

1999 SENATE BILL 375

February 8, 2000 – Introduced by Senator DARLING, by request of Lieutenant Governor Scott McCallum. Referred to Joint survey committee on Tax Exemptions.

1 **AN ACT to amend** 77.51 (21m); and **to create** chapter 141 of the statutes;
2 **relating to:** certain electronic mail solicitations, representations and chain
3 letters, collection of certain information from visitors to Internet Web sites, a
4 sales tax and use tax exemption for providing access to, or use of, the Internet
5 and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill prohibits certain types of electronic mail messages and creates requirements regarding certain information that is obtained by persons that maintain Web sites on the Internet. The bill also creates a sales tax exemption for Internet access services.

Electronic mail prohibitions

The bill prohibits the user of an electronic mail service from sending an electronic mail solicitation or chain letter that uses the service provider's equipment in a manner that violates the provider's solicitation or chain letter policy. "Electronic mail solicitation" is defined as an electronic mail message sent to encourage a person to purchase property, goods or services or to visit a Web site on the Internet. "Chain letter" is defined as an electronic mail message sent to more than one recipient that requests each recipient to send copies of the message to other recipients. The bill also prohibits any person from sending an electronic mail message or chain letter to an Internet user that uses the equipment of the Internet user's electronic mail service

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provider in a manner that violates the provider's solicitation or chain letter policy. The bill defines "Internet user" as a person that maintains an electronic mail address with an electronic service provider.

The above prohibitions apply only if the electronic mail service provider displays the solicitation or chain letter policy on the home page of its Internet Web site and makes printed copies of the policy available at no charge. The bill provides for damages for an electronic mail service provider that is injured by a person who violates either prohibition more than 30 days after the policy is displayed on the home page. If such an injury occurs, the electronic mail service provider is entitled to the greater of: 1) the amount of actual damages; 2) \$15,000; or 3) \$50 for each electronic mail solicitation or chain letter that violates the policy.

The bill also prohibits a person from sending an electronic mail solicitation unless the person includes with the solicitation a return electronic mail address or notice of a toll-free telephone number that the recipient may use to notify the person that the recipient does not want to receive solicitations. If the recipient provides such notice to the person, the bill prohibits the person from sending another solicitation to the recipient. The bill requires the department of agriculture, trade and consumer protection (DATCP) to investigate complaints about persons that violate this prohibition, and allows DATCP or any district attorney to bring an action on behalf of the state for an injunction or other relief. In addition, a person that violates the prohibition may forfeit no more than \$10 for each solicitation that violates the prohibition, subject to a maximum forfeiture of \$1,000 per day in which a violation occurs.

In addition, the bill prohibits a person from knowingly sending an electronic mail message that represents either of the following: 1) that the message is from another person without the consent of that person; or 2) that the message is from an Internet domain name without the consent of the person that registered the name. The bill defines "Internet domain name" as a name identifying a person's Internet address that the person has registered with organization that assigns and maintains names for Internet addresses. A person that violates this prohibition may be fined not more than \$10,000, imprisoned for not more than two years, or both. For a second violation, the length of imprisonment increases to no more than five years.

Web site requirements

The bill imposes certain requirements on persons that maintain Web sites for purposes of doing business in this state. First, such a person may not disclose, in exchange for money or anything else of value, information about a state resident that is obtained from the resident's use of the Internet, unless the resident consents to the disclosure. Second, such a person may not request a child to provide information to the person through the Internet that includes personal information about the child, unless the person makes a reasonable effort to obtain the consent of the child's parent or legal guardian. The bill defines "reasonable effort to obtain consent" to include requiring the parent or guardian to mail or send a facsimile consent form, provide a credit card number or provide an electronic signature. A person that violates these prohibitions may forfeit no more than \$10,000 for each violation. In addition, the bill

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allows the department of justice to commence an action for an injunction to restrain a violation.

The bill also requires a person that maintains a Web site for purposes of doing business in this state to display a notice on the home page of the Web site that describes any information that the person collects about visitors to the Web site, including any information that is sold or provided to third parties. If the person sells or provides information to third parties, the person must allow a visitor to the Web site to notify the person whether or not the visitor consents to the sale or provision of information. If a visitor notifies the person that the person does not consent, the person may not sell or provide the information. A person that violates any of these requirements may forfeit no more than \$10,000.

Sales tax exemption

Finally, the bill creates a sales tax exemption for providing access to the Internet.

This bill will be referred to the joint survey committee on tax exemptions for a detailed analysis, which will be printed as an appendix to this 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.** 77.51 (21m) of the statutes is amended to read:
2 77.51 **(21m)** “Telecommunications services” means sending messages and
3 information transmitted through the use of local, toll and wide-area telephone
4 service; channel services; telegraph services; teletypewriter; computer exchange
5 services; cellular mobile telecommunications service; specialized mobile radio;
6 stationary two-way radio; paging service; or any other form of mobile and portable
7 one-way or two-way communications; or any other transmission of messages or
8 information by electronic or similar means between or among points by wire, cable,
9 fiber optics, laser, microwave, radio, satellite or similar facilities.
10 “Telecommunications services” does not include sending collect telecommunications
11 that are received outside of the state. In this subsection, “computer exchange
12 services” does not include providing access to or use of the Internet. In this

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1 subsection, “Internet” means interconnecting networks that are connected to
2 network access points by telecommunications services.

3 **SECTION 2.** Chapter 141 of the statutes is created to read:

4 **CHAPTER 141**

5 **INTERNET TRANSACTIONS**

6 **141.01 Definitions.** In this chapter:

7 **(1)** “Child” means a resident who is less than 15 years of age.

8 **(1g)** “Department” means the department of agriculture, trade and consumer
9 protection.

10 **(1m)** “Display on a home page” means to display in written form on a home page
11 or at an Internet address that is readily accessible through a link on a home page.

12 **(1s)** “Electronic chain letter” means an electronic mail message that is sent to
13 more than one recipient with a request that each recipient send copies of the message
14 to other recipients.

15 **(2)** “Electronic mail service provider” means any person that is an intermediary
16 in sending or receiving electronic mail and that provides to Internet users the ability
17 to send or receive electronic mail.

18 **(3)** “Electronic mail solicitation” means an electronic mail message that is sent
19 for the purpose of encouraging a person to purchase property, goods or services or to
20 visit a Web site.

21 **(4)** “Home page” means the first page of a Web site that is displayed when a
22 person visits the computer address of the Web site.

23 **(5)** “Internet domain name” means a name identifying the Internet address of
24 a person on the Internet that the person has registered with an organization that
25 assigns and maintains names for Internet addresses, including the Internet

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1 Network Information Center, the U.S. Domain Name Registration Services or any
2 successor organization.

3 (6) “Internet user” means a person that maintains an electronic mail address
4 with an electronic mail service provider.

5 (7) “Public Web site” means a Web site that is accessible at no charge to a person
6 who visits the site.

7 (8) “Resident” means an individual who is a resident of this state.

8 (9) “Send” means to initiate the transmission of an electronic mail message, but
9 does not include any transmission of the message by an electronic mail service
10 provider.

11 (10) “Solicitation or chain letter policy” means the policy of an electronic mail
12 service provider regarding the sending of electronic mail solicitations or electronic
13 chain letters by or to the provider’s Internet users.

14 (11) “Web site” means a collection of related computer files on the Internet that
15 is located at an Internet address.

16 **141.02 Electronic mail. (1) SOLICITATION OR CHAIN LETTER POLICY VIOLATIONS.**

17 (a) Subject to par. (b):

18 1. No Internet user of an electronic mail service provider may send an electronic
19 mail solicitation or electronic chain letter that uses the equipment of the provider in
20 a manner that violates the provider’s solicitation or chain letter policy.

21 2. No person may send an electronic mail solicitation or electronic chain letter
22 to an Internet user that uses the equipment of the Internet user’s electronic mail
23 service provider in a manner that violates the provider’s solicitation or chain letter
24 policy.

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1 (b) The prohibitions under par. (a) apply only to a solicitation or chain letter
2 policy that an electronic mail service provider displays on the home page of the
3 provider's Web site and makes available in printed form at no charge upon request.

4 (c) An electronic mail service provider who is injured by a violation of par. (a)
5 that occurs more than 30 days after the solicitation or chain letter policy is displayed
6 on the provider's home page may bring an action against the person who violated par.
7 (a) and is entitled to each of the following:

8 1. The greater of the amount of actual damages, \$15,000 or an amount equal
9 to \$50 for each electronic mail solicitation or electronic chain letter that uses the
10 provider's equipment in a manner that violates the provider's solicitation or chain
11 letter policy.

12 2. Notwithstanding s. 814.04, costs, disbursements and reasonable attorney
13 fees.

14 **(1m)** ELECTRONIC MAIL SOLICITATIONS. (a) No person may send an electronic mail
15 solicitation unless the person includes with the solicitation a return electronic mail
16 address or notice of a toll-free telephone number that the recipient of the solicitation
17 may use to notify the person that the recipient does not want to receive electronic
18 mail solicitations.

19 (b) If a recipient of an electronic mail solicitation uses a return electronic mail
20 address or toll-free telephone number specified in par. (a) to notify the person that
21 sent the electronic mail solicitation that the recipient does not want to receive an
22 electronic mail solicitation, the person may not send another electronic mail
23 solicitation to the recipient. A recipient who receives an electronic mail solicitation
24 that violates this paragraph may complain to the department.

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1 (c) The department shall investigate each complaint concerning a violation of
2 par. (b). The department or any district attorney may on behalf of the state bring an
3 action for temporary or permanent injunctive or other relief for any violation of par.
4 (b) or for the penalties specified in par. (d) or for both.

5 (d) Any person who violates par. (b) may be required to forfeit not more than
6 \$10 for each electronic mail solicitation that violates par. (b), subject to a maximum
7 forfeiture of \$1,000 for each day in which a violation occurs.

8 **(2) PROHIBITED REPRESENTATIONS.** No person may knowingly send an electronic
9 mail message that represents that the message is from another person without the
10 consent of that person or that represents that the message is from an Internet
11 domain name without the consent of the person who has registered the name.
12 Whoever violates this subsection may be fined not more than \$10,000 or imprisoned
13 for not more than 2 years or both. For a 2nd or subsequent violation of this
14 subsection, a person may be fined not more than \$10,000 or imprisoned for not more
15 than 5 years or both.

16 **141.03 Internet privacy. (1) CONSENT REQUIRED.** (a) A person that maintains
17 a Web site for the purpose of doing business in this state may not disclose to another
18 person, for money or anything else of value, any information about a resident that
19 is obtained from the resident's use of the Internet, including from an electronic mail
20 message sent by the resident, without the consent of the resident.

21 (b) A person that maintains a Web site for the purpose of doing business in this
22 state may not request a child to provide information through the Internet to the
23 person that includes personal information about the child without making a
24 reasonable effort to obtain the consent of the child's parent or legal guardian. For
25 purposes of this paragraph, a "reasonable effort to obtain consent" includes requiring

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1 a child's parent or guardian to mail or send a facsimile consent form to the person,
2 provide a credit card number to the person or provide an electronic signature, as
3 defined in s. 137.04 (2), to the person.

4 (c) A person who violates par. (a) or (b) may be required to forfeit not more than
5 \$10,000 for each violation. Each disclosure of or request for information about one
6 resident or child constitutes a separate violation.

7 (d) The department of justice may commence an action in circuit court in the
8 name of the state to restrain by temporary or permanent injunction any act or
9 practice constituting a violation of par. (a) or (b).

10 **(2) WEB SITE ACCESS.** (a) A person that maintains a Web site for the purpose
11 of doing business in this state shall do each of the following:

12 1. Display a notice on the home page of the Web site that states whether the
13 person collects any information about visitors to the Web site and that describes any
14 information that is collected and the purposes for which it is collected, including a
15 description of any information that is sold or provided to 3rd parties. A notice
16 required under this paragraph shall be in an easily comprehensible format.

17 2. If the person sells or provides information about visitors to the Web site to
18 3rd parties, allow a visitor to notify the person, at the time that the visitor visits the
19 Web site, whether or not the visitor consents to the sale or provision of such
20 information.

21 (b) If a visitor notifies a person under par. (a) that the visitor does not consent
22 to the sale or provision of information specified in par. (a), the person may not sell
23 or provide the information to 3rd parties.

24 (c) For purposes of par. (a), a person does not maintain a Web site for the
25 purpose of doing business in this state if the person's involvement with the Web site

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1 is limited only to providing access to the Internet to another person that maintains
2 the Web site for the purpose of doing business in this state.

3 (d) A person who violates par. (a) or (b) may be required to forfeit not more than
4 \$10,000 for each violation.

5 **SECTION 3. Initial applicability.**

6 (1) The treatment of section 141.02 (1) (a), (1m) and (2) of the statutes first
7 applies to electronic mail messages sent on the effective date of this subsection.

8 (2) The treatment of section 141.03 (1) (a) of the statutes first applies to
9 disclosures made on the effective date of this subsection.

10 (3) The treatment of section 141.03 (1) (b) of the statutes first applies to
11 requests made on the effective date of this subsection.

12 **SECTION 4. Effective date.**

13 (1) This act takes effect on the first day of the 6th month beginning after
14 publication.

15 (END)