

2005 ASSEMBLY BILL 685

September 22, 2005 – Introduced by Representatives DAVIS, FREESE, FRISKE, HUNDERTMARK, RHOADES, GRONEMUS, LOEFFELHOLZ, OTT, GUNDERSON, ALBERS, KREIBICH, TOWNSEND, PETTIS, MOLEPSKE and SHILLING, cosponsored by Senators KANAVAS, STEPP, LEIBHAM, DARLING, LASSA, OLSEN, COWLES and ROESSLER. Referred to Committee on Criminal Justice and Homeland Security.

1 **AN ACT** *to amend* 100.264 (2) (intro.) and 165.25 (4) (ar); and *to create* 100.54
2 of the statutes; **relating to:** regulating certain electronic mail solicitations and
3 practices related to electronic mail solicitations and providing penalties.

Analysis by the Legislative Reference Bureau

This bill imposes certain requirements and restrictions upon persons who send electronic mail solicitations. The bill defines an electronic mail solicitation as an electronic mail message that is sent by a person other than a nonprofit organization or a state or federal agency without the consent of the recipient for the purpose of selling, leasing, or offering to sell or lease property, goods, or services to the recipient.

The bill prohibits all of the following: 1) knowingly sending an electronic mail solicitation that misrepresents the sender's identity, telephone number, return electronic mail address, street mailing address, or any information identifying the solicitation's transmission path; 2) knowingly sending electronic mail solicitations using an address, Internet user account, domain name, or Internet protocol address that the sender obtained by misrepresenting his or her identity; 3) knowingly selling an electronic mail address, without the address holder's permission, for the purpose of falsifying transmission information; 4) knowingly selling software that is designed to falsify electronic mail transmission information; and 5) collecting electronic mail addresses appearing on the Internet for the purpose of sending an electronic mail solicitation that contains certain fraudulent information.

The bill creates an affirmative defense to the sending of an electronic mail solicitation in violation of the provisions of this bill. The sender is entitled to that

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defense if the sender demonstrates, by a preponderance of the evidence, that the electronic mail solicitation was sent in error and that the sender followed certain procedures, including providing recipients a reasonable opportunity to request that the sender send no further electronic mail solicitations.

The bill requires the Department of Agriculture, Trade and Consumer Protection (DATCP) to investigate violations of the provisions of this bill and to maintain an Internet Web site that explains how a person may file a complaint with DATCP concerning such violations. Persons who violate the provisions of the bill are subject to civil and criminal penalties.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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 100.54 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.** 100.54 of the statutes is created to read:

11 **100.54 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.

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1 (b) “Electronic mail solicitation” means an electronic mail message that is sent
2 by a person other than a nonprofit organization or a state or federal agency without
3 the consent of the recipient for the purpose of selling or leasing or offering to sell or
4 lease property, goods, or services to the recipient.

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

7 (d) “Nonprofit organization” means an organization that is described in section
8 501 (c) (3) of the Internal Revenue Code and that is exempt from federal income tax
9 under section 501 (a) of the Internal Revenue Code.

10 (e) “Send” means to initiate the transmission of an electronic mail message, but
11 does not include any transmission of an electronic mail message by an electronic mail
12 service provider.

13 **(2) PROHIBITIONS.** (a) Except as provided in par. (b), no person may do any of
14 the following:

15 1. Knowingly send an electronic mail solicitation that misrepresents the
16 identity, telephone number, return electronic mail address, or street mailing address
17 of the person sending the electronic mail solicitation.

18 2. Knowingly send, conspire with another person to send, or aid or abet the
19 sending of an electronic mail solicitation that misrepresents or obscures information
20 identifying the transmission path of the electronic mail solicitation.

21 3. Knowingly send more than one electronic mail solicitation if any of the
22 following apply:

23 a. The person obtains 15 or more electronic mail accounts or Internet user
24 accounts by falsely representing the person’s identity and uses such accounts to
25 knowingly send the electronic mail solicitations.

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1 b. The person obtains 2 or more Internet domain names by falsely representing
2 the person's identity and uses such domain names to send the electronic mail
3 solicitations.

4 c. The person falsely represents the right to use 5 or more Internet protocol
5 addresses and uses such Internet protocol addresses to send more than one electronic
6 mail solicitation intentionally.

7 d. Without authorization, the person accesses the protected computer of
8 another and intentionally sends more than one electronic mail solicitation using the
9 protected computer.

10 4. Knowingly sell, give, or otherwise distribute, or possess with the intent to
11 sell, give, or otherwise distribute, software that is any of the following:

12 a. Primarily designed or produced for the purpose of facilitating or enabling the
13 falsification of electronic mail transmission information or other routing
14 information.

15 b. Of limited commercially significant purpose other than to facilitate or enable
16 the falsification of electronic mail transmission information or other routing
17 information.

18 c. Marketed by that person or someone in concert with that person for use in
19 facilitating or enabling the falsification of electronic mail transmission information
20 or other routing information.

21 5. Knowingly sell an electronic mail address to another person for the purpose
22 of facilitating or enabling the falsification of commercial electronic mail
23 transmission information unless the seller first obtains the electronic mail address
24 holder's permission to sell that electronic mail address.

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1 6. Collect electronic mail addresses appearing on the Internet for the purpose
2 of sending, or advertising in, an electronic mail solicitation that contains fraudulent
3 or misleading information or that solicits the sale or lease of fraudulent products or
4 services.

5 (b) Paragraph (a) 1. to 3. does not apply to a person who, through an automatic
6 technical process, transmits, routes, relays, handles, or stores an electronic mail
7 solicitation, if the identity or address of the recipient of the electronic mail
8 solicitation is determined by another.

9 **(3) ENFORCEMENT.** (a) The department shall investigate violations of this
10 section.

11 (b) The department shall maintain an Internet Web site that explains how a
12 person who receives electronic mail solicitation that violates this section may file a
13 complaint with the department. The Internet Web site shall be designed to enable
14 a viewer of the Web site to send a complaint to the department in the form of
15 electronic mail.

16 **(4) CRIMINAL PENALTIES.** (a) Except as provided in pars. (b) to (d), whoever
17 violates this section is guilty of a Class A misdemeanor.

18 (b) Whoever violates this section is guilty of a Class I felony if any of the
19 following apply:

20 1. The person sends more than 250 electronic mail solicitations in any 24-hour
21 period.

22 2. The violation causes a loss of more than \$500 in any 12-month period.

23 3. The person acts in concert with 3 or more others as a leader or organizer of
24 the conduct that violates this section.

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1 (c) Whoever violates sub. (2) (a) 3. is guilty of a Class I felony, if the person
2 obtains 20 or more electronic mail accounts or Internet user accounts by falsely
3 representing the person's identity.

4 (d) Whoever violates this section is guilty of a Class H felony, if any of the
5 following apply:

6 1. The person acted in furtherance of a felony.

7 2. The person has previously been convicted of violating any law of this state
8 or another state, or a federal law, that regulates the transmission of electronic mail
9 solicitations.

10 (e) In addition to the penalties authorized under pars. (a) to (d), a court may
11 order that a person who is guilty of violating this section forfeit to the state any of
12 the following:

13 1. Money or other things of value the person obtained as a result of violating
14 this section.

15 2. Personal property used in connection with a violation of this section, if the
16 owner of the personal property knew it was used in connection with a violation of this
17 section.

18 **(5) CIVIL FORFEITURES.** The department may initiate a civil action against a
19 person who violates this section and recover a civil penalty not to exceed the greater
20 of \$25,000 per day of violation, or \$8 per electronic mail solicitation sent in violation
21 of this section. An action under this subsection shall be initiated not later than 2
22 years after the last violation.

23 **(6) AFFIRMATIVE DEFENSE.** (a) It is an affirmative defense to the sending of an
24 electronic mail solicitation in violation of this section if the person who sent the
25 electronic mail solicitation demonstrates, by a preponderance of the evidence, that

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1 the electronic mail solicitation was sent in error and the person did all of the
2 following:

3 1. Provided to recipients of the electronic mail solicitations a reasonable
4 opportunity to request that the person send no further electronic mail solicitations.

5 2. Established and implemented, with due care, reasonable practices and
6 procedures effectively to prevent the sending of electronic mail solicitations from
7 that person in violation of this section.

8 3. Trained the person's employees, if any, with regard to the requirements of
9 this section.

10 4. Maintained records demonstrating compliance with this section.

11 (b) No person may exercise the defense under par. (a) more than once in any
12 12-month period. A person exercises the defense if the defense is asserted in
13 response to any complaint made to the department about a violation of this section,
14 regardless of whether litigation has been initiated.

15 **(7) IMMUNITY.** An electronic mail service provider is immune from civil liability
16 for any good faith acts or omissions related to the blocking of electronic mail
17 solicitations sent in violation of this section.

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

21 **SECTION 3.** 165.25 (4) (ar) of the statutes is amended to read:

22 165.25 **(4)** (ar) The department of justice shall furnish all legal services
23 required by the department of agriculture, trade and consumer protection relating
24 to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,
25 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50

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1 and, 100.51, and 100.54 and chs. 126, 136, 344, 704, 707, and 779, together with any
2 other services as are necessarily connected to the legal services.

3 **SECTION 4. Nonstatutory provisions.**

4 (1) The assembly chief clerk shall send a copy of this act to the attorney general
5 of each state and to the attorney general of the United States.

6 (END)