

2003 SENATE BILL 36

February 12, 2003 – Introduced by Senators RISSER, SCHULTZ, HANSEN, ROESSLER and M. MEYER, cosponsored by Representatives KRUG, BLACK, GUNDERSON, COGGS, PLOUFF, A. WILLIAMS, TURNER and BERCEAU. Referred to Committee on Judiciary, Corrections and Privacy.

1 **AN ACT** *to create* 134.75 of the statutes; **relating to:** restrictions on the
2 transmission of unsolicited electronic mail.

Analysis by the Legislative Reference Bureau

Current law restricts the transmittal of unsolicited messages by facsimile machine for the purpose of encouraging customers to purchase property, goods, or services. This bill imposes similar restrictions on the transmittal of unsolicited electronic mail for this purpose. Under the bill, a person sending such electronic mail (solicitor) may not transmit an unsolicited message without the consent of the person being solicited unless the person being solicited has or has had a previous business relationship with the solicitor, the solicitation contains the legal name, street address, and electronic mail address of the solicitor, or the solicitation contains a statement that it is being made for the purpose of encouraging the person being solicited to purchase property, goods, or services.

The bill also imposes a prohibition on any electronic mail solicitation to a person who has notified a solicitor in writing or by electronic mail that the person does not want to receive electronic mail solicitations.

The restrictions and prohibitions under the bill do not apply to a person who provides computer users with access to a computer network and who, as part of that service, transmits electronic mail to those users.

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

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1 **SECTION 1.** 134.75 of the statutes is created to read:

2 **134.75 Restrictions on unsolicited electronic mail. (1) DEFINITIONS.** In
3 this section:

4 (a) “Electronic mail solicitation” means the unsolicited transmission of a
5 message by electronic mail for the purpose of encouraging a person to purchase
6 property, goods, or services.

7 (b) “Solicitor” means a person who makes an electronic mail solicitation.

8 **(2) RESTRICTIONS.** No solicitor may make an electronic mail solicitation to a
9 person without the consent of the person solicited unless any of the following applies:

10 (a) The person solicited has or had a business or personal relationship with the
11 solicitor.

12 (b) The electronic mail solicitation contains a statement that it is made for the
13 purpose of encouraging the person to purchase property, goods, or services.

14 (c) The electronic mail solicitation contains the legal name, street address, and
15 electronic mail address of the solicitor.

16 **(3) PROHIBITION.** No solicitor may make any electronic mail solicitation to a
17 person who has notified the solicitor in writing or by electronic mail, at least 30 days
18 before the solicitor makes the solicitation, that the person does not want to receive
19 electronic mail solicitations.

20 **(4) EXCEPTIONS.** Subsections (2) and (3) do not apply to a person who provides
21 computer users with access to a computer network and who, as part of that service,
22 transmits electronic mail solicitations, other than electronic mail solicitations
23 prepared by the person providing access to the computer network, to those users.
24 Nothing in this section shall be construed to prohibit a provider of Internet access
25 service from adopting and implementing a more restrictive policy, or entering into

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1 and enforcing a more restrictive contract, under which the provider may decline to
2 transmit any electronic mail solicitation that violates that policy or contract.

3 **(5) TERRITORIAL APPLICATION.** This section applies to any electronic mail
4 solicitation received by a person in this state.

5 **(6) DAMAGES.** (a) A solicitor who violates sub. (2) or (3) is liable to the person
6 solicited in an amount equal to the person's damages or \$10 for each electronic mail
7 solicitation made to the person in violation of sub. (2) or (3), whichever is greater.

8 (b) In addition to the amounts under par. (a), a person who recovers damages
9 under par. (a) may recover costs and, notwithstanding s. 814.04 (1), attorney fees.

10 **(7) INJUNCTIVE RELIEF.** A court may grant an injunction against a person who
11 violates this section, in addition to awarding damages under sub. (6).

12 **SECTION 2. Initial applicability.**

13 (1) This act first applies to electronic mail solicitations transmitted on the
14 effective date of this subsection.

15 **(END)**