

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2005 ASSEMBLY BILL 685**

October 17, 2005 – Offered by Representative DAVIS.

1 **AN ACT** *to amend* 100.264 (2) (intro.) and 165.25 (4) (ar); and *to create* 100.54
2 and 943.201 (2m) of the statutes; **relating to:** regulating certain electronic
3 mail solicitations and practices related to electronic mail solicitations and
4 providing penalties.

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

5 **SECTION 1.** 100.264 (2) (intro.) of the statutes is amended to read:
6 100.264 (2) SUPPLEMENTAL FORFEITURE. (intro.) If a fine or a forfeiture is
7 imposed on a person for a violation under s. 100.16, 100.17, 100.18, 100.182, 100.183,
8 100.20, 100.205, 100.207, 100.21, 100.30 (3), 100.35, 100.44 or 100.46, or 100.54 or
9 a rule promulgated under one of those sections, the person shall be subject to a
10 supplemental forfeiture not to exceed \$10,000 for that violation if the conduct by the
11 defendant, for which the violation was imposed, was perpetrated against an elderly

1 person or disabled person and if the court finds that any of the following factors is
2 present:

3 **SECTION 2.** 100.54 of the statutes is created to read:

4 **100.54 Electronic mail solicitations. (1) DEFINITIONS.** In this section:

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

8 (b) “Electronic mail solicitation” means an electronic mail message, including
9 any program or document attached to the messages, that is sent by a person other
10 than a state or federal agency without the consent of the recipient for the purpose
11 of selling or leasing or offering to sell or lease property, goods, or services to the
12 recipient.

13 (bg) “Identifying information” means any of the following:

14 1. The unique identifying driver number assigned to an individual by the
15 department of transportation under s. 343.17 (3) (a) 4.

16 2. An individual’s social security number.

17 3. The identifying number of an individual’s depository account, as defined in
18 s. 815.18 (2) (e).

19 4. An individual’s unique biometric data, including fingerprint, voice, retina or
20 iris image, or other unique physical representation.

21 5. An individual’s electronic signature, as defined in s. 178.46 (1g) (c).

22 6. Any other unique code, number, information, or data pertaining to an
23 individual that can be used, alone or in conjunction with another object or device, to
24 obtain, access, or transfer the individual’s money, goods, services, benefits, or any
25 other thing of value.

1 (br) “Internet” means the international computer network of both federal and
2 nonfederal interoperable packet switched data networks, including the graphical
3 subnetwork known as the World Wide Web.

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

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

9 (fm) “Web site” means a location on the Internet with a single uniform resource
10 locator or any other single location on the Internet.

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

13 1. Send an electronic mail solicitation that misrepresents the identity,
14 telephone number, return electronic mail address, or street mailing address of the
15 person sending the electronic mail solicitation.

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

19 3. Send more than one electronic mail solicitation if any of the following apply:

20 a. The person obtains 15 or more electronic mail accounts or Internet user
21 accounts by falsely representing the person’s identity and uses the accounts to
22 knowingly send the electronic mail solicitations.

23 b. The person obtains 2 or more Internet domain names by falsely representing
24 the person’s identity and uses the domain names to send the electronic mail
25 solicitations.

1 c. The person falsely represents the right to use 5 or more Internet protocol
2 addresses and uses the Internet protocol addresses to send more than one electronic
3 mail solicitation.

4 d. Without authorization, the person accesses the protected computer of
5 another and intentionally sends more than one electronic mail solicitation using the
6 protected computer.

7 4. Sell, give, or otherwise distribute, or possess with the intent to sell, give, or
8 otherwise distribute, software that is any of the following:

9 a. Primarily designed or produced for the purpose of facilitating or enabling the
10 falsification of electronic mail transmission information or other routing
11 information.

12 b. Of limited commercially significant purpose other than to facilitate or enable
13 the falsification of electronic mail transmission information or other routing
14 information.

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

18 5. Sell an electronic mail address to another person for the purpose of
19 facilitating or enabling the falsification of commercial electronic mail transmission
20 information unless the seller first obtains the electronic mail address holder's
21 permission to sell that electronic mail address.

22 6. Collect electronic mail addresses appearing on the Internet for the purpose
23 of sending, or advertising in, an electronic mail solicitation that contains fraudulent
24 or misleading information or that solicits the sale or lease of fraudulent products or
25 services.

1 7. Solicit identifying information from another by using an electronic mail
2 message, Web site, or other Internet communication that represents that the
3 electronic mail message, Web site, or other Internet communication originates from
4 a business, without the authorization of the business.

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 may 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.

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 (cm) Whoever violates sub. (2) (a) 7. is guilty of a class H felony.

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

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

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

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

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

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

19 **(5) CIVIL FORFEITURES.** (a) The department may initiate a civil action against
20 a person who violates this section and recover a civil penalty in the following
21 amounts:

22 1. Not more than the greater of \$25,000 per day of violation, or \$8 per electronic
23 mail solicitation sent in violation of this section.

24 2. If the court finds the person sent an electronic mail in violation of this section
25 to a computer that the person knew or should have known was accessible to a minor,

1 the amount under subd. 1. plus an additional forfeiture not to exceed \$10,000 per
2 violation.

3 (b) An action under this subsection shall be initiated not later than 2 years after
4 the last violation.

5 **(6) AFFIRMATIVE DEFENSE.** (a) It is an affirmative defense to the sending of an
6 electronic mail solicitation in violation of this section if the person who sent the
7 electronic mail solicitation demonstrates, by a preponderance of the evidence, that
8 the electronic mail solicitation was sent in error and the person did all of the
9 following:

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

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

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

17 (b) No person may exercise the defense under par. (a) more than once in any
18 12-month period. A person exercises the defense if the defense is asserted in
19 response to any complaint made to the department about a violation of this section,
20 regardless of whether litigation has been initiated.

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

