

2001 ASSEMBLY BILL 416

May 18, 2001 – Introduced by Representatives FOTI, MILLER, McCORMICK, TURNER, LIPPERT, SHILLING, J. FITZGERALD, D. MEYER, AINSWORTH, ALBERS, FREESE, FRISKE, HAHN, HOVEN, KRAWCZYK, LADWIG, LASSA, M. LEHMAN, OTT, PETROWSKI, PETTIS, PLOUFF, RHOADES, SKINDRUD, STONE, SYKORA, URBAN, VRAKAS and WADE, cosponsored by Senators PANZER, M. MEYER, S. FITZGERALD, DARLING, HARSDFORF, HUELSMAN, HANSEN, ROESSLER and SCHULTZ. Referred to Committee on Information Policy and Technology.

1 **AN ACT** *to amend* 100.264 (2) (intro.); and *to create* 100.52 of the statutes;
2 **relating to:** prohibiting certain electronic mail solicitations and providing a
3 penalty.

Analysis by the Legislative Reference Bureau

This bill imposes certain requirements on a person who sends an electronic mail solicitation, which is defined as an electronic mail message sent without the consent of the recipient for the purpose of selling or leasing or offering to sell or lease property, goods, or services to the recipient. Under the bill, a person who sends an electronic mail solicitation must maintain a toll-free telephone number or return electronic mail address that the recipient may use to direct the person not to send any other electronic mail solicitation to the recipient. In addition, an electronic mail solicitation must include a statement that notifies the recipient about the toll-free number or return electronic mail address. The statement must be displayed in the same font size as the majority of the text of the electronic mail solicitation. Also, if the person sending an electronic mail solicitation does not have a previous business relationship with the recipient, the electronic mail solicitation must include the letters “ADV” at the beginning of the subject of the electronic mail solicitation.

The bill prohibits a person from sending an electronic mail solicitation to a recipient who uses the toll-free number or return electronic mail address to direct the person not to send additional electronic mail solicitations to the recipient. In addition, a person may not send an electronic mail solicitation to an address that an employer maintains for an employee if the employer uses the toll-free telephone

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number or return electronic mail address to direct the person not to send electronic mail solicitations to the address maintained by the employer. The bill also prohibits a person that sends an electronic mail solicitation from misrepresenting the person's identity or knowingly providing a false or inaccurate toll-free telephone number or return electronic mail address.

The bill's prohibitions are enforced by the department of agriculture, trade and consumer protection. Any person who violates the bill's prohibitions is subject to a civil forfeiture of not less than \$100 nor more than \$10,000 for each violation. In addition, for a violation perpetrated against an elderly or disabled person, a court may, under certain circumstances, impose a supplemental forfeiture of no more than \$10,000.

Finally, the bill provides that its prohibitions apply to any interstate electronic mail solicitation sent or received by a person in this state and to any intrastate electronic mail solicitation.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 100.264 (2) (intro.) of the statutes is amended to read:

2 100.264 **(2)** SUPPLEMENTAL FORFEITURE. (intro.) If a fine or a forfeiture is
3 imposed on a person for a violation under s. 100.16, 100.17, 100.18, 100.182, 100.183,
4 100.20, 100.205, 100.207, 100.21, 100.30 (3), 100.35, 100.44 or 100.46, or 100.52 or
5 a rule promulgated under one of those sections, the person shall be subject to a
6 supplemental forfeiture not to exceed \$10,000 for that violation if the conduct by the
7 defendant, for which the violation was imposed, was perpetrated against an elderly
8 person or disabled person and if the court finds that any of the following factors is
9 present:

10 **SECTION 2.** 100.52 of the statutes is created to read:

11 **100.52 Electronic mail solicitations. (1) DEFINITIONS.** In this section,
12 “electronic mail solicitation” means an electronic mail message that is sent without

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1 the consent of the recipient for the purpose of selling or leasing or offering to sell or
2 lease property, goods, or services to the recipient.

3 **(2) PROHIBITIONS.** (a) No person may send an electronic mail solicitation unless
4 the person does all of the following:

5 1. Establishes and maintains a toll-free telephone number or return electronic
6 mail address that allows the recipient of the electronic mail solicitation to direct the
7 person not to send any other electronic mail solicitation to the recipient.

8 2. Includes a statement in the electronic mail solicitation that identifies the
9 toll-free telephone number or return electronic mail address specified in subd. 1. and
10 that notifies the recipient that the recipient may use the toll-free telephone number
11 or return electronic mail address to direct the person not to send any other electronic
12 mail solicitation to the recipient. A statement required under this subdivision shall
13 be displayed in the same font size as the majority of the text in the electronic mail
14 solicitation.

15 3. If the person does not have a previous business relationship with the
16 recipient of the electronic mail solicitation, includes the letters “ADV” at the
17 beginning of the subject of the electronic mail message.

18 (b) Notwithstanding par. (a):

19 1. A person may not send an electronic mail solicitation to a recipient of a prior
20 electronic mail solicitation sent by the person if the recipient uses the toll-free
21 telephone number or return electronic mail address specified in par. (a) 1. to direct
22 the person not to send any other electronic mail solicitation to the recipient.

23 2. A person may not send an electronic mail solicitation to an electronic mail
24 address that an employer provides for an employee if the employer uses the toll-free

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1 telephone number or return electronic mail address specified in par. (a) 1. to direct
2 the person not to send the electronic mail solicitation.

3 (c) No person that sends an electronic mail solicitation may misrepresent the
4 identity of the person sending the electronic mail solicitation or knowingly provide
5 a false or inaccurate toll-free telephone number or return electronic mail address
6 specified in par. (a) 1.

7 **(3) ENFORCEMENT.** (a) The department shall investigate violations of this
8 section.

9 (b) The department or any district attorney may, on behalf of the state, do any
10 of the following:

11 1. Bring an action for temporary or permanent injunctive or other relief for any
12 violation of this section.

13 2. Bring an action for the recovery of a civil forfeiture against any person that
14 violates this section in an amount of not less than \$100 nor more than \$10,000 for
15 each violation.

16 **(4) TERRITORIAL APPLICATION.** This section applies to any interstate electronic
17 mail solicitation sent or received by a person in this state and any intrastate
18 electronic mail solicitation.

19 **(END)**