



2011 ASSEMBLY BILL 634

February 24, 2012 - Introduced by Representatives RIPP, JACQUE, TRANEL, SPANBAUER, WYNN, MARKLEIN and BIES, cosponsored by Senator HOLPERIN. Referred to Committee on Consumer Protection and Personal Privacy.

1 **AN ACT** *to repeal* 100.52 (1) (e) and 100.52 (2); *to renumber* 100.52 (3) (b) and
2 100.52 (9); *to renumber and amend* 100.52 (3) (a); *to amend* 20.115 (1) (im),
3 20.115 (8) (jm), 100.52 (4) (a) 2., 100.52 (4) (b) 1. and 100.55 (3) (b) 3.; *to repeal*
4 *and recreate* 100.52 (9) (title); and *to create* 100.52 (1) (c), 100.52 (1) (fm),
5 100.52 (1m), 100.52 (4) (b) 3., 100.52 (8) and 100.52 (9) (a) of the statutes;
6 **relating to:** the prohibition on telephone solicitations to residential customers,
7 granting rule-making authority, and making an appropriation.

Analysis by the Legislative Reference Bureau

Current law regulates “telephone solicitation,” which is defined as the unsolicited initiation of a telephone conversation for the purpose of encouraging the recipient of the telephone call to purchase property, goods, or services. Current law generally prohibits a telephone solicitor, or employee or contractor of a telephone solicitor, from making a telephone solicitation to a residential customer if the customer’s landline or wireless telephone number is included in a nonsolicitation directory maintained by the Department of Agriculture, Trade and Consumer Protection (DATCP), which lists residential customers who do not wish to receive telephone solicitations. Current law exempts the following from the prohibition: 1) telephone solicitations made by nonprofit organizations; 2) telephone solicitations made in response to a recipient’s request; and 3) telephone solicitations made to

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current clients of the person selling property, goods, or services that are the reason for the solicitation. Current law requires DATCP to promulgate rules requiring that telephone solicitors register with DATCP and pay initial registration and annual registration renewal fees to DATCP, which DATCP must use for establishing and maintaining the nonsolicitation directory, as well as for consumer protection, information, and education. Current law prohibits a telephone solicitor who is not registered from requiring that employees or contractors make telephone solicitations in this state. Current law also provides that if a residential customer does not biennially renew his or her listing in the nonsolicitation directory, DATCP must eliminate the customer's telephone number from the directory.

Federal law also regulates telephone solicitations by authorizing the Federal Trade Commission (FTC) to prohibit deceptive and abusive telemarketing acts or practices. Under that authority, the FTC has promulgated a regulation that, with certain exceptions, prohibits a telemarketer from initiating a telephone call encouraging the purchase of goods or services if the recipient's telephone number is on a national "do-not-call" registry maintained by the FTC that consists of the telephone numbers of persons who do not wish to receive such calls. One of the exceptions applies to telemarketing calls to businesses. Federal law requires telemarketers to pay annual fees in order to access the registry. The FTC allows a person to add a landline or wireless telephone number to the registry through a toll-free number or over the Internet. Under federal law, inclusion of a telephone number in the registry is permanent and a person is not required to periodically renew the inclusion. However, a person may remove a telephone number from the registry and the FTC must periodically review the registry and remove telephone numbers that have been disconnected or reassigned to another person.

This bill eliminates the state's nonsolicitation directory and instead prohibits a telephone solicitor, or employee or contractor of a telephone solicitor, from making a telephone solicitation, as defined under current state law, to a landline or wireless telephone number that is included on a "state do-not-call registry," which the bill defines as the portion of the national do-not-call registry that consists of telephone numbers with Wisconsin area codes. The bill allows DATCP to cooperate with the FTC to add telephone numbers that were in the state's nonsolicitation directory to the national do-not-call registry. The bill's prohibition is subject to the same exemptions as the prohibition under current state law. The bill requires DATCP to publicize the procedures for a residential customer to add a telephone number to the national do-not-call registry.

The bill also provides that the initial registration and annual registration renewal fees that are paid by telephone solicitors must be used for DATCP's administration and enforcement of the requirements applicable to telephone solicitors, as well as for consumer protection, information, and education. The bill allows DATCP to base the amount of a fee that a telephone solicitor must pay on a methodology established by rule, in addition to basing the amount on the number of telephone lines used by the telephone solicitor to make solicitations, which is the basis allowed under current law. In addition, the bill requires that DATCP's rules require a telephone solicitor to provide DATCP with proof that the telephone solicitor

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has complied with federal law in obtaining copies or updated versions of the state do-not-call registry. The proof must be provided upon initial registration and annual renewal, as well as any other time upon DATCP's request. Finally, the bill prohibits a telephone solicitor from using or possessing a copy or updated version of the state do-not-call registry that the telephone solicitor has obtained in violation of federal law.

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 (1) (im) of the statutes is amended to read:

2 20.115 (1) (im) *Consumer protection; telephone solicitor fees.* The amounts in
3 the schedule from telephone solicitor registration and registration renewal fees paid
4 under the rules promulgated under s. 100.52 (3) (a), for consumer protection and
5 consumer information and education.

6 **SECTION 2.** 20.115 (8) (jm) of the statutes is amended to read:

7 20.115 (8) (jm) *Telephone solicitation regulation.* All moneys received from
8 telephone solicitor registration and registration renewal fees paid under the rules
9 promulgated under s. 100.52 (3) (a) not appropriated under sub. (1) (im) for
10 ~~establishing and maintaining the nonsolicitation directory under~~ administering and
11 enforcing s. 100.52 (2).

12 **SECTION 3.** 100.52 (1) (c) of the statutes is created to read:

13 100.52 (1) (c) "National do-not-call registry" means the national database
14 established by the federal trade commission under 47 USC 227 (c) (3) that consists
15 of telephone numbers of residential customers who object to receiving telephone
16 solicitations.

17 **SECTION 4.** 100.52 (1) (e) of the statutes is repealed.

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

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1 100.52 (1) (fm) “State do-not-call registry” means the portion of the national
2 do-not-call registry that consists of telephone numbers with Wisconsin area codes.

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

4 100.52 (1m) NATIONAL DO-NOT-CALL REGISTRY. The department may cooperate
5 with the federal trade commission to add telephone numbers included in the
6 nonsolicitation directory, as defined in s. 100.52 (1) (e), 2009 stats., to the national
7 do-not-call registry.

8 **SECTION 7.** 100.52 (2) of the statutes is repealed.

9 **SECTION 8.** 100.52 (3) (a) of the statutes is renumbered 100.52 (3) and amended
10 to read:

11 100.52 (3) REGISTRATION OF TELEPHONE SOLICITORS. The department shall
12 promulgate rules that require any telephone solicitor who requires an employee or
13 contractor to make a telephone solicitation to a residential customer in this state to
14 register with the department, obtain a registration number from the department,
15 and pay ~~a~~ an initial registration fee and an annual registration renewal fee to the
16 department. ~~The amount of the registration fee shall be based on the cost of~~
17 ~~establishing the nonsolicitation directory, and the amount that an individual~~
18 ~~telephone solicitor is required to pay shall be based on the number of telephone lines~~
19 ~~used by the telephone solicitor to make telephone solicitations~~ or some other
20 methodology established by the department by rule. The rules shall also require a
21 telephone solicitor that registers with the department to ~~pay an annual registration~~
22 ~~renewal fee to the department,~~ at the time of initial registration, the time of annual
23 renewal, and any other time upon request of the department, provide the department
24 with proof that the telephone solicitor has complied with federal law in obtaining
25 copies and updated versions of the state do-not-call registry. The amount of the

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1 registration renewal fee fees shall be based on the ~~cost of maintaining the~~
2 ~~nonsolicitation directory~~ amount required to administer and enforce this section and
3 to provide the amounts appropriated under s. 20.115 (1) (im).

4 **SECTION 9.** 100.52 (3) (b) of the statutes is renumbered 100.52 (4) (d).

5 **SECTION 10.** 100.52 (4) (a) 2. of the statutes is amended to read:

6 100.52 (4) (a) 2. Make a telephone solicitation to a residential customer if the
7 ~~nonsolicitation directory that is provided or made available to the telephone solicitor~~
8 ~~under sub. (2) (d) includes a listing for the residential customer~~ telephone number
9 that, at the time the solicitation is made, is listed on the state do-not-call registry.

10 **SECTION 11.** 100.52 (4) (b) 1. of the statutes is amended to read:

11 100.52 (4) (b) 1. Require an employee or contractor to make a telephone
12 solicitation to a person in this state unless the telephone solicitor is registered with
13 the department under the rules promulgated under sub. (3) (a).

14 **SECTION 12.** 100.52 (4) (b) 3. of the statutes is created to read:

15 100.52 (4) (b) 3. Use or possess a copy or updated version of the state
16 do-not-call registry that the telephone solicitor has obtained in violation of federal
17 law.

18 **SECTION 13.** 100.52 (8) of the statutes is created to read:

19 100.52 (8) RULES. The department may promulgate rules to administer and
20 enforce this section.

21 **SECTION 14.** 100.52 (9) (title) of the statutes is repealed and recreated to read:

22 100.52 (9) (title) DEPARTMENT DUTIES.

23 **SECTION 15.** 100.52 (9) of the statutes is renumbered 100.52 (9) (b).

24 **SECTION 16.** 100.52 (9) (a) of the statutes is created to read:

