



2001 SENATE BILL 129

April 11, 2001 - Introduced by Senators ERPENBACH, BURKE, DARLING, DECKER, HANSEN and HARSDORF, cosponsored by Representatives FOTI, ZIEGELBAUER, SCHNEIDER, POCAN, RYBA, PLOUFF, MUSSER, TURNER, STASKUNAS, PETTIS, LASSA, BERCEAU, KREUSER, PLALE, PETROWSKI and GUNDERSON. Referred to Committee on Economic Development and Corrections.

1 **AN ACT** *to renumber and amend* 196.208 (11) (d); *to amend* 134.95 (2), 196.208
2 (10) (a) and 301.029 (2) (a); and *to create* 134.73, 196.208 (5p) and 196.208 (11)
3 (d) 2. of the statutes; **relating to:** contract authority of the department of
4 corrections, prisoner access to personal information of persons who are not
5 prisoners, requiring prisoners conducting telephone solicitations or answering
6 toll-free telephone numbers to identify themselves as prisoners, and providing
7 a penalty.

Analysis by the Legislative Reference Bureau

Under current law, as enacted in the 1999 biennial budget bill, the department of corrections (DOC) may not enter into any contract or other agreement if, in the performance of the contract or agreement, a prisoner would perform data entry or telemarketing services and would have access to an individual's financial transaction card numbers, checking or savings account numbers, or social security number or to any information that may identify a minor. Under the bill, DOC could not enter into a contract if the prisoner would perform data entry or telemarketing services and would have access to any personal identifying information of an individual who is not a prisoner. Personal identifying information includes such things as an individual's name, address, telephone number, driver's license number, and social security number and the numbers of certain types of bank accounts.

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This bill also creates disclosure requirements for prisoners who make telephone solicitations or answer toll-free telephone numbers. Specifically, the bill does the following:

1. Requires a prisoner who is making a telephone solicitation to do all of the following immediately after a person answers the telephone: a) state his or her name; b) state that he or she is a prisoner; and c) inform the person answering the call of the name and location of the correctional facility in which he or she is a prisoner. These requirements apply to solicitations to sell goods or services, to solicit charitable contributions, or to conduct opinion polls or surveys. In addition, the requirements apply to prisoners located in a facility outside of this state if they make telephone solicitations to persons in this state.

2. Requires a prisoner who is answering a toll-free telephone number to do all of the following immediately after answering a call to the number: a) state his or her name; b) state that he or she is a prisoner; and c) inform the caller of the name and location of the correctional facility in which he or she is a prisoner. These requirements apply to toll-free numbers used to sell goods or services or to solicit charitable contributions. In addition, the requirements apply to prisoners located in a facility outside of this state if the prisoner is answering toll-free calls made by persons in this state.

A prisoner who violates the bill's disclosure requirements is subject to a forfeiture (a civil monetary penalty) of not more than \$500, while an employer of a prisoner who is a party to a prisoner's violation of the requirements is subject to a forfeiture of not more than \$10,000. An employer may be a party to a prisoner's violation of the requirements by aiding and abetting the violation, by conspiring with a prisoner to commit the violation, or by advising, hiring, counseling, or otherwise procuring a prisoner to violate the requirements.

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.** 134.73 of the statutes is created to read:

2 **134.73 Identification of prisoner making telephone solicitation. (1)**

3 DEFINITIONS. In this section:

4 (a) "Contribution" has the meaning given in s. 440.41 (5).

5 (b) "Prisoner" means a prisoner of any public or private correctional or
6 detention facility that is located within or outside this state.

7 (c) "Solicit" has the meaning given in s. 440.41 (8).

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1 (d) "Telephone solicitation" means the unsolicited initiation of a telephone
2 conversation for any of the following purposes:

- 3 1. To encourage a person to purchase property, goods, or services.
- 4 2. To solicit a contribution from a person.
- 5 3. To conduct an opinion poll or survey.

6 **(2) REQUIREMENTS.** A prisoner who makes a telephone solicitation shall do all
7 of the following immediately after the person called answers the telephone:

8 (a) Identify himself or herself by name.

9 (b) State that he or she is a prisoner.

10 (c) Inform the person called of the name of the correctional or detention facility
11 in which he or she is a prisoner and the city and state in which the facility is located.

12 **(3) TERRITORIAL APPLICATION.** (a) *Intrastate.* This section applies to any
13 intrastate telephone solicitation.

14 (b) *Interstate.* This section applies to any interstate telephone solicitation
15 received by a person in this state.

16 **(4) PENALTIES.** (a) A prisoner who violates this section may be required to forfeit
17 not more than \$500.

18 (b) If a person who employs a prisoner to engage in telephone solicitation is
19 concerned in the commission of a violation of this section as provided under s. 134.99,
20 the person may be required to forfeit not more than \$10,000.

21 **SECTION 2.** 134.95 (2) of the statutes is amended to read:

22 134.95 **(2) SUPPLEMENTAL FORFEITURE.** If a fine or a forfeiture is imposed on a
23 person for a violation under s. 100.171, 100.173, 100.174, 100.175, 100.177, 134.71,
24 134.72, 134.73, or 134.87 or ch. 136 or a rule promulgated under these sections or that
25 chapter, the person shall be subject to a supplemental forfeiture not to exceed

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1 \$10,000 for that violation if the conduct by the defendant, for which the fine or
2 forfeiture was imposed, was perpetrated against an elderly person or disabled person
3 and if any of the factors under s. 100.264 (2) (a), (b), or (c) is present.

4 **SECTION 3.** 196.208 (5p) of the statutes is created to read:

5 196.208 (5p) TOLL-FREE CALLS ANSWERED BY PRISONERS. (a) In this subsection:

6 1. "Charitable organization" has the meaning given in s. 440.41 (1).

7 2. "Prisoner" has the meaning given in s. 134.73 (1) (b).

8 (b) If a prisoner is employed directly or indirectly by a charitable organization
9 or toll-free service vendor to answer calls made to the charitable organization or
10 toll-free service vendor, the prisoner shall do all of the following immediately upon
11 answering a call:

12 1. Identify himself or herself by name.

13 2. State that he or she is a prisoner.

14 3. Inform the calling party of the name of the correctional or detention facility
15 in which he or she is a prisoner and the city and state in which the facility is located.

16 (c) A charitable organization or toll-free service vendor that directly or
17 indirectly employs a prisoner shall provide reasonable supervision of the prisoner to
18 assure the prisoner's compliance with par. (b).

19 **SECTION 4.** 196.208 (10) (a) of the statutes is amended to read:

20 196.208 (10) (a) Subsections (2) to (5) apply to any pay-per-call service that
21 a caller may access by a call originating in this state and ~~sub. (5p) and (5t)~~
22 applies apply to any charitable organization, toll-free service vendor, or employee of
23 a charitable organization or toll-free service vendor that a caller may access by a call
24 originating in this state.

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1 **SECTION 5.** 196.208 (11) (d) of the statutes is renumbered 196.208 (11) (d) 1. and
2 amended to read:

3 196.208 (11) (d) 1. ~~Any~~ Except as provided in subd. 2., any person who violates
4 subs. (2) to (9) shall be required to forfeit not less than \$25 nor more than \$5,000 for
5 each offense.

6 3. Forfeitures under ~~this paragraph~~ subds. 1. and 2. shall be enforced by action
7 on behalf of the state by the department of justice or, upon informing the department
8 of justice, by the district attorney of the county where the violation occurs.

9 **SECTION 6.** 196.208 (11) (d) 2. of the statutes is created to read:

10 196.208 (11) (d) 2. a. A prisoner who violates sub. (5p) (b) may be required to
11 forfeit not more than \$500.

12 b. A person who employs a prisoner to answer calls made to a toll-free
13 telephone number may be required to forfeit not more than \$10,000 if the person
14 violates sub. (5p) (c), aids and abets a prisoner's violation of sub. (5p) (b), is a party
15 to a conspiracy with a prisoner to commit a violation of sub. (5p) (b), or advises, hires,
16 or counsels or otherwise procures a prisoner to commit a violation of sub. (5p) (b).

17 **SECTION 7.** 301.029 (2) (a) of the statutes is amended to read:

18 301.029 (2) (a) The department may not enter into any contract or other
19 agreement if, in the performance of the contract or agreement, a prisoner would
20 perform data entry or telemarketing services and have access to an individual's
21 financial transaction card numbers, checking or savings account numbers; or social
22 security number or to any personal identifying information, as defined in s. 943.201
23 (1) (b), of an individual who is not a prisoner.

24 **SECTION 8. Initial applicability.**

