



2001 SENATE BILL 40

February 7, 2001 - Introduced by Senators ERPENBACH, JAUCH, MOEN, SCHULTZ, BAUMGART, ROESSLER, PLACHE, DARLING, ROBSON, WIRCH, DECKER, ROSENZWEIG, HANSEN and GROBSCHMIDT, cosponsored by Representatives FREESE, SINICKI, RICHARDS, J. LEHMAN, STASKUNAS, BOCK, SCHOOFF, POCAN, YOUNG, SCHNEIDER, PLOUFF, URBAN, GUNDERSON, HUBER, BOYLE, KRAWCZYK, BERCEAU, F. LASEE, BALOW, ZIEGELBAUER, MUSSER, WILLIAMS, BLACK, CULLEN, HAHN, OLSEN, KREUSER, TRAVIS, ALBERS, GRONEMUS and HEBL. Referred to Committee on Privacy, Electronic Commerce and Financial Institutions.

1 **AN ACT to repeal** 134.72 (2) (a) (title) and 134.72 (2) (b) (title); **to renumber**
2 134.72 (2) (a); **to renumber and amend** 134.72 (1) (c) and 134.72 (2) (b); **to**
3 **amend** 100.264 (2) (intro.), 134.72 (title), 134.72 (3) (a) and 134.72 (3) (b); and
4 **to create** 20.115 (8) (jm), 100.52 (title), 100.52 (1) (title), 100.52 (1) (a), 100.52
5 (1) (b), 100.52 (1) (c), 100.52 (1) (d), 100.52 (1) (e), 100.52 (1) (g), 100.52 (2),
6 100.52 (3), 100.52 (4) (title), 100.52 (4) (b), 100.52 (4) (c), 100.52 (4) (d), 100.52
7 (5), 100.52 (6), 100.52 (7) and 100.52 (8) of the statutes; **relating to:** prohibiting
8 certain telephone solicitations, requiring the registration of telephone
9 solicitors, requiring the exercise of rule-making authority, making an
10 appropriation, and providing penalties.

Analysis by the Legislative Reference Bureau

This bill requires the department of agriculture, trade and consumer protection (DATCP) to promulgate rules for the registration of telephone solicitors. The bill defines "telephone solicitor" as any person, other than a nonprofit organization, that employs or contracts with an individual to make a telephone solicitation. The bill prohibits a telephone solicitor that is not registered from requiring an employee or

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contractor to make a telephone solicitation to a person in this state. Telephone solicitors are required to obtain a registration number from DATCP and pay a registration fee and annual registration renewal fees. The amount of the fees is based on the cost of establishing a nonsolicitation directory, which is discussed below. In addition, the amount that an individual telephone solicitor is required to pay must be based on the number of telephone lines used by the telephone solicitor to make telephone solicitations. DATCP must also promulgate rules that require an individual who makes a telephone solicitation on behalf of a telephone solicitor to identify the telephone solicitor and the telephone solicitor's registration number at the beginning of the telephone conversation.

This bill also requires DATCP to establish a nonsolicitation directory that includes listings for residential telephone customers who do not wish to receive telephone solicitations from telephone solicitors. The bill requires DATCP to promulgate rules establishing requirements and procedures for a residential customer to request a listing in the directory. A residential customer must notify DATCP on a biennial basis if the residential customer wishes to continue to be listed in the directory. DATCP must provide copies of the directory to telephone solicitors who are registered under the bill, but may not otherwise release copies to the public. In addition, a telephone solicitor who receives a copy of the directory may not solicit or accept from any person anything of value in exchange for providing the person with any information included in the copy. The bill prohibits a telephone solicitor from making a telephone solicitation to a residential customer if the copy of the directory that is provided to the telephone solicitor includes a listing for the customer.

A telephone solicitor who violates the prohibition against making a telephone solicitation to a residential customer included in the nonsolicitation directory is subject to a forfeiture of between \$1,000 and \$10,000. A person who violates the bill's other requirements is subject to a forfeiture of between \$100 and \$500. In addition, a person may be subject to a supplemental forfeiture of up to \$10,000 for a violation perpetrated against an elderly or disabled person.

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.** 20.115 (8) (jm) of the statutes is created to read:
2 20.115 (8) (jm) *Telephone solicitation regulation.* All moneys received from
3 telephone solicitor registration and registration renewal fees paid under the rules
4 promulgated under s. 100.52 (3) (a) for establishing and maintaining the
5 nonsolicitation directory under s. 100.52 (2).

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1 **SECTION 2.** 100.264 (2) (intro.) of the statutes is amended to read:

2 100.264 (2) SUPPLEMENTAL FORFEITURE. (intro.) If a fine or a forfeiture is
3 imposed on a person for a violation under s. 100.16, 100.17, 100.18, 100.182, 100.183,
4 100.20, 100.205, 100.207, 100.21, 100.30 (3), 100.35, 100.44 ~~or~~, 100.46, or 100.52 or
5 a rule promulgated under one of those sections, the person shall be subject to a
6 supplemental forfeiture not to exceed \$10,000 for that violation if the conduct by the
7 defendant, for which the violation was imposed, was perpetrated against an elderly
8 person or disabled person and if the court finds that any of the following factors is
9 present:

10 **SECTION 3.** 100.52 (title) of the statutes is created to read:

11 **100.52 (title) Telephone solicitations.**

12 **SECTION 4.** 100.52 (1) (title) of the statutes is created to read:

13 100.52 (1) (title) DEFINITIONS.

14 **SECTION 5.** 100.52 (1) (a) of the statutes is created to read:

15 100.52 (1) (a) "Basic local exchange service" has the meaning in s. 196.01 (1g).

16 **SECTION 6.** 100.52 (1) (b) of the statutes is created to read:

17 100.52 (1) (b) "Nonprofit organization" means a corporation, association, or
18 organization exempt from taxation under section 501 (c) (3) of the Internal Revenue
19 Code.

20 **SECTION 7.** 100.52 (1) (c) of the statutes is created to read:

21 100.52 (1) (c) "Nonsolicitation directory" means the directory established in
22 rules promulgated by the department under sub. (2) (b).

23 **SECTION 8.** 100.52 (1) (d) of the statutes is created to read:

24 100.52 (1) (d) "Residential customer" means an individual who is furnished
25 with basic local exchange service by a telecommunications utility.

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1 **SECTION 9.** 100.52 (1) (e) of the statutes is created to read:

2 100.52 (1) (e) “Telecommunications utility” has the meaning given in s. 196.01
3 (10).

4 **SECTION 10.** 100.52 (1) (g) of the statutes is created to read:

5 100.52 (1) (g) “Telephone solicitor” means a person, other than a nonprofit
6 organization, that employs or contracts with an individual to make a telephone
7 solicitation.

8 **SECTION 11.** 100.52 (2) of the statutes is created to read:

9 100.52 (2) NONSOLICITATION DIRECTORY LISTING. (a) Upon a request by a
10 residential customer, the department shall include in the nonsolicitation directory
11 a listing indicating that the residential customer does not want to receive any
12 telephone solicitation made on behalf of a telephone solicitor.

13 (b) The department shall promulgate rules for establishing and maintaining
14 a directory that includes listings of residential customers who do not wish to receive
15 telephone solicitations made on behalf of telephone solicitors. The rules
16 promulgated under this paragraph shall establish requirements and procedures for
17 a residential customer to request a listing in the directory. The rules shall also
18 require a residential customer who requests a listing in the directory to notify the
19 department on a biennial basis if the residential customer wishes to continue to be
20 included in the directory. The department shall eliminate a residential customer
21 from the directory if the customer does not make the biennial notification.

22 (c) Except for copies of the nonsolicitation directory that are provided to
23 registered telephone solicitors under par. (d), the nonsolicitation directory is not
24 subject to inspection, copying, or receipt under s. 19.35 (1) and may not be released
25 by the department.

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1 (d) The department may provide copies of the nonsolicitation directory only to
2 telephone solicitors who are registered under sub. (3). A telephone solicitor who
3 receives a copy of the directory under this paragraph may not solicit or accept from
4 any person, directly or indirectly, anything of value in exchange for providing the
5 person with any information included in the copy.

6 **SECTION 12.** 100.52 (3) of the statutes is created to read:

7 100.52 (3) REGISTRATION OF TELEPHONE SOLICITORS. (a) The department shall
8 promulgate rules that require any telephone solicitor who requires an employee or
9 contractor to make a telephone solicitation to a person in this state to register with
10 the department, obtain a registration number from the department, and pay a
11 registration fee to the department. The amount of the registration fee shall be based
12 on the cost of establishing the nonsolicitation directory, and the amount that an
13 individual telephone solicitor is required to pay shall be based on the number of
14 telephone lines used by the telephone solicitor to make telephone solicitations. The
15 rules shall also require a telephone solicitor that registers with the department to
16 pay an annual registration renewal fee to the department. The amount of the
17 registration renewal fee shall be based on the cost of maintaining the nonsolicitation
18 directory.

19 (b) The department shall promulgate rules that require an individual who
20 makes a telephone solicitation on behalf of a telephone solicitor to identify the
21 telephone solicitor and the telephone solicitor's registration number at the beginning
22 of the telephone conversation.

23 **SECTION 13.** 100.52 (4) (title) of the statutes is created to read:

24 100.52 (4) (title) PROHIBITIONS.

25 **SECTION 14.** 100.52 (4) (b) of the statutes is created to read:

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1 100.52 (4) (b) A telephone solicitor may not require an employee or contractor
2 to make a telephone solicitation to a person in this state unless the telephone solicitor
3 is registered with the department under the rules promulgated under sub. (3) (a).

4 **SECTION 15.** 100.52 (4) (c) of the statutes is created to read:

5 100.52 (4) (c) A telephone solicitor may not make a telephone solicitation to a
6 residential customer if the nonsolicitation directory that is provided to the telephone
7 solicitor under sub. (2) (d) includes a listing for the residential customer.

8 **SECTION 16.** 100.52 (4) (d) of the statutes is created to read:

9 100.52 (4) (d) A telephone solicitor may not require an employee or contractor
10 to make a telephone solicitation that violates par. (a) or (c).

11 **SECTION 17.** 100.52 (5) of the statutes is created to read:

12 100.52 (5) TERRITORIAL APPLICATION. This section applies to any interstate
13 telephone solicitation received by a person in this state and to any intrastate
14 telephone solicitation.

15 **SECTION 18.** 100.52 (6) of the statutes is created to read:

16 100.52 (6) PRIVATE CAUSE OF ACTION. Any person who suffers damages as the
17 result of another person violating this section may bring an action against the person
18 who violated this section to recover the amount of those damages.

19 **SECTION 19.** 100.52 (7) of the statutes is created to read:

20 100.52 (7) ENFORCEMENT. The department shall investigate violations of this
21 section and may bring an action for temporary or permanent injunctive or other relief
22 for any violation of this section.

23 **SECTION 20.** 100.52 (8) of the statutes is created to read:

24 100.52 (8) PENALTIES. (a) Except as provided in par. (b), a person who violates
25 this section may forfeit not less than \$100 nor more than \$500 for each violation.

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1 (b) A telephone solicitor that violates sub. (4) (d) may forfeit not less than
2 \$1,000 nor more than \$10,000 for each violation.

3 **SECTION 21.** 134.72 (title) of the statutes is amended to read:

4 **134.72 (title) Prohibition of certain unsolicited messages by telephone**
5 **or facsimile machine.**

6 **SECTION 22.** 134.72 (1) (c) of the statutes is renumbered 100.52 (1) (f) and
7 amended to read:

8 100.52 (1) (f) "Telephone solicitation" means the unsolicited initiation of a
9 telephone conversation for the purpose of encouraging a person to purchase property,
10 goods or services or to make a contribution, donation, grant, or pledge of money,
11 credit, property, or other thing of any kind or value.

12 **SECTION 23.** 134.72 (2) (a) (title) of the statutes is repealed.

13 **SECTION 24.** 134.72 (2) (a) of the statutes is renumbered 100.52 (4) (a).

14 **SECTION 25.** 134.72 (2) (b) (title) of the statutes is repealed.

15 **SECTION 26.** 134.72 (2) (b) of the statutes is renumbered 134.72 (2), and 134.72
16 (2) (b), as renumbered, is amended to read:

17 134.72 (2) (b) Notwithstanding ~~subd. 1. par. (a)~~, a person may not make a
18 facsimile solicitation to a person who has notified the facsimile solicitor in writing
19 or by facsimile transmission that the person does not want to receive facsimile
20 solicitation.

21 **SECTION 27.** 134.72 (3) (a) of the statutes is amended to read:

22 134.72 (3) (a) *Intrastate.* This section applies to any ~~intrastate telephone~~
23 ~~solicitation~~ or intrastate facsimile solicitation.

24 **SECTION 28.** 134.72 (3) (b) of the statutes is amended to read:

