



2003 ASSEMBLY BILL 597

October 16, 2003 - Introduced by Representatives FOTI, F. LASEE, M. LEHMAN, SUDER, NISCHKE, OTT, HAHN, MILLER, JESKEWITZ, ALBERS, KRUG, LADWIG, GUNDERSON, FRISKE, PETROWSKI, POCAN, SERATTI, BIES, NASS, KREIBICH, KESTELL, KRAWCZYK, OWENS, MCCORMICK, VAN ROY and TAYLOR, cosponsored by Senators KANAVAS, STEPP, ROESSLER, HARSDFORF, M. MEYER, LASSA and LAZICH. Referred to Committee on State Affairs.

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 message 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 (electronic mail solicitation). 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. 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 number or return electronic mail address to direct the person not to send electronic

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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 prohibitions under the bill do not apply to an Internet service provider that transmits electronic mail messages only as an intermediary.

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 100.53 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.** 100.53 of the statutes is created to read:

11 **100.53 Electronic mail solicitations. (1) DEFINITIONS.** In this section:

12 (a) “Electronic mail service provider” means any person that is an intermediary
13 in providing Internet users with the ability to send or receive electronic mail.

14 (b) “Electronic mail solicitation” means an electronic mail message that is sent
15 without the consent of the recipient for the purpose of selling or leasing or offering
16 to sell or lease property, goods, or services to the recipient.

17 (c) “Internet user” means a person that maintains an electronic mail address
18 with an electronic mail service provider.

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

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

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

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

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

19 (b) Notwithstanding par. (a), no person may do any of the following:

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

24 2. Send an electronic mail solicitation to an electronic mail address that an
25 employer provides for an employee if the employer uses the toll-free telephone

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

3 3. Send an electronic mail solicitation that misrepresents the identity of the
4 person sending the electronic mail solicitation.

5 4. Knowingly provide a false or inaccurate toll-free telephone number or return
6 electronic mail address 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)**