

2001 ASSEMBLY BILL 818

February 18, 2002 – Introduced by Representatives RICHARDS, BOCK, J. LEHMAN, KREUSER, SINICKI, LASSA, MILLER, TURNER, BERCEAU and RYBA, cosponsored by Senators JAUCH, SCHULTZ, HARSDORF and HUELSMAN. Referred to Joint Committee on Information Policy and Technology.

1 **AN ACT** *to amend* 100.207 (3) (a), 100.207 (5), 100.207 (6) (b) 1., 100.207 (6) (c)
2 and 100.207 (6) (em) 1.; and *to create* 100.207 (3) (d), 100.207 (3m), 100.207 (6)
3 (g) and 100.207 (7) of the statutes; **relating to:** prohibited actions by
4 telecommunications providers, administration and enforcement of the federal
5 communications commission unauthorized carrier charge rules and remedies,
6 and requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

Current state law prohibits persons who provide telecommunications services from engaging in certain sales practices such as charging a customer for telecommunications services provided after the customer has cancelled those services. The law also prohibits a person who provides telecommunications services from engaging in advertising practices concerning those services that are false, misleading, or deceptive. In addition, the law requires that if a person orders telecommunications services as the result of an oral solicitation, the provider of the telecommunications services must provide independent confirmation of the order.

This bill provides that a person may request a telecommunications service orally, in writing, or by electronic means but specifies that a telecommunications provider may not provide services to a person who orders the service by any electronic means that simultaneously activates the service.

The bill also imposes additional requirements on persons who provide telecommunications services. The bill prohibits a person from enrolling a customer

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in any telecommunications service in which the customer did not affirmatively request to be enrolled. The bill specifies that a request to be enrolled in a particular telecommunications service is an affirmative request to be enrolled only in that particular service. The bill also prohibits the practice known as “slamming.” A person engages in slamming by making a change in a customer’s selection of a provider of telecommunications services even though the customer did not affirmatively request that such a change be made.

In addition to the slamming prohibitions created under this bill, federal law also prohibits slamming. This prohibition against slamming under federal law is regulated by the federal communications commission (FCC). Under rules promulgated by the FCC, any state may notify the FCC that it intends to administer the FCC rules prohibiting slamming including the remedies and penalties specified under those rules. This bill directs the department of agriculture, trade and consumer protection (DATCP) to notify the FCC of its intention to administer the FCC rules. It also requires DATCP to promulgate rules that are consistent with the FCC regulations rules.

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.** 100.207 (3) (a) of the statutes is amended to read:

2 100.207 **(3)** (a) A person may not engage in negative option billing or negative
3 enrollment of telecommunications services, including unbundled
4 telecommunications services. A person may not bill a customer for, or enroll a
5 customer in, any telecommunications service that the customer did not affirmatively
6 order unless that service is required to be provided by law, the federal
7 communications commission, or the public service commission. A customer’s failure
8 to refuse a person’s proposal to provide a telecommunications service is not an
9 affirmative request for that telecommunications service. A customer’s request to be
10 enrolled in a particular telecommunications service is an affirmative request to be
11 enrolled only in that particular telecommunications service.

12 **SECTION 2.** 100.207 (3) (d) of the statutes is created to read:

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1 100.207 (3) (d) A person may not make a change in a customer's selection of a
2 telecommunications service provider unless the customer affirmatively requests
3 that the person take such action.

4 **SECTION 3.** 100.207 (3m) of the statutes is created to read:

5 100.207 (3m) REQUESTS FOR SERVICE. (a) A customer may affirmatively request
6 a telecommunications service orally, in writing, or by electronic means.

7 (b) Notwithstanding par. (a), a person may not provide a telecommunications
8 service to a customer who orders the service by an electronic means that
9 simultaneously activates that service.

10 **SECTION 4.** 100.207 (5) of the statutes is amended to read:

11 100.207 (5) TERRITORIAL APPLICATION. ~~Subsections (2) to (4) apply~~ This
12 subsection applies to any practice directed to any person in this state.

13 **SECTION 5.** 100.207 (6) (b) 1. of the statutes is amended to read:

14 100.207 (6) (b) 1. The department of justice, after consulting with the
15 department of agriculture, trade and consumer protection, or any district attorney
16 upon informing the department of agriculture, trade and consumer protection, may
17 commence an action in circuit court in the name of the state to restrain by temporary
18 or permanent injunction any violation of this section. Injunctive relief may include
19 an order directing telecommunications providers, as defined in s. 196.01 (8p), to
20 discontinue telecommunications service provided to a person violating this section
21 or ch. 196. Temporary injunctive relief may include an order requiring that a person
22 who provides telecommunications services deposit in an escrow account any
23 payments that the provider has received or is expected to receive from customers as
24 a result of practices that may violate this section or ch. 196. Before entry of final
25 judgment, the court may make such orders or judgments as may be necessary to

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1 restore to any person any pecuniary loss suffered because of the acts or practices
2 involved in the action if proof of these acts or practices is submitted to the satisfaction
3 of the court.

4 **SECTION 6.** 100.207 (6) (c) of the statutes is amended to read:

5 100.207 **(6)** (c) Any person who violates ~~subs. (2) to (4)~~ this section shall be
6 required to forfeit not less than \$25 nor more than ~~\$5,000~~ \$10,000 for each offense.
7 Each day of violation constitutes a separate offense. Forfeitures under this
8 paragraph shall be enforced by the department of justice, after consulting with the
9 department of agriculture, trade and consumer protection, or, upon informing the
10 department, by the district attorney of the county where the violation occurs.

11 **SECTION 7.** 100.207 (6) (em) 1. of the statutes is amended to read:

12 100.207 **(6)** (em) 1. Before preparing any proposed rule under ~~this section~~ par.
13 (e), the department shall form an advisory group to suggest recommendations
14 regarding the content and scope of the proposed rule. The advisory group shall
15 consist of one or more persons who may be affected by the proposed rule, a
16 representative from the department of justice, and a representative from the public
17 service commission.

18 **SECTION 8.** 100.207 (6) (g) of the statutes is created to read:

19 100.207 **(6)** (g) Nothing in this subsection precludes the department from
20 seeking a remedy or penalty in accordance with the rules promulgated under sub.
21 (7). Practices in violation of sub. (3) may also constitute a violation of the rules
22 promulgated under sub. (7).

23 **SECTION 9.** 100.207 (7) of the statutes is created to read:

24 100.207 **(7)** ADMINISTRATION OF FEDERAL COMMUNICATIONS COMMISSION RULES.
25 The department shall administer and enforce the federal communications

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1 commission's unauthorized carrier change rules and remedies under 47 CFR 64.1110
2 to 64.1190 and shall notify the federal communications commission, in accordance
3 with 47 CFR 64.1110 (a), of its intention to administer and enforce those rules and
4 remedies. In addition to the rules promulgated under sub. (6) (e), the department
5 shall promulgate rules that are consistent with the commission's unauthorized
6 carrier change rules and remedies under 47 CFR 64.1110 to 64.1190.

7 **SECTION 10. Initial applicability.**

8 (1) This act first applies to changes in telecommunications services made on the
9 effective date of this subsection.

10 **SECTION 11. Effective date.**

11 (1) This act takes effect on the first day of the 10th month beginning after
12 publication.

13 (END)