

1999 BILL

1 **AN ACT to renumber 134.72 (1) (a); to amend 134.72 (title), 134.72 (3) (a), 134.72**
2 **(3) (b), 767.265 (2r) and 968.01 (1); to repeal and recreate 767.265 (2r); and**
3 **to create 134.72 (1) (ag) and 134.72 (2) (c) of the statutes; relating to:**
4 **unsolicited messages transmitted by electronic mail.**

Analysis by the Legislative Reference Bureau

Current law restricts the transmittal of unsolicited documents by facsimile machine that encourage persons to purchase property, goods or services. These restrictions prohibit the transmittal of unsolicited documents that are more than one page to persons with whom the person sending the documents has not had a prior business relationship.

This bill expands this coverage to include the transmittal of unsolicited messages by electronic mail.

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:

5 **SECTION 1.** 134.72 (title) of the statutes is amended to read:

BILL

1 **134.72 (title) Prohibition of certain unsolicited messages by telephone**
2 **or facsimile machine and documents.**

3 **SECTION 2.** 134.72 (1) (a) of the statutes is renumbered 134.72 (1) (am).

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

5 134.72 (1) (ag) ^{141.01 (1)} "Electronic mail solicitation" means the unsolicited
6 transmission of a message by electronic mail for the purpose of encouraging a person
7 to purchase property, goods or services.

8 **SECTION 4.** 134.72 (2) (c) of the statutes is created to read:

9 134.72 (2) (c) *Electronic mail solicitation.* 1. A person may not make an
10 electronic mail solicitation without the consent of the person solicited unless all of
11 the following apply:

12 a. The message transmitted, if printed, does not exceed one page in length and
13 is received by the person solicited after 9 p.m. and before 6 a.m.

14 b. The person making the electronic mail solicitation has had a previous
15 business relationship with the person solicited.

16 2. Notwithstanding subd. 1., a person may not make a electronic mail
17 solicitation to a person who has notified the solicitor in writing or by electronic mail
18 that the person does not want to receive an electronic mail solicitation.

19 **SECTION 5.** 134.72 (3) (a) of the statutes is amended to read:

20 134.72 (3) (a) *Intrastate.* This section applies to any intrastate telephone
21 solicitation ~~or~~, intrastate facsimile solicitation or intrastate electronic mail
22 solicitation.

23 **SECTION 6.** 134.72 (3) (b) of the statutes is amended to read:

BILL

1 134.72 (3) (b) *Interstate*. This section applies to any ~~interstate telephone~~
2 solicitation, ~~or interstate facsimile solicitation~~, received by a person in this state that
3 is a telephone solicitation, a facsimile solicitation or an electronic mail solicitation.

4 **SECTION 7.** 767.265 (2r) of the statutes is amended to read:

5 767.265 (2r) Upon entry of each order for child support, maintenance, family
6 support or support by a spouse and upon approval of each stipulation for child
7 support, unless the court finds that income withholding is likely to cause the payer
8 irreparable harm or unless s. 767.267 applies, the court shall provide notice of the
9 assignment by regular mail or by facsimile machine, as defined in s. 134.72 (1) (a)
10 (am), or other electronic means to the last-known address of the person from whom
11 the payer receives or will receive money. The notice shall provide that the amount
12 withheld may not exceed the maximum amount that is subject to garnishment under
13 15 USC 1673 (b) (2). If the clerk of court or support collection designee, whichever
14 is appropriate, does not receive the money from the person notified, the court shall
15 provide notice of the assignment to any other person from whom the payer receives
16 or will receive money. Notice under this subsection may be a notice of the court, a
17 copy of the executed assignment or a copy of that part of the court order directing
18 payment.

19 **SECTION 8.** 767.265 (2r) of the statutes, as affected by 1997 Wisconsin Act 191
20 and 1999 Wisconsin Act (this act), is repealed and recreated to read:

21 767.265 (2r) Upon entry of each order for child support, maintenance, family
22 support or support by a spouse and upon approval of each stipulation for child
23 support, unless the court finds that income withholding is likely to cause the payer
24 irreparable harm or unless s. 767.267 applies, the court, family court commissioner
25 or county child support agency under s. 59.53 (5) shall provide notice of the

BILL

1 assignment by regular mail or by facsimile machine, as defined in s. 134.72 (1) (am),
2 or other electronic means to the last-known address of the person from whom the
3 payer receives or will receive money. The notice shall provide that the amount
4 withheld may not exceed the maximum amount that is subject to garnishment under
5 15 USC 1673 (b) (2). If the department or its designee, whichever is appropriate, does
6 not receive the money from the person notified, the court, family court commissioner
7 or county child support agency under s. 59.53 (5) shall provide notice of the
8 assignment to any other person from whom the payer receives or will receive money.
9 Notice under this subsection may be a notice of the court, a copy of the executed
10 assignment or a copy of that part of the court order directing payment.

11 **SECTION 9.** 968.01 (1) of the statutes is amended to read:

12 968.01 (1) "Facsimile machine" has the meaning given in s. 134.72 (1) (a) (am).

13 **SECTION 10. Effective dates.** This act takes effect on the day after publication,
14 except as follows:

15 (1) The repeal and recreation of section 767.265 (2r) of the statutes takes effect
16 on October 1, 1999, or on the date stated in the notice published by the department
17 of workforce development in the Wisconsin Administrative Register under section
18 767.29 (1) (f) of the statutes, whichever is earlier.

19 (END)



O-NOTE

due
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jlg

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

INSEAT 1-5 ✓

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AN ACT ...; relating to: certain electronic mail solicitations and representations,
collection of certain information from visitors to internet web ^{sites} ~~sites~~, a sales tax
and use tax exemption for providing access to, or use of, the internet and
providing a penalty. ✓

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be prepared for a subsequent version.

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:

SECTION 1. Chapter 141 [✓] of the statutes is created to read:

CHAPTER 141

INTERNET TRANSACTIONS

1 **141.01 Definitions.** In this[✓] chapter:

2 (1) "Child" means a resident who is less than 12[✓] years of age.

3 (3) (4) (1m) "Display on a home page" means to display in written form on a home page or
4 at an internet address that is readily accessible through a link on a home page.

5 (2) "Electronic mail service provider"[✓] means a person that provides a[✓] registered
6 user with an electronic mail address for transmitting electronic mail through
7 equipment located in this state and that is an intermediary in the transmission of
8 the mail.

9 (3) "Electronic mail solicitation"[✓] means an unsolicited electronic mail message
10 that is sent for the purpose of encouraging a person to purchase property, goods or
11 services.

12 (8) (5) "Internet domain name" means a name identifying the internet address of
13 a person on the[✓] World Wide Web that the person has registered with an organization
14 that assigns and maintains names for internet addresses, including the Internet
15 Network Information Center, the US^o Domain Name Registration Services or any
16 successor organization.

17 (3) (4) "Home page" means the first page of a web site that is displayed when a
18 person visits the computer address of the web site.

19 (6) "Public web site" means a web site that is accessible at no charge to a person
20 who visits the site.

21 (7) "Registered user" means a person that maintains an electronic mail address
22 with an electronic mail service provider.

23 (8) "Resident" means an individual who is a resident of this state.

1 (9) "Send" means to initiate the transmission of an electronic mail message, but
2 does not include any transmission of the message by an ✓ electronic mail service
3 provider.

4 (10) "Solicitation policy" means the policy of an electronic mail service provider
5 regarding the sending of ✓ electronic mail solicitations by or to the provider's
6 ✓ registered users.

7 (11) "Web site" means a collection of related computer files on the World Wide
8 Web that is located at an internet address.

9 (12) "World Wide Web" means all the resources and users on the internet that
10 use the hypertext transport protocol.

11 **141.02 Electronic mail. (1) SOLICITATION POLICY VIOLATIONS.** (a) Subject to
12 par. ✓ (b):

13 1. No registered user of electronic mail service provider may send an electronic
14 mail solicitation that uses the equipment of the provider in a manner that violates
15 the provider's solicitation policy.

16 2. No person may send an electronic mail solicitation to a registered user that
17 uses the equipment of the registered user's electronic mail service provider in a
18 manner that violates the provider's solicitation policy.

19 (b) The prohibitions under par. (a) ✓ apply only to a solicitation policy that an
20 electronic mail service provider displays on the home page of the provider's web site
21 and makes available in printed form at no charge upon request.

22 (c) An electronic mail service provider who is injured by a violation of ✓ par. (a)
23 that occurs more than 30 days after the solicitation policy is displayed on the
24 provider's home page may bring an action against the person who violated par. (a)
25 and is entitled to each of the following:

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

4 2. Notwithstanding s. 814.04, costs, disbursements and reasonable attorney
5 fees.

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

14 **141.03 Internet privacy.** (1) CONSENT REQUIRED. (a) A person may not
15 disclose to another person, for money or anything else of value, any information
16 about a resident that is obtained from the resident's use of the internet, including
17 from an electronic mail message sent by the resident, without the consent of the
18 resident.

19 (b) A person may not request a child to send an electronic mail message to the
20 person that includes personal information about the child without the consent of the
21 child's parent or legal guardian.

22 (c) A person who violates par. (a) or (b) may be required to forfeit not more than
23 \$10,000 for each violation. Each disclosure of or request for information about one
24 resident or child constitutes a separate violation.

1 (d) The department of justice[✓] may commence an action in circuit court in the
2 name of the state to restrain by temporary or permanent injunction any act or
3 practice constituting a violation of par. (a) or (b).

4 (2) WEB SITE ACCESS. (a) No resident may be required to provide his or her
5 name, residential, business or electronic mail address, telephone number, age, sex
6 or occupation as a condition for obtaining access to a public web site.[✓]

7 (b) A person that maintains a web site for the purpose of doing business in this
8 state shall display a notice on the home page of the web site that states whether the
9 person collects any information about visitors to the web site and that describes any
10 information that is collected and the purposes for which it is collected, including a
11 description of any information that is sold to ^{3rd} ~~third~~ parties. A notice required under
12 this paragraph[✓] shall be in an easily comprehensible format. A person who violates
13 this paragraph may be required to forfeit not more than \$10,000[✓] for each violation.

14 **SECTION 2. Initial applicability.**

15 (1) The treatment of section 141.02 (1) (a) and (2)[✓] of the statutes first applies
16 to electronic mail messages sent on the effective date of this subsection.

17 (2) The treatment of section 141.03 (1) (a)[✓] of the statutes first applies to
18 disclosures made on the effective date of this subsection.

19 (3) The treatment of section 141.03 (1) (b)[✓] of the statutes first applies to
20 requests made on the effective date of this subsection.

21 **SECTION 3. Effective date.**

22 (1) This act takes effect on the first day of the [✓]6th month beginning after
23 publication.

24 (END)[✓]

D-NOTE

INSERT 1-5

1999 BILL

1 **AN ACT to amend 77.51 (21m) of the statutes; relating to:** a sales tax and use
2 tax exemption for providing access to, or use of, the internet.

Analysis by the Legislative Reference Bureau

This bill creates a sales tax and use tax exemption for access to, and use of, 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:

3 **SECTION 1.** 77.51 (21m) ✓ of the statutes is amended to read:

4 77.51 (21m) "Telecommunications services" means sending messages and
5 information transmitted through the use of local, toll and wide-area telephone
6 service; channel services; telegraph services; teletypewriter; computer exchange
7 services; cellular mobile telecommunications service; specialized mobile radio;

~~BILL~~

SECTION 1

INSERT 1-5 (continued)

1 stationary two-way radio; paging service; or any other form of mobile and portable
2 one-way or two-way communications; or any other transmission of messages or
3 information by electronic or similar means between or among points by wire, cable,
4 fiber optics, laser, microwave, radio, satellite or similar facilities.
5 "Telecommunications services" does not include sending collect telecommunications
6 that are received outside of the state. In this subsection, "computer exchange
7 services" does not include providing access to or use of the internet. In this
8 subsection, "internet" means interconnecting networks that are connected to
9 network access points by telecommunications services.

10 SECTION 2. Effective date.

11 (1) This act takes effect on the first day of the 2nd month beginning after
12 publication.

13 (END)

OF
INSERT 1-5

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0812/P1dn

MDK:.....

↑
jlg

Lieutenant Governor McCallum:

Please review this draft very carefully to make sure that it achieves your intent. In particular, please note the following:

1. The draft allows an electronic mail service provider to seek damages for an injury from an electronic mail message that uses its equipment in violation of its solicitation policy. What is the nature of such an injury? How is an electronic mail service provider likely to show that an injury occurred? Should an electronic mail service provider be required to prove such an injury before collecting damages? Or should the draft be revised?

2. The draft (along with the California law on which it is based) raises several issues regarding interstate commerce and delegation of legislative authority. Although I have not thoroughly researched these issues, I can look at them further at your request.

3. The draft prohibits a person from collecting information from a child without parental consent, but does not address how consent must be obtained. Also, how would a person know whether a child, rather than an adult, is supplying information?

4. Are the forfeitures for violations of proposed s. 141.03 (1) (a) and (b) and (2) (b) okay? Do you want to provide a penalty for violations of proposed s. 141.03 (2) (a)?

Please contact me if you want to discuss these issues further.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0812/P1dn
MDK:jlg:hmh

February 26, 1999

Lieutenant Governor McCallum:

Please review this draft very carefully to make sure that it achieves your intent. In particular, please note the following:

1. The draft allows an electronic mail service provider to seek damages for an injury from an electronic mail message that uses its equipment in violation of its solicitation policy. What is the nature of such an injury? How is an electronic mail service provider likely to show that an injury occurred? Should an electronic mail service provider be required to prove such an injury before collecting damages? Or should the draft be revised?

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3. The draft prohibits a person from collecting information from a child without parental consent, but does not address how consent must be obtained. Also, how would a person know whether a child, rather than an adult, is supplying information?

4. Are the forfeitures for violations of proposed s. 141.03 (1) (a) and (b) and (2) (b) okay? Do you want to provide a penalty for violations of proposed s. 141.03 (2) (a)?

Please contact me if you want to discuss these issues further.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us



State of Wisconsin
Lieutenant Governor

Scott McCallum
Lieutenant Governor

State Capitol, Room 22 East • Madison, Wisconsin 53702
608/266-3516 Fax 267-3571

TO: Mark D. Kunkel, Legislative Attorney
FR: Chris Wolle
DT: March 30, 1999
RE: LRB-0812, relating to certain electronic mail solicitations and representations, collection of certain information from visitors to internet web sites, a sales tax and use tax exemption for providing access to, or use of, the internet and providing a penalty.

Thank you for preparing the above-referenced bill draft. In your drafter's note you asked a number of questions. I hope the following answers are responsive. If not, please let me know. Also, there are two items described at the end of this memo that we would like added to the draft.

- 1. The draft allows an electronic mail service provider to seek damages for an injury from an electronic mail message that uses its equipment in violation of its solicitation policy. What is the nature of such an injury? How is an electronic mail service provider likely to show that an injury occurred? Should an electronic mail service provider be required to prove such an injury before collecting damages? Or should the draft be revised?**

The nature of the injury here is trespass. See Compuserve Inc. v. Cyber Promotions, Inc., 962 F. Supp. 1015, 1021 (S.D. Ohio 1997)(electronic signals generated and sent by computer held to be sufficiently physically tangible to support a trespass cause of action). An ISP has a possessory interest in its computer systems. Further, a spammer's contact with an ISP's equipment is clearly intentional. Although e-mail travels through the Internet over various routes, the messages are affirmatively directed by the spammer through the ISP's equipment to their destination.

There are many places in the process of transmitting and delivering e-mail where costs are incurred by the ISP. In general, mass e-mail transmissions place a tremendous burden on an ISP's equipment, making it vulnerable to disruption. An ISP's central processing unit (CPU) performance is a critical issue for ISPs. An ISP's CPU has a finite capacity designed to accommodate the demands imposed by its customers, which makes it a valuable commodity. When the CPU is tied up processing unsolicited e-mail, the entire e-mail queue is slowed down.

Furthermore, ISPs purchase bandwidth based on the usage projected by their prospective customer base. The profit margin for small to midsize ISPs can be quite marginal, and bandwidth costs are among the largest portions of their budgets. When a spammer consumes an ISP's bandwidth, the ISP can 1) let the paying customers cope with slower Internet access; 2) absorb the costs of increasing bandwidth; or 3) raise rates to pay for additional computer and staff resources.

Unsolicited bulk e-mail results in a substantial quantity of mail sent to invalid e-mail addresses, (which causes additional harm to the performance of an ISP's mail system). For each message that contains undeliverable recipients, the ISP's computers must attempt to transmit a message back to the originating site of the e-mail message to inform it of the delivery failure. Attempts to send such "bounce" messages back to the spammer consume considerable processing resources.

With respect to ISPs providing evidence of injury, in the case of dial-up users¹ e-mail servers maintain logs that can be used to trace the origin and destination of e-mail messages. Hard copies of such logs can be produced. If a registered user injects a message into an ISP's mail server network it can be traced in-house. ISPs can also be expected to maintain records of complaints about junk e-mail from service subscribers. Other subscribers will terminate their accounts if the receipt of unsolicited e-mail becomes a problem. Finally, ISPs will know how much employee time is spent addressing large volumes of unsolicited e-mail. For small companies, clearing up spam can be a terrible drain on resources.

As in any case of trespass, proof of injury would need to precede damages. Obviously, an ISP that lacks the technical means to provide evidence of an injury will not be in a position to institute a cause of action.

2. The draft (along with the California law on which it is based) raises several issues regarding interstate commerce and delegation of legislative authority. Although I have not thoroughly researched these issues, I can look at them further at your request.

With respect to the interstate commerce clause, I take it you are referring to Section 141.03(1). Perhaps the thing to do on page 5, lines 3 and 8 is to insert the phrase "that maintains a web site for the purpose of doing business in this state" after "person". This would conform that language to 141.03(2)(b). On page 5, line 19, would it be necessary to insert after "public web site" the phrase "maintained for the purpose of doing business in this state"? [Section 141.03(2)(a)]

The draft does not include the three-year moratorium on new or increased Wisconsin taxes applicable to Internet transactions. Thus, when you refer to a delegation of legislative authority, what are you referring to?

¹ Customers have dial up service if they dial in to the ISP via modem and have a password to access the system. Examples include America Online and Chorus.net.

3. The draft prohibits a person from collecting information from a child without parental consent, but does not address how consent must be obtained. Also, how would a person know whether a child, rather than an adult, is supplying the information?

Recently, the Federal Trade Commission put forth the Children's Online Privacy Protection Act of 1998² that would require web site operators to obtain "verifiable parental consent" before gathering information from children. "Verifiable parental consent" is defined in that Act as:

- 1 Verifiable parental consent: The term 'verifiable parental consent' means any reasonable effort (taking into consideration available technology), including a request for authorization for future collection, use, and disclosure described in the notice, to ensure that a parent of a child receives notice of the operator's personal information collection, use, and disclosure practices, and authorizes the collection, use, and disclosure, as applicable, of person information and the subsequent use of that information before that information is collected from that child.

Mechanisms for obtaining actual or verifiable parental consent include having the parent: mail or fax a signed form downloaded from the site; provide a credit card number; or provide an electronic (digital) signature.

On page 5, line 9, insert "verifiable" after "the" and before "consent and create a definition similar to that found in the Children's Online Privacy Protection Act. Use the mechanisms listed above as examples.

4. Are the forfeitures for violations of proposed s. 141.03(1)(a) and (b) and (2)(b) okay? Do you want to provide a penalty for violations of proposed s. 141.03(2)(a)?

Those forfeitures seem fine.

5. Miscellaneous Items.

- a) Definition of "electronic mail solicitation." On page 2, line 23, please broaden the definition to include items such as chain letters and invitations to check out websites. Could this be done by deleting "encouraging a person to" using the phrase "inducing action by a person including the purchase of"? *not sure how to define*
- b) ISP liability for website content. Some company websites are actually hosted by their ISP. Thus, ISPs are concerned that under the preliminary draft, they could be liable for a Wisconsin company's failure to include the required privacy statement. In the material beginning at page 5, line 20, please add language to clarify that ISPs are not liable for the content or omissions of websites.

² Copy attached hereto.



State of Wisconsin
Lieutenant Governor

Scott McCallum
Lieutenant Governor

State Capitol, Room 22 East • Madison, Wisconsin 53702
608/266-3516 Fax 267-3571

TO: Mark D. Kunkel, Legislative Attorney
FR: Chris Wolle
DT: April 15, 1999
RE: LRB-0812, relating to certain electronic mail solicitations and representations, etc.

Please make the following changes to the above-referenced bill draft.

✓ Page 2, line 16: delete "12" and insert "15".

- Page 2, line 19: delete the definition currently provided for "Electronic mail service provider" and insert "means any person who is an intermediary in sending or receiving electronic mail and provides to Internet users the ability to send or receive electronic mail."

(This is intended to allow non-ISPs that maintain their own electronic mail servers to establish policies against the use of their equipment for the transmission of unsolicited e-mail.)

✓ Page 3, line 10: delete "Registered" and insert "Internet". Also:

- ✓ Page 3, line 18
- ✓ Page 4, line 1
- ✓ Page 4, line 4

(The intent here is to broaden the definition to cover people who do not maintain their own ISP accounts but gain access to the Internet from locations such as work, educational facilities, etc.)

✓ Page 3, lines 21-22: delete "that use the hypertext transport protocol".

(This is only one of several different protocols.)

Page 5, line 8: delete "send an electronic mail message" and insert "provide information".

(This is meant to broaden the prohibition on soliciting information from children without verifiable parental consent.)

- Page 5, line 17 to page 6, line 2: delete paragraph (a) and make paragraph (b) paragraph (a). Create a new paragraph (b) that requires a person maintaining a web site to give customers the option of preventing the sale or distribution of information gathered by the person maintaining the web site. In effect, web sites gathering information would have a check-off where the Internet user is asked if he does or does not agree to have information distributed or sold to other entities. ✓

Please add the following provisions related to unsolicited electronic mail:

- Clarify that the transmission of electronic mail from an organization to its members shall not be deemed to be unsolicited bulk e-mail. ✓
- Mandate that a person sending unsolicited bulk e-mail must include a toll-free telephone number or a valid e-mail reply address that recipients can contact to request that they receive no more unsolicited e-mail. If the request to cease sending unsolicited e-mail is ignored, allow the aggrieved party to file a complaint with the Department of Agriculture, Trade and Consumer Protection. Provide for the recovery of forfeitures: \$10 per e-mail up to \$1,000 per day. See Section 943.13(1m)(b), Wis.Stats. (trespass to land).
Also allow recovery of attorneys' fees and costs. ✓

don't do for now

Thank you for your attention to this matter. If you have any questions, please call.

TITLE XIII--CHILDREN'S ONLINE PRIVACY PROTECTION

SEC. 1301. SHORT TITLE.

This title may be cited as the 'Children's Online Privacy Protection Act of 1998'.

SEC. 1302. DEFINITIONS.

In this title:

(1) **Child:** The term 'child' means an individual under the age of 13.

(2) **Operator:** The term 'operator'

(A) means any person who operates a website located on the Internet or an online service and who collects or maintains personal information from or about the users of or visitors to such website or online service, or on whose behalf such information is collected or maintained, where such website or online service is operated for commercial purposes, including any person offering products or services for sale through that website or online service, involving commerce-

(i) among the several States or with 1 or more foreign nations;

(ii) in any territory of the United States or in the District of Columbia, or between any such territory and--

(I) another such territory; or

(II) any State or foreign nation; or

(iii) between the District of Columbia and any State, territory, or foreign nation; but

(B) does not include any nonprofit entity that would otherwise be exempt from coverage under section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

(3) **Commission:** The term `Commission' means the Federal Trade Commission.

(4) **Disclosure:** The term `disclosure' means, with respect to personal information--

(A) the release of personal information collected from a child in identifiable form by an operator for any purpose, except where such information is provided to a person other than the operator who provides support for the internal operations of the website and does not disclose or use that information for any other purpose; and

(B) making personal information collected from a child by a website or online service directed to children or with actual knowledge that such information was collected from a child, publicly available in identifiable form, by any means including by a public posting, through the Internet, or through--

(i) a home page of a website;

(ii) a pen pal service;

(iii) an electronic mail service;

(iv) a message board; or

(v) a chat room.

(5) **Federal agency:** The term `Federal agency' means an agency, as that term is defined in section 551(1) of title 5, United States Code.

6) **Internet:** The term `Internet' means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(7) **Parent:** The term `parent' includes a legal guardian.

(8) Personal information: The term `personal information' means individually identifiable information about an individual collected online, including--

(A) a first and last name;

(B) a home or other physical address including street name and name of a city or town;

(C) an e-mail address;

(D) a telephone number;

(E) a Social Security number;

(F) any other identifier that the Commission determines permits the physical or online contacting of a specific individual; or

(G) information concerning the child or the parents of that child that the website collects online from the child and combines with an identifier described in this paragraph.

(9) Verifiable parental consent: The term `verifiable parental consent' means any reasonable effort (taking into consideration available technology), including a request for authorization for future collection, use, and disclosure described in the notice, to ensure that a parent of a child receives notice of the operator's personal information collection, use, and disclosure practices, and authorizes the collection, use, and disclosure, as applicable, of personal information and the subsequent use of that information before that information is collected from that child.

(10) Website or online service directed to children:

(A) In general: The term `website or online service directed to children' means--

(i) a commercial website or online service that is targeted to children; or

(ii) that portion of a commercial website or online service that is targeted to children.

(B) Limitation: A commercial website or online service, or a portion of a commercial website or online service, shall not be deemed directed to children solely for referring or linking to a commercial website or online service directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link.

(11) Person: The term `person' means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity.

(12) Online contact information: The term `online contact information' means an e-mail address or another substantially similar identifier that permits direct contact with a person online.

SEC. 1303. REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH THE COLLECTION AND USE OF PERSONAL INFORMATION FROM AND ABOUT CHILDREN ON THE INTERNET.

(a) Acts Prohibited:

(1) In general: It is unlawful for an operator of a website or online service directed to children, or any operator that has actual knowledge that it is collecting personal information from a child, to collect personal information from a child in a manner that violates the regulations prescribed under subsection (b).

(2) Disclosure to parent protected: Notwithstanding paragraph (1), neither an operator of such a website or online service nor the operator's agent shall be held to be liable under any Federal or State law for any disclosure made in good faith and following reasonable procedures in responding to a request for disclosure of personal information under subsection (b)(1)(B)(iii) to the parent of a child.

(b) Regulations:

(1) In general: Not later than 1 year after the date of the enactment of this Act, the Commission shall promulgate under section 553 of title 5, United States Code, regulations that--

(A) require the operator of any website or online service directed to children that collects personal information from children or the operator of a website or online service that has actual knowledge that it is collecting personal information from a child--

(i) to provide notice on the website of what information is collected from children by the operator, how the operator uses such information, and the operator's disclosure practices for such information; and

(ii) to obtain verifiable parental consent for the collection, use, or disclosure of personal information from children;

(B) require the operator to provide, upon request of a parent under this subparagraph whose child has provided personal information to that website or online service, upon proper identification of that parent, to such parent--

(i) a description of the specific types of personal information collected from the child by that operator;

(ii) the opportunity at any time to refuse to permit the operator's further use or maintenance in retrievable form, or future online collection, of personal information from that child; and

(iii) notwithstanding any other provision of law, a means that is reasonable under the circumstances for the parent to obtain any personal information collected from that child:

(C) prohibit conditioning a child's participation in a game, the offering of a prize, or another activity on the child disclosing more personal information than is reasonably necessary to participate in such activity; and

(D) require the operator of such a website or online service to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.

(2) When consent not required: The regulations shall provide that verifiable parental consent under paragraph (1)(A)(ii) is not required in the case of--

(A) online contact information collected from a child that is used only to respond directly on a one-time basis to a specific request from the child and is not used to recontact the child and is not maintained in retrievable form by the operator;

(B) a request for the name or online contact information of a parent or child that is used for the sole purpose of obtaining parental consent or providing notice under this section and where such information is not maintained in retrievable form by the operator if parental consent is not obtained after a reasonable time;

(C) online contact information collected from a child that is used only to respond more than once directly to a specific request from the child and is not used to recontact the child beyond the scope of that request--

(i) if, before any additional response after the initial response to the child, the operator uses reasonable efforts to provide a parent notice of the online contact information collected from the child, the purposes for which it is to be used, and an opportunity for the parent to request that the operator make no further use of the information and that it not be maintained in retrievable form; or

(ii) without notice to the parent in such circumstances as the Commission may determine are appropriate, taking into consideration the benefits to the child of access to information and services, and risks to the security and privacy of the child, in regulations promulgated under this subsection;

(D) the name of the child and online contact information (to the extent reasonably necessary to protect the safety of a child participant on the site)--

(i) used only for the purpose of protecting such safety;

(ii) not used to recontact the child or for any other purpose; and

(iii) not disclosed on the site,

if the operator uses reasonable efforts to provide a parent notice of the name and online contact information collected from the child, the purposes for which it is to be used, and an opportunity for the parent to request that the operator make no further use of the information and that it not be maintained in retrievable form; or

(E) the collection, use, or dissemination of such information by the operator of such a website or online service necessary--

(i) to protect the security or integrity of its website;

(ii) to take precautions against liability;

(iii) to respond to judicial process; or

(iv) to the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation on a matter related to public safety.

(3) Termination of service: The regulations shall permit the operator of a website or an online service to terminate service provided to a child whose parent has refused, under the regulations prescribed under paragraph (1)(B)(ii), to permit the operator's further use or maintenance in retrievable form, or future online collection, of personal information from that child.

(c) Enforcement: Subject to sections 1304 and 1306, a violation of a regulation prescribed under subsection (a) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(d) Inconsistent State Law: No State or local government may impose any liability for commercial activities or actions by operators in interstate or foreign commerce in connection with an activity or action described in this title that is inconsistent with the treatment of those activities or actions under this section.

[Page: H11241]

SEC. 1304. SAFE HARBORS.

(a) Guidelines: An operator may satisfy the requirements of regulations issued under section 1303(b) by following a set of self-regulatory guidelines, issued by representatives of the marketing or online industries, or by other persons, approved under subsection (b).

(b) Incentives:

(1) Self-regulatory incentives: In prescribing regulations under section 1303, the Commission shall provide incentives for self-regulation by operators to implement the protections afforded children under the regulatory requirements described in subsection (b) of that section.

(2) **Deemed compliance:** Such incentives shall include provisions for ensuring that a person will be deemed to be in compliance with the requirements of the regulations under section 1303 if that person complies with guidelines that, after notice and comment, are approved by the Commission upon making a determination that the guidelines meet the requirements of the regulations issued under section 1303.

(3) **Expedited response to requests:** The Commission shall act upon requests for safe harbor treatment within 180 days of the filing of the request, and shall set forth in writing its conclusions with regard to such requests.

(c) **Appeals:** Final action by the Commission on a request for approval of guidelines, or the failure to act

within 180 days on a request for approval of guidelines, submitted under subsection (b) may be appealed to a district court of the United States of appropriate jurisdiction as provided for in section 706 of title 5, United States Code.

SEC. 1305. ACTIONS BY STATES.

(a) **In General:**

(1) **Civil actions:** In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in a practice that violates any regulation of the Commission prescribed under section 1303(b), the State, as *parens patriae*, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to--

(A) enjoin that practice;

(B) enforce compliance with the regulation;

(C) obtain damage, restitution, or other compensation on behalf of residents of the State; or

(D) obtain such other relief as the court may consider to be appropriate.

(2) **Notice:**

(A) **In general:** Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Commission--

(i) written notice of that action; and

(ii) a copy of the complaint for that action.

(B) Exemption:

(i) In general: Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the attorney general determines that it is not feasible to provide the notice described in that subparagraph before the filing of the action.

(ii) Notification: In an action described in clause (i), the attorney general of a State shall provide notice and a copy of the complaint to the Commission at the same time as the attorney general files the action.

(b) Intervention:

(1) In general: On receiving notice under subsection (a)(2), the Commission shall have the right to intervene in the action that is the subject of the notice.

(2) Effect of intervention: If the Commission intervenes in an action under subsection (a), it shall have the right--

(A) to be heard with respect to any matter that arises in that action; and

(B) to file a petition for appeal.

(3) Amicus curiae: Upon application to the court, a person whose self-regulatory guidelines have been approved by the Commission and are relied upon as a defense by any defendant to a proceeding under this section may file amicus curiae in that proceeding.

(c) Construction: For purposes of bringing any civil action under subsection (a), nothing in this title shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to--

(1) conduct investigations;

(2) administer oaths or affirmations; or

(3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) Actions by the Commission: In any case in which an action is instituted by or on behalf of the Commission for violation of any regulation prescribed under section 1303, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action for violation of that regulation.

(e) Venue; Service of Process:

(1) Venue: Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(2) Service of process: In an action brought under subsection (a), process may be served in any district in which the defendant--

(A) is an inhabitant; or

(B) may be found.

SEC. 1306. ADMINISTRATION AND APPLICABILITY OF ACT.

(a) In General: Except as otherwise provided, this title shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(b) Provisions: Compliance with the requirements imposed under this title shall be enforced under--

(1) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of--

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act (12 U.S.C. 601 et seq. and 611 et seq.), by the Board; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;

(3) the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the National Credit Union Administration Board with respect to any Federal credit union;

(4) part A of subtitle VII of title 49, United States Code, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part;

(5) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section 406 of that Act (7 U.S.C. 226, 227)), by the Secretary of Agriculture with respect to any activities subject to that Act; and

(6) the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.

(c) Exercise of Certain Powers: For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law.

(d) Actions by the Commission: The Commission shall prevent any person from violating a rule of the Commission under section 1303 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this title. Any entity that violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this title.

(e) Effect on Other Laws: Nothing contained in the Act shall be construed to limit the authority of the Commission under any other provisions of law.

[Page: H11242]

SEC. 1307. REVIEW.

Not later than 5 years after the effective date of the regulations initially issued under section 1303, the Commission shall--

(1) review the implementation of this title, including the effect of the implementation of this title on practices relating to the collection and disclosure of information relating to children, children's ability to obtain access to information of their choice online, and on the availability of websites directed to children; and

(2) prepare and submit to Congress a report on the results of the review under paragraph (1).

SEC. 1308. EFFECTIVE DATE.

Sections 1303(a), 1305, and 1306 of this title take effect on the later of--

(1) the date that is 18 months after the date of enactment of this Act; or

(2) the date on which the Commission rules on the first application filed for safe harbor treatment under section 1304 if the Commission does not rule on the first such application within one year after the date of enactment of this Act, but in no case later than the date that is 30 months after the date of enactment of this Act.

D-NOTE

P2

By 9/13
Fri.
2:00pm

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

RM NOT
RHW

and chain letters

Regen

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

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be prepared for a subsequent version.

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:

6 SECTION 1. 77.51 (21m) of the statutes is amended to read:
 7 77.51 (21m) "Telecommunications services" means sending messages and
 8 information transmitted through the use of local, toll and wide-area telephone

1 service; channel services; telegraph services; teletypewriter; computer exchange
 2 services; cellular mobile telecommunications service; specialized mobile radio;
 3 stationary two-way radio; paging service; or any other form of mobile and portable
 4 one-way or two-way communications; or any other transmission of messages or
 5 information by electronic or similar means between or among points by wire, cable,
 6 fiber optics, laser, microwave, radio, satellite or similar facilities.
 7 "Telecommunications services" does not include sending collect telecommunications
 8 that are received outside of the state. In this subsection, "computer exchange
 9 services" does not include providing access to or use of the internet. In this
 10 subsection, "internet" means interconnecting networks that are connected to
 11 network access points by telecommunications services.

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

INSERT 2-16 ✓

13 CHAPTER 141

14 INTERNET TRANSACTIONS

15 141.01 Definitions. In this chapter:

16 (1) "Child" means a resident who is less than ~~12~~ ¹⁵ years of age.

17 (1m) "Display on a home page" means to display in written form on a home page
 18 or at an internet address that is readily accessible through a link on a home page.

INSERT 2-18 ✓

19 (2) "Electronic mail service provider" means a person that provides a registered
 20 user with an electronic mail address for transmitting electronic mail through
 21 equipment located in this state and that is an intermediary in the transmission of
 22 the mail.

INSERT 2-19 ✓

23 (3) "Electronic mail solicitation" means an unsolicited electronic mail message
 24 that is sent for the purpose of encouraging a person to purchase property, goods or
 25 services.

INSERT 2-25 ✓

1 (4) "Home page" means the first page of a web site that is displayed when a
2 person visits the computer address of the web site.

3 (5) "Internet domain name" means a name identifying the internet address of
4 a person on the ~~World Wide Web~~ ^{internet} that the person has registered with an organization
5 that assigns and maintains names for internet addresses, including the Internet
6 Network Information Center, the U.S. Domain Name Registration Services or any
7 successor organization.

8 (7) "Public web site" means a web site that is accessible at no charge to a person
9 who visits the site.

10 (6) "Registered user" means a person that maintains an electronic mail address
11 with an electronic mail service provider.

12 (8) "Resident" means an individual who is a resident of this state.

13 (9) "Send" means to initiate the transmission of an electronic mail message, but
14 does not include any transmission of the message by an electronic mail service
15 provider.

16 (10) "Solicitation ^{or chain letter} policy" means the policy of an electronic mail service provider
17 regarding the sending of electronic mail solicitations ^{or electronic chain letters} by or to the provider's
18 ~~registered~~ ^{internet} users.

19 (11) "Web site" means a collection of related computer files on the ~~World Wide~~ ^{internet}
20 ~~Web~~ that is located at an internet address.

21 (12) "World Wide Web" means all the ~~resources and users on the internet that~~
22 ~~use the hypertext transport protocol~~ ^{internet}

23 141.02 Electronic mail. (1) SOLICITATION/POLICY VIOLATIONS. (a) Subject to
24 par. (b):

OR CHAIN LETTER (CS)

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0812/P2ins
MDK:.....

1

INSERT 2-16:

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(1g) "Department" means the department of agriculture, trade and consumer protection.

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4

INSERT 2-18:

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

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INSERT 2-19:

9

~~§~~ any person that is an intermediary in sending or receiving electronic mail and that

10

provides to internet users the ability to send or receive electronic mail.

11

INSERT 2-25:

12

~~§~~ or to visit a web site

13

INSERT 4-18:

14

(1m) ELECTRONIC MAIL SOLICITATIONS. (a) No person may send 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 of the solicitation may use to notify the person that the recipient does not want to receive electronic mail solicitations.

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(b) If a recipient of an electronic mail solicitation uses a return electronic mail address or toll-free telephone number specified in par. (a) to notify the person that sent the electronic mail solicitation that the recipient does not want to receive an electronic mail solicitation, the person may not send another electronic mail

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1

1. No ~~registered~~ ^{internet} user of electronic mail service provider may send an electronic mail solicitation ^{or electronic chain letter} that uses the equipment of the provider in a manner that violates the provider's solicitation policy.

4

2. No person may send an electronic mail solicitation to ~~registered~~ ^{an internet} user that uses the equipment of the ~~registered~~ ^{internet} user's electronic mail service provider in a manner that violates the provider's solicitation ^{or chain letter} policy.

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

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

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

15

16

17

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

18

19

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

20

21

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INSERT 4-18 ✓

1 person may be fined not more than \$10,000 or imprisoned for not more than 5 years
2 or both.

3 **141.03 Internet privacy. (1) CONSENT REQUIRED.** (a) A person may not
4 disclose to another person, for money or anything else of value, any information
5 about a resident that is obtained from the resident's use of the internet, including
6 from an electronic mail message sent by the resident, without the consent of the
7 resident.

INSERT 5-3

INSERT 5-8.1

INSERT 5-8.2

8 (b) A person may not request a child to send an electronic mail message to the
9 person that includes personal information about the child without the consent of the
10 child's parent or legal guardian.

INSERT 5-10

INSERT 5-9

11 (c) A person who violates par. (a) or (b) may be required to forfeit not more than
12 \$10,000 for each violation. Each disclosure of or request for information about one
13 resident or child constitutes a separate violation.

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

17 ~~(2) WEB SITE ACCESS. (a) No resident may be required to provide his or her~~
18 ~~name, residential, business or electronic mail address, telephone number, age, sex~~
19 ~~or occupation as a condition for obtaining access to a public web site.~~

20 ~~(a)~~ A person that maintains a web site for the purpose of doing business in this
21 state shall display a notice on the home page of the web site that states whether the
22 person collects any information about visitors to the web site and that describes any
23 information that is collected and the purposes for which it is collected, including a
24 description of any information that is sold to 3rd parties. A notice required under

or provided

INSERT 6-1

1(d)

1 this paragraph shall be in an easily comprehensible format. A person who violates
2 ~~this paragraph~~ ^{par. (a) or (b)} may be required to forfeit not more than \$10,000 for each violation.

3 **SECTION 3. Initial applicability.**

^{1(m)} ✓

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

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

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

10 **SECTION 4. Effective date.**

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

13 (END)

D-note
↓

1 solicitation to the recipient. A recipient who receives an electronic mail solicitation
2 that violates this paragraph[✓] may complain to the department.[✓]

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

7 (d) Any person who violates par. (b) may be required to forfeit not more than
8 \$10 for each electronic mail solicitation that violates par. (b), subject to a maximum
9 forfeiture of \$1,000 for each day in which a violation occurs.

10 **INSERT 5-3:**

11 ~~#26~~ that maintains a web site for the purpose of doing business in this state

12 **INSERT 5-8.1:**

13 ~~#26~~ that maintains a web site for the purpose of doing business in this state

14 **INSERT 5-8.2:**

15 ~~#26~~ provide information through the internet

16 **INSERT 5-9:**

17 ~~#26~~ making a reasonable effort to obtain

18 **INSERT 5-10:**

19 ~~#26~~ For purposes of this paragraph[✓], a "reasonable effort to obtain consent" includes
20 requiring a child's parent or guardian to mail or send a facsimile consent form to the
21 person, provide a credit card number to the person or provide an electronic signature,
22 as defined in s. 137.04 (2)[✓], to the person.

23 **INSERT 6-1:**

24 ~~#26~~ 2. If the person sells or provides information about visitors to the web site to
25 3rd parties, allow a visitor to notify the person, at the time that the visitor visits the

1 web site, whether or not the visitor consents to the sale or provision of such
2 information.

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

6 (c) For purposes of par. (a), a person does not maintain a web site for the purpose
7 of doing business in this state if the person's involvement with the web site is limited
8 only to providing access to the internet to another person that maintains the web site
9 for the purpose of doing business in this state.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0812/P2dn
MDK.....

↑
JLg

Lieutenant Governor McCallum:

Please review this version very carefully to make sure that it achieves your intent. I will prepare an analysis for the next version of this bill after you review this version. In particular, please note the following:

1. Based on your redraft instructions, I don't think it is necessary to use the term "World Wide Web". Therefore, the term "internet" is used instead in the definitions of "internet domain name" and "web site". Is this okay?

2. Proposed s. 141.03 (1) (b) refers to providing information "through the internet", rather than referring only to providing information. Is this okay?

3. This version allows DA/CP or a district attorney to bring an action for forfeitures for violations of the electronic mail solicitation prohibition. This version does not allow a private individual to do so. Because attorneys' fees are usually made available to private individuals, rather than the state, this version does not provide for attorneys' fees. Please contact me if you want to revise the enforcement provisions of this version.

4. The federal definition that you provided regarding "verifiable parental consent" appears to require only that a person make a reasonable effort to obtain consent. Therefore, this version requires the same thing in proposed s. 141.03 (1) (b), and gives examples of what constitutes obtaining consent. Is this okay?

5. This version adds a definition for "electronic chain letter". I took this approach because it seems to me that a chain letter is something entirely different than a solicitation.

6. Proposed s. 141.03 (2) (c) is intended to create an exemption for internet service providers.

7. The delegation of authority issue that I mentioned in the previous drafter's note concerns making it illegal for a person to violate another person's solicitation or chain letter policy. Therefore, in a sense, the bill delegates to a private party the power to define what constitutes illegal activity. I haven't researched this issue, but I wanted to at least bring it to your attention. I can look at this issue further if you want me to.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0812/P2dn
MDK:jlg:jf

August 13, 1999

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2. Proposed s. 141.03 (1) (b) refers to providing information "through the Internet", rather than referring only to providing information. Is this okay?

3. This version allows DATCP or a district attorney to bring an action for forfeitures for violations of the electronic mail solicitation prohibition. This version does not allow a private individual to do so. Because attorneys' fees are usually made available to private individuals, rather than the state, this version does not provide for attorneys' fees. Please contact me if you want to revise the enforcement provisions of this version.

4. The federal definition that you provided regarding "verifiable parental consent" appears to require only that a person make a reasonable effort to obtain consent. Therefore, this version requires the same thing in proposed s. 141.03 (1) (b), and gives examples of what constitutes obtaining consent. Is this okay?

5. This version adds a definition for "electronic chain letter". I took this approach because it seems to me that a chain letter is something entirely different than a solicitation.

6. Proposed s. 141.03 (2) (c) is intended to create an exemption for Internet service providers.

7. The delegation of authority issue that I mentioned in the previous drafter's note concerns making it illegal for a person to violate another person's solicitation or chain letter policy. Therefore, in a sense, the bill delegates to a private party the power to define what constitutes illegal activity. I haven't researched this issue, but I wanted to at least bring it to your attention. I can look at this issue further if you want me to.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us

BY
Monday
11:11
afternoon

~~BY NOTICE~~

1

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

RM
NOT
RUN

INSERT A ✓

Reger

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 is a preliminary draft. An analysis will be prepared for a subsequent version.~~

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:

6 SECTION 1. 77.51 (21m) of the statutes is amended to read:
 7 77.51 (21m) "Telecommunications services" means sending messages and
 8 information transmitted through the use of local, toll and wide-area telephone

1 service; channel services; telegraph services; teletypewriter; computer exchange
2 services; cellular mobile telecommunications service; specialized mobile radio;
3 stationary two-way radio; paging service; or any other form of mobile and portable
4 one-way or two-way communications; or any other transmission of messages or
5 information by electronic or similar means between or among points by wire, cable,
6 fiber optics, laser, microwave, radio, satellite or similar facilities.
7 “Telecommunications services” does not include sending collect telecommunications
8 that are received outside of the state. In this subsection, “computer exchange
9 services” does not include providing access to or use of the Internet. In this
10 subsection, “Internet” means interconnecting networks that are connected to
11 network access points by telecommunications services.

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

13 CHAPTER 141

14 INTERNET TRANSACTIONS

15 141.01 Definitions. In this chapter:

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

17 (1g) “Department” means the department of agriculture, trade and consumer
18 protection.

19 (1m) “Display on a home page” means to display in written form on a home page
20 or at an Internet address that is readily accessible through a link on a home page.

21 (1s) “Electronic chain letter” means an electronic mail message that is sent to
22 more than one recipient with a request that each recipient send copies of the message
23 to other recipients.

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

4 (3) “Electronic mail solicitation” means an ~~unsolicited~~ *msw* electronic mail message
5 that is sent for the purpose of encouraging a person to purchase property, goods or
6 services or to visit a Web site.

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

9 (5) “Internet domain name” means a name identifying the Internet address of
10 a person on the Internet that the person has registered with an organization that
11 assigns and maintains names for Internet addresses, including the Internet
12 Network Information Center, the U.S. Domain Name Registration Services or any
13 successor organization.

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

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

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

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

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

1 (11) "Web site" means a collection of related computer files on the Internet that
2 is located at an Internet address.

3 **141.02 Electronic mail. (1) SOLICITATION OR CHAIN LETTER POLICY VIOLATIONS.**

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

5 1. No Internet user of an electronic mail service provider may send an electronic
6 mail solicitation or electronic chain letter that uses the equipment of the provider in
7 a manner that violates the provider's solicitation or chain letter policy.

8 2. No person may send an electronic mail solicitation or electronic chain letter
9 to an Internet user that uses the equipment of the Internet user's electronic mail
10 service provider in a manner that violates the provider's solicitation or chain letter
11 policy.

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

15 (c) An electronic mail service provider who is injured by a violation of par. (a)
16 that occurs more than 30 days after the solicitation or chain letter policy is displayed
17 on the provider's home page may bring an action against the person who violated par.

18 (a) and is entitled to each of the following: *the amount of actual damages*

19 1. The greater of \$15,000, *or* an amount equal to \$50 for each electronic mail
20 solicitation or electronic chain letter that uses the provider's equipment in a manner

21 that violates the provider's solicitation or chain letter policy, *or the amount of actual*
22 *damages.*

23 2. Notwithstanding s. 814.04, costs, disbursements and reasonable attorney
24 fees.

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

6 (b) If a recipient of an electronic mail solicitation uses a return electronic mail
7 address or toll-free telephone number specified in par. (a) to notify the person that
8 sent the electronic mail solicitation that the recipient does not want to receive an
9 electronic mail solicitation, the person may not send another electronic mail
10 solicitation to the recipient. A recipient who receives an electronic mail solicitation
11 that violates this paragraph may complain to the department.

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

16 (d) Any person who violates par. (b) may be required to forfeit not more than
17 \$10 for each electronic mail solicitation that violates par. (b), subject to a maximum
18 forfeiture of \$1,000 for each day in which a violation occurs.

19 **(2) PROHIBITED REPRESENTATIONS.** No person may knowingly send an electronic
20 mail message that represents that the message is from another person without the
21 consent of that person or that represents that the message is from an Internet
22 domain name without the consent of the person who has registered the name.
23 Whoever violates this subsection may be fined not more than \$10,000 or imprisoned
24 for not more than 2 years or both. For a 2nd or subsequent violation of this

1 subsection, a person may be fined not more than \$10,000 or imprisoned for not more
2 than 5 years or both.

3 **141.03 Internet privacy. (1) CONSENT REQUIRED.** (a) A person that maintains
4 a Web site for the purpose of doing business in this state may not disclose to another
5 person, for money or anything else of value, any information about a resident that
6 is obtained from the resident's use of the Internet, including from an electronic mail
7 message sent by the resident, without the consent of the resident.

8 (b) A person that maintains a Web site for the purpose of doing business in this
9 state may not request a child to provide information through the Internet to the
10 person that includes personal information about the child without making a
11 reasonable effort to obtain the consent of the child's parent or legal guardian. For
12 purposes of this paragraph, a "reasonable effort to obtain consent" includes requiring
13 a child's parent or guardian to mail or send a facsimile consent form to the person,
14 provide a credit card number to the person or provide an electronic signature, as
15 defined in s. 137.04 (2), to the person.

16 (c) A person who violates par. (a) or (b) may be required to forfeit not more than
17 \$10,000 for each violation. Each disclosure of or request for information about one
18 resident or child constitutes a separate violation.

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

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

24 1. Display a notice on the home page of the Web site that states whether the
25 person collects any information about visitors to the Web site and that describes any

1 information that is collected and the purposes for which it is collected, including a
2 description of any information that is sold or provided to 3rd parties. A notice
3 required under this paragraph shall be in an easily comprehensible format.

4 2. If the person sells or provides information about visitors to the Web site to
5 3rd parties, allow a visitor to notify the person, at the time that the visitor visits the
6 Web site, whether or not the visitor consents to the sale or provision of such
7 information.

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

11 (c) For purposes of par. (a), a person does not maintain a Web site for the
12 purpose of doing business in this state if the person's involvement with the Web site
13 is limited only to providing access to the Internet to another person that maintains
14 the Web site for the purpose of doing business in this state.

15 (d) A person who violates par. (a) or (b) may be required to forfeit not more than
16 \$10,000 for each violation.

17 SECTION 3. Initial applicability.

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

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

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

24 SECTION 4. Effective date.

1

INSERT A:

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.

Subsub

→ **Electronic mail prohibitions** ^{IP} 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 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 ~~3~~^{two} years, or both. For a ~~2nd~~^{second} violation, the length of imprisonment increases to no more than ~~3~~^{five} years. P

Subsub → **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 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 ~~3rd~~^{third} parties. If the person sells or provides information to ~~3rd~~^{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. ✓

Subsub → **Sales tax exemption** Finally, the bill creates a sales tax exemption for providing access to the Internet.

Barman, Mike

From: Kunkel, Mark
Sent: Thursday, February 03, 2000 3:18 PM
To: Barman, Mike
Subject: FW: Bill introduction

Mike, can you take care of this?

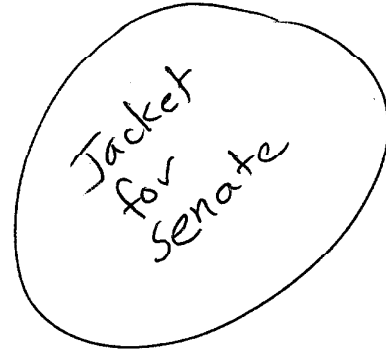
Mark Kunkel
Legislative Attorney
Legislative Reference Bureau
(608) 266-0131 mark.kunkel@legis.state.wi.us

-----Original Message-----

From: Stuart, Todd
Sent: Thursday, February 03, 2000 2:54 PM
To: Kunkel, Mark
Subject: Bill introduction

Hi Mark:
The e-commerce bill (LRB-0812/1) is ready to be introduced. Could you please send a jacketed copy over to Sen. Darling's office. Jim Villa of her office is handling this bill. Thanks much,
TS

Todd C. Stuart
Office of the Lieutenant Governor
State of Wisconsin
(608) 266-3516
Fax: (608) 267-3571
todd.stuart@ltgov.state.wi.us





State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

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LEGAL SECTION: (608) 266-3561
REFERENCE SECTION: (608) 266-0341
FAX: (608) 266-5648

STEPHEN R. MILLER
CHIEF

February 28, 2000



MEMORANDUM

To: Senator Darling

From: Mark D. Knukel, Legislative Attorney, (608) 266-0131
Joseph T. Kreye, Legislative Attorney, (608) 266-2263
Marc E. Shovers, Sr. Legislative Attorney, (608) 266-0129

Subject: Technical Memorandum to **1999 SB 375** (LRB 99-0812/1)

We received the attached technical memorandum relating to your bill. This copy is for your information and your file. If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

MEMORANDUM

February 24, 2000

TO: Mark D. Kunkel
Legislative Reference Bureau

FROM: Yeang-Eng Braun ^{YEB}
Department of Revenue

SUBJECT: Technical Memorandum on SB 375 (LRB 0812/1), Relating to the Exclusion of Internet Access Services from the Sales and Use Tax.

The Department feels that the bill does not accomplish part of the proposal's intent, which appears to be a sales and use tax exemption for Internet access. Amending the definition of telecommunications service in 77.51 (21m) to exclude the provision of Internet access from the definition of "computer exchange services" does not create an exemption, because Internet access would still be considered a telecommunications service based on other elements of the statutory definition. Specifically, Internet access would be considered "any other transmission of messages or information by electronic or similar means between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities," and remain subject to the sales and use tax regardless of the proposed changes.

In order to accomplish the desired intent, the Department suggests that sec. 77.51(21m), Wis. Stats., be amended by excluding "Internet access service" from the definition of "telecommunications services." In order to avoid exempting other telecommunications services, the Department feels that the author should state in the law that the exclusion for Internet access services is intended to exempt what are commonly known as Internet access services, and that the exclusion is not intended to exempt other telecommunications services including local, toll and wide-area telephone services, channel services, telegraph services, teletypewriter services, computer exchange services, cellular mobile telecommunications service, specialized mobile radio services, stationary two-way radio services, and paging services. Any change that exempts Internet access should also state that it is not intended to exempt cable television system services.

Further, the Department recommends adding a sunset clause to the exclusion of Internet services. The Department feels that there is no technological limit to the types of data and information (e.g., voice and data telecommunications) that may be conveyed via the "Internet." Enactment of this proposal carries a serious risk of jeopardizing all or part of the state's current annual revenues from general telecommunications services (over \$120 million per year). Providing a sunset clause helps to reduce the risk of jeopardizing future state sales tax revenues by giving the legislature an opportunity to revisit the issue after these technological and other changes have occurred.

If you have questions regarding this technical memorandum, please contact John Stott at 266-9706.

YEB:JTS:dls
t:\fsn99-00\js\sb375.tec