



**SENATE SUBSTITUTE AMENDMENT 2,
TO 2005 SENATE BILL 116**

March 3, 2006 – Offered by Senator ERPENBACH.

1 **AN ACT to repeal** 100.52 (1) (b), (d), (f) and (h); **to renumber** 134.72; **to amend**
2 100.52 (2) (a), 100.52 (2) (b), 100.52 (3) (a), 100.52 (4) (a) 2., 100.52 (4) (a) 3.,
3 100.52 (4) (c), 134.95 (2), 767.265 (2r) and 968.01 (1); and **to create** 13.101 (18),
4 100.52 (1) (bm) and 100.52 (3) (am) of the statutes; **relating to:** prohibitions
5 against certain telephone and facsimile solicitations, and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law regulates telephone solicitation, defined as the unsolicited initiation of a telephone conversation for the purpose of encouraging the recipient of the telephone call to purchase property, goods, or services. Generally, under current law, a telephone solicitor may not make a telephone solicitation to a residential customer if the customer's telephone number is included in a directory, maintained by the Department of Agriculture, Trade and Consumer Protection (DATCP), listing residential customers who do not wish to receive telephone solicitations. This substitute amendment alters current law regarding telephone solicitations as follows.

1. Current law regulates telephone solicitations made to traditional "land line" customers. This substitute amendment broadens current law to include cellular telephone customers. As a result, the directory may include a customer's cellular

telephone number, and telephone solicitors may not make telephone solicitations to cellular telephone numbers that are included in the directory.

2. Current law allows only individuals to request inclusion in the directory. Under the substitute amendment, a small business, as defined in the substitute amendment, may request inclusion of a land line number or cellular telephone number in the directory.

3. Under current law, telephone solicitors must register with DATCP and pay an annual fee that is based on the cost of maintaining the directory. Under the substitute amendment, DATCP must collect the registration fee in quarterly installments, but DATCP must reduce or waive installments if DATCP estimates that, at the end of the fiscal year, its fee collections will exceed expenditures for maintaining the directory by 15 percent or more.

Current law also prohibits facsimile solicitations without the consent of the recipient, unless certain conditions are met. Also, a facsimile solicitor must honor a recipient's written or facsimile request not to receive facsimile solicitations and may not disclose the recipient's facsimile number to another. Under current law, district attorneys are authorized to enforce these provisions through forfeiture actions. This substitute amendment transfers enforcement authority for these provisions to DATCP. Under the substitute amendment, DATCP also administers these provisions.

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

1 **SECTION 1.** 13.101 (18) of the statutes is created to read:

2 13.101 (18) Notwithstanding sub. (4), the committee may not transfer funds
3 from the appropriation under 20.115 (8) (jm).

4 **SECTION 2.** 100.52 (1) (b), (d), (f) and (h) of the statutes are repealed.

5 **SECTION 3.** 100.52 (1) (bm) of the statutes is created to read:

6 100.52 (1) (bm) “Customer” means an individual or small business in this state
7 that is furnished with telecommunications service. In this paragraph, “small
8 business” has the meaning given in s. 227.114 (1).

9 **SECTION 4.** 100.52 (2) (a) of the statutes is amended to read:

10 100.52 (2) (a) Upon a request by a residential customer, the department shall
11 include in the nonsolicitation directory a listing indicating that the residential

1 customer does not want to receive telephone solicitations made on behalf of a
2 telephone solicitor.

3 **SECTION 5.** 100.52 (2) (b) of the statutes is amended to read:

4 100.52 (2) (b) The department shall promulgate rules for establishing,
5 maintaining, and semiannually updating a directory that includes listings of
6 residential customers who do not wish to receive telephone solicitations made on
7 behalf of telephone solicitors. The rules promulgated under this paragraph shall
8 establish requirements and procedures for a residential customer to request a listing
9 in the directory. The rules shall also require a residential customer who requests a
10 listing in the directory to notify the department on a biennial basis if the residential
11 customer wishes to continue to be included in the directory. The department shall
12 eliminate a residential customer from the directory if the customer does not make
13 the biennial notification.

14 **SECTION 6.** 100.52 (3) (a) of the statutes is amended to read:

15 100.52 (3) (a) The department shall promulgate rules that require any
16 telephone solicitor who requires an employee or contractor to make a telephone
17 solicitation to a residential customer in this state to register with the department,
18 obtain a registration number from the department, and pay a registration fee to the
19 department in quarterly installments. The amount of the registration fee shall be
20 based on the cost of establishing the nonsolicitation directory, and the amount that
21 an individual telephone solicitor is required to pay shall be based on the number of
22 telephone lines used by the telephone solicitor to make telephone solicitations. The
23 rules shall also require a telephone solicitor that registers with the department to
24 pay an annual registration renewal fee to the department. The amount of the

1 registration renewal fee shall be based on the cost of maintaining the nonsolicitation
2 directory.

3 **SECTION 7.** 100.52 (3) (am) of the statutes is created to read:

4 100.52 (3) (am) Annually, no later than January 1, the department shall
5 estimate the total expenditures from the appropriation under s. 20.115 (8) (jm) in
6 that fiscal year and the unencumbered balance that will remain in the appropriation
7 under s. 20.115 (8) (jm) at the end of that fiscal year. If the estimated unencumbered
8 balance exceeds 15 percent of the estimated expenditures from that appropriation
9 the department shall reduce or waive one or more quarterly installments under par.
10 (a). The department shall apply any reduction or waiver under this paragraph
11 proportionally to all telephone solicitors registered under par. (a).

12 **SECTION 8.** 100.52 (4) (a) 2. of the statutes is amended to read:

13 100.52 (4) (a) 2. Make a telephone solicitation to a ~~residential~~ customer if the
14 nonsolicitation directory that is provided or made available to the telephone solicitor
15 under sub. (2) (d) includes a listing for the residential customer.

16 **SECTION 9.** 100.52 (4) (a) 3. of the statutes is amended to read:

17 100.52 (4) (a) 3. Make a telephone solicitation to a ~~nonresidential~~ customer if
18 the ~~nonresidential~~ customer has provided notice by mail to the telephone solicitor
19 that the ~~nonresidential~~ customer does not wish to receive telephone solicitations.

20 **SECTION 10.** 100.52 (4) (c) of the statutes is amended to read:

21 100.52 (4) (c) A telephone solicitor or employee or contractor of a telephone
22 solicitor that makes a telephone solicitation to a ~~nonresidential customer~~ person in
23 this state shall, upon the request of the ~~nonresidential customer~~ person, provide the
24 mailing address for notifying the telephone solicitor that the ~~nonresidential~~
25 ~~customer~~ person does not wish to receive telephone solicitations.

1 **SECTION 11.** 134.72 of the statutes is renumbered 100.525.

2 **SECTION 12.** 134.95 (2) of the statutes is amended to read:

3 134.95 (2) SUPPLEMENTAL FORFEITURE. If a fine or a forfeiture is imposed on a
4 person for a violation under s. 100.171, 100.173, 100.174, 100.175, 100.177, 134.71,
5 ~~134.72~~, 134.73, or 134.87 or ch. 136 or a rule promulgated under these sections or that
6 chapter, the person shall be subject to a supplemental forfeiture not to exceed
7 \$10,000 for that violation if the conduct by the defendant, for which the fine or
8 forfeiture was imposed, was perpetrated against an elderly person or disabled person
9 and if any of the factors under s. 100.264 (2) (a), (b), or (c) is present.

10 **SECTION 13.** 767.265 (2r) of the statutes is amended to read:

11 767.265 (2r) Upon entry of each order for child support, maintenance, family
12 support, support by a spouse or the annual receiving and disbursing fee, and upon
13 approval of each stipulation for child support, unless the court finds that income
14 withholding is likely to cause the payer irreparable harm or unless s. 767.267
15 applies, the court, circuit court commissioner or county child support agency under
16 s. 59.53 (5) shall provide notice of the assignment by regular mail or by facsimile
17 machine, as defined in s. ~~134.72 (1) (a)~~ 100.525 (1) (a), or other electronic means to
18 the last-known address of the person from whom the payer receives or will receive
19 money. The notice shall provide that the amount withheld may not exceed the
20 maximum amount that is subject to garnishment under 15 USC 1673 (b) (2). If the
21 department or its designee, whichever is appropriate, does not receive the money
22 from the person notified, the court, circuit court commissioner or county child
23 support agency under s. 59.53 (5) shall provide notice of the assignment to any other
24 person from whom the payer receives or will receive money. Notice under this

1 subsection may be a notice of the court, a copy of the executed assignment or a copy
2 of that part of the court order directing payment.

3 **SECTION 14.** 968.01 (1) of the statutes is amended to read:

4 968.01 (1) "Facsimile machine" has the meaning given in s. ~~134.72 (1) (a)~~
5 100.525 (1) (a).

6 (END)