data.".

3 **14.** Page 10, line 21: delete "attorney general" and substitute "department".

4 **15.** Page 11, line 18: delete the material beginning with "the consumer" and
5 ending with "sub. (2) (a) 5. or" on line 19.

6 **16.** Page 12, line 25: after "account." insert "A controller that recognizes
7 signals approved by other states shall be considered in compliance with this
8 paragraph. Such means shall include all of the following:

9 1. A clear and conspicuous link on the controller's website to a webpage that
10 enables a consumer or an agent of a consumer to opt out of the targeted advertising
11 or sale of the consumer's personal data.

12 2. On or before July 1, 2026, an opt-out preference signal sent, with a
13 consumer's consent, by a platform, technology, or mechanism to the controller
14 indicating the consumer's intent to opt out of any processing of the consumer's
15 personal data for the purpose of targeted advertising or sale of the consumer's
16 personal data. Such platform, technology, or mechanism shall do all of the following:

17 a. Not unfairly advantage one controller over another.

18 b. Require the consumer to make an affirmative and unambiguous choice to opt
19 out of any processing of the consumer's personal data.

20 c. Be easy to use by the average consumer.

21 d. Enable the controller to accurately determine whether the consumer is a
22 resident of this state and whether the consumer has made a legitimate request to opt
23 out of any targeted advertising or sale of the consumer's personal data.".

24 **17.** Page 15, line 1: after "shall" insert "regularly".

1 **18.** Page 15, line 17: after that line insert:

2 “6. The processing of personal data related to any good, service, or product
3 feature likely to be accessed by a child.”.

4 **19.** Page 16, line 3: on lines 3, 5, and 7, delete “attorney general” and
5 substitute “department”.

6 **20.** Page 16, line 3: delete the material beginning with “a civil” and ending
7 with “under” on line 4.

8 **21.** Page 16, line 6: delete the material beginning with “attorney” and ending
9 with “general” on line 7 and substitute “department”.

10 **22.** Page 16, line 11: delete “attorney general” and substitute “department”.

11 **23.** Page 22, line 3: after “society,” insert “entity regulated by the federal Farm
12 Credit Administration,”.

13 **24.** Page 23, line 17: delete “The” and substitute “Except as authorized by the
14 federal Fair Credit Reporting Act, the”.

15 **25.** Page 24, line 17: delete the material beginning with that line and ending
16 with page 25, line 23, and substitute:

17 “(9) VIOLATIONS. (a) The department and the department of justice shall have
18 authority to enforce violations of this section.

19 (b) 1. The department or the department of justice shall, at least 30 days before
20 initiating any action under this section, provide a controller or processor written
21 notice that identifies the specific provisions of this section the department or the
22 department of justice alleges have been or are being violated. If within the 30 days
23 the controller or processor cures the noticed violation and provides the department

1 or the department of justice an express written statement that the alleged violations
2 have been cured and that no such further violations shall occur, no action shall be
3 initiated against the controller or processor.

4 2. Notwithstanding subd. 1., if a controller or processor continues to violate this
5 section in breach of an express written statement provided to the department or the
6 department of justice under subd. 1., the department or the department of justice
7 may initiate an action under this section.

8 (c) Nothing in this section shall be construed as providing the basis for, or being
9 subject to, a private right of action to violations of this section or under any other law.

10 **(10) ENFORCEMENT; PENALTIES.** (a) Any controller or processor that violates this
11 section or any order issued under this section is subject to a forfeiture of not less than
12 \$100 and not more than \$10,000 for each violation.

13 (b) The department or the department of justice have exclusive authority to
14 enforce violations of this section and may commence an action in any court of
15 competent jurisdiction in the name of the state to restrain by temporary or
16 permanent injunction the violation of this section and any order issued under this
17 section. The court may in its discretion, prior to the entry of final judgment, make
18 such orders or judgments as may be necessary to restore any person any pecuniary
19 loss suffered because of the acts or practices involved in the action, provided proof
20 thereof is submitted to the satisfaction of the court. The department may use its
21 authority in ss. 93.14 and 93.15 to investigate violations of this section and any order
22 issued under this section.

23 (c) The department of justice may issue a civil investigative demand to any
24 controller or processor believed to be engaged in, or about to engage in, any violation
25 of this section, and by the civil investigative demand the department of justice may

1 compel the attendance of any officers or agents of the controller or processor, examine
2 the officers or agents of the controller or processor under oath, require the production
3 of any books or papers that the department of justice deems relevant or material to
4 the inquiry, and issue written interrogatories to be answered by the officers or agents
5 of the controller or processor.

6 (d) The department and the department of justice may serve a subpoena, as
7 provided by s. 885.03, and a complaint, notice, order, civil investigative demand, or
8 other process, as may be a summons, and either may be served by registered mail to
9 an address furnished by the person or concern to either the department or the
10 department of financial institutions. Service may be proved by affidavit. Service in
11 any event may be also by registered mail addressed to the person or concern and
12 proved by post office return receipt, in which case the time of service is the date borne
13 by the receipt.

14 (e) Notwithstanding s. 814.04 (1), the department or the department of justice
15 may recover reasonable expenses incurred in investigating, preparing, and
16 prosecuting the case, including attorney fees, of any action initiated under this
17 section.

18 **(10m) RULEMAKING.** The department may promulgate rules necessary to effect
19 the purposes of this section.”.

20 **26.** Page 25, line 25: after that line insert:

21 **“SECTION 1g.** 100.75 (9) (b) 1. of the statutes, as created by 2023 Wisconsin Act
22 (this act), is repealed.

23 **SECTION 1r.** 100.75 (9) (b) 2. of the statutes, as created by 2023 Wisconsin Act
24 (this act), is renumbered 100.75 (9) (b) and amended to read:

