

1999 ASSEMBLY BILL 715

February 3, 2000 – Introduced by Representatives WARD, BOCK, DUFF, HAHN, KESTELL, OWENS, POWERS, SPILLNER and URBAN, cosponsored by Senators DARLING and ROSENZWEIG. Referred to Committee on Judiciary and Personal Privacy.

1 **AN ACT to renumber** 134.72 (1) (a); **to renumber and amend** 134.72 (4); **to**
2 **amend** 134.72 (2) (b) 2., 767.265 (2r) and 968.01 (1); and **to create** 20.115 (8)
3 (jm), 134.72 (1) (ag), 134.72 (1) (bg), 134.72 (1) (br), 134.72 (1g), 134.72 (1r),
4 134.72 (2) (b) 3., 134.72 (2) (b) 4. and 134.72 (4) (b) of the statutes; **relating to:**
5 prohibiting certain facsimile solicitations, requiring registration of facsimile
6 solicitors, requiring the exercise of rule-making authority, making an
7 appropriation and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a person who sends facsimile solicitations is subject to two prohibitions. “Facsimile solicitation” is defined as the unsolicited transmission of a document by a facsimile machine for the purpose of encouraging the recipient to make purchases. Under the first prohibition, a person may not make a facsimile solicitation if the recipient has notified the person in writing or by facsimile transmission that the recipient does not want to receive facsimile solicitations. Second, if a recipient has not made the notification required under the first prohibition, a person may not send a facsimile solicitation without the recipient’s consent unless all of the following apply: 1) the facsimile solicitation does not exceed one page in length; 2) the facsimile solicitation is received by the recipient after 9 p.m. and before 6 a.m.; and 3) the person making the facsimile solicitation has had a previous business relationship with the recipient.

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This bill changes the first prohibition by requiring the department of agriculture, trade and consumer protection (DATCP) to establish a nonsolicitation directory that includes listings for persons who do not wish to receive facsimile solicitations. The bill requires DATCP to promulgate rules establishing requirements and procedures for a person to request a listing in the directory. DATCP must provide copies of the directory to the public free of charge and must also make the directory available to the public in a manner that facilitates public access to the directory. Under the first prohibition, as affected by the bill, a person may not make a facsimile solicitation to a recipient if the directory that is available to the public at the time of solicitation includes a listing for the recipient. The bill eliminates the requirement under the first prohibition that a recipient must notify a person that the recipient does not want to receive facsimile solicitations.

This bill also requires DATCP to promulgate rules that require a facsimile solicitor to register annually with DATCP and pay an annual registration fee. “Facsimile solicitor” is defined as a person that employs an individual to make a facsimile solicitation. The amount of the registration fee must be based on the cost for DATCP to establish and maintain the nonsolicitation directory. The bill prohibits a facsimile solicitor that is not registered from requiring an employe to make a facsimile solicitation to a recipient in this state.

A facsimile solicitor who violates the bill’s prohibitions is subject to a forfeiture of up to \$10,000. A facsimile solicitor is also subject to this forfeiture amount if the facsimile solicitor requires an employe to violate the first prohibition, as affected by the bill, or the second prohibition, which is not affected by the bill.

For further information see the *state and local* 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) *Facsimile solicitation regulation.* All moneys received from
- 3 facsimile solicitor registration fees paid under the rules promulgated under s. 134.72
- 4 (1r) for establishing and maintaining the nonsolicitation directory under s. 134.72
- 5 (1g).
- 6 **SECTION 2.** 134.72 (1) (a) of the statutes is renumbered 134.72 (1) (ar).
- 7 **SECTION 3.** 134.72 (1) (ag) of the statutes is created to read:

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1 134.72 (1) (ag) “Department” means the department of agriculture, trade and
2 consumer protection.

3 **SECTION 4.** 134.72 (1) (bg) of the statutes is created to read:

4 134.72 (1) (bg) “Facsimile solicitor” means a person that employs an individual
5 to make a facsimile solicitation.

6 **SECTION 5.** 134.72 (1) (br) of the statutes is created to read:

7 134.72 (1) (br) “Nonsolicitation directory” means the directory established in
8 rules promulgated by the department under sub. (1g) (b).

9 **SECTION 6.** 134.72 (1g) of the statutes is created to read:

10 134.72 (1g) NONSOLICITATION DIRECTORY LISTING. (a) Upon a request by any
11 person, the department shall include in the nonsolicitation directory a listing
12 indicating that the person does not want to receive any facsimile solicitation.

13 (b) The department shall promulgate rules establishing a directory that
14 includes listings of persons who do not wish to receive facsimile solicitations. The
15 rules promulgated under this paragraph shall establish requirements and
16 procedures for a person to request a listing in the directory.

17 (c) The department shall provide copies of the nonsolicitation directory to the
18 public free of charge and make the nonsolicitation directory available to the public
19 in a manner that, as determined by the department, facilitates public access to the
20 directory.

21 **SECTION 7.** 134.72 (1r) of the statutes is created to read:

22 134.72 (1r) REGISTRATION OF FACSIMILE SOLICITORS. The department shall
23 promulgate rules that require any facsimile solicitor who requires an employe to
24 make a facsimile solicitation to a person in this state to register with the department
25 on an annual basis and pay an annual registration fee to the department. The

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1 amount of the registration fee shall be based on the cost of establishing and
2 maintaining the nonsolicitation directory.

3 **SECTION 8.** 134.72 (2) (b) 2. of the statutes is amended to read:

4 134.72 (2) (b) 2. Notwithstanding subd. 1., a person may not make a facsimile
5 solicitation to a person who has notified the facsimile solicitor in writing or by
6 facsimile transmission that the person does not want to receive facsimile solicitation
7 if the nonsolicitation directory that is available to the public at the time of the
8 facsimile solicitation includes a listing for the person.

9 **SECTION 9.** 134.72 (2) (b) 3. of the statutes is created to read:

10 134.72 (2) (b) 3. A facsimile solicitor may not require an employe to make a
11 facsimile solicitation to a person in this state unless the facsimile solicitor is
12 registered with the department under the rules promulgated under sub. (1r).

13 **SECTION 10.** 134.72 (2) (b) 4. of the statutes is created to read:

14 134.72 (2) (b) 4. A facsimile solicitor may not require an employe to make a
15 facsimile solicitation that violates subd. 1. or 2.

16 **SECTION 11.** 134.72 (4) of the statutes is renumbered 134.72 (4) (a) and
17 amended to read:

18 134.72 (4) (a) ~~A~~ Except as provided in par. (b), a person who violates this
19 section may forfeit up to not more than \$500.

20 **SECTION 12.** 134.72 (4) (b) of the statutes is created to read:

21 134.72 (4) (b) A facsimile solicitor that violates sub. (2) (b) 3. or 4. may forfeit
22 not more than \$10,000.

23 **SECTION 13.** 767.265 (2r) of the statutes, as affected by 1999 Wisconsin Act 9,
24 is amended to read:

