



2005 SENATE BILL 116

March 15, 2005 – Introduced by Senators ERPENBACH, OLSEN, RISSER, CARPENTER, MILLER, TAYLOR, LASSA, BRESKE and HANSEN, cosponsored by Representatives SHILLING, BLACK, POCAN, PARISI, STASKUNAS, OWENS, VAN AKKEREN, BOYLE, SHERMAN, HEBL, GRONEMUS, BERCEAU, POPE-ROBERTS, HINES, CULLEN, GUNDERSON, BENEDICT, KRUSICK, LEHMAN, SINICKI, GRIGSBY, JESKEWITZ, LOEFFELHOLZ, OTT, AINSWORTH, SHERIDAN, TRAVIS, SEIDEL, MOLEPSKE, ALBERS, PETROWSKI and PRIDEMORE. Referred to Committee on Energy, Utilities and Information Technology.

1 **AN ACT to repeal** 100.52 (10) (b); **to renumber and amend** 100.52 (10) (a); **to**
2 **amend** 100.52 (1) (d), 100.52 (1) (f), 100.52 (1) (i), 100.52 (1) (j), 100.52 (3) (a)
3 and 100.52 (4) (a) 3.; and **to create** 13.101 (18), 100.52 (1) (bm), 100.52 (3) (am),
4 100.52 (11) and 893.93 (5) of the statutes; **relating to:** prohibitions against
5 certain telephone solicitations, authorizing a private cause of action, and
6 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 bill alters current law regarding telephone solicitations as follows.

1. Under current law, the definitions of residential customer and nonresidential customer do not include persons have with cellular telephone service. This bill broadens the definitions of residential customer and nonresidential customer to include persons who have commercial mobile service, which includes cellular telephone service. As a result, under the bill, cellular telephone numbers

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may be included in the directory of residential customers who do not wish to receive telephone solicitations, and telephone solicitors may not make telephone solicitations to such cellular telephone numbers.

2. Current law excludes nonprofit organizations and their employees and contractors from restrictions on telephone solicitations. The bill clarifies that the exemption applies only to organizations with 501(c)(3) status under the Internal Revenue Code. The bill also expands the definition of “telephone solicitation” to include solicitations to make a gift of property, goods, or services. As a result, under the bill, a nonprofit organization that makes unsolicited telephone calls to solicit donations is subject to current restrictions on telephone solicitations, unless the organization has 501(c)(3) status.

3. Under current law, a telephone solicitor may not make a telephone solicitation to a nonresidential customer if the customer has notified the solicitor by mail that the customer does not wish to receive telephone solicitations. Under the bill, a telephone solicitor is prohibited from making a telephone solicitation to a nonresidential customer or a residential customer who has verbally informed the solicitor that the customer does not wish to receive telephone solicitations.

4. Under current law, the penalty for a violation of the restrictions on telephone solicitations is a forfeiture not to exceed \$100. The bill increases the penalty to a forfeiture of not less than \$1,000 nor more than \$10,000. The bill also permits a person who suffers damages as a result of a violation to bring an action for injunctive relief and for actual damages or \$500 per violation, whichever is greater.

5. Under current law, the registration fee DATCP charges telephone solicitors must be based on the cost of maintaining the nonsolicitation directory. Under the bill, 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 nonsolicitation directory by 15 percent or more.

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.** 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) (bm) of the statutes is created to read:

5 100.52 (1) (bm) “Commercial mobile service” has the meaning given in s. 196.01
6 (2i).

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1 **SECTION 3.** 100.52 (1) (d) of the statutes is amended to read:

2 100.52 (1) (d) “Nonresidential customer” means a person, other than a
3 residential customer, who is furnished with telecommunications service or
4 commercial mobile service by a telecommunications utility.

5 **SECTION 4.** 100.52 (1) (f) of the statutes is amended to read:

6 100.52 (1) (f) “Residential customer” means an individual who is furnished
7 with basic local exchange service or commercial mobile service by a
8 telecommunications utility, but does not include an individual who operates a
9 business at his or her residence.

10 **SECTION 5.** 100.52 (1) (i) of the statutes is amended to read:

11 100.52 (1) (i) “Telephone solicitation” means the unsolicited initiation of a
12 telephone conversation for the purpose of encouraging the recipient of the telephone
13 call to purchase property, goods, or services or to make a gift of anything of value.

14 **SECTION 6.** 100.52 (1) (j) of the statutes is amended to read:

15 100.52 (1) (j) “Telephone solicitor” means a person, other than ~~a nonprofit~~
16 ~~organization or an employee or contractor of a nonprofit organization~~ an
17 organization described in section 501 (c) (3) of the Internal Revenue Code or an
18 employee or contractor of an organization described in section 501 (c) (3) of the
19 Internal Revenue Code, that employs or contracts with an individual to make a
20 telephone solicitation.

21 **SECTION 7.** 100.52 (3) (a) of the statutes is amended to read:

22 100.52 (3) (a) The department shall promulgate rules that require any
23 telephone solicitor who requires an employee or contractor to make a telephone
24 solicitation to a residential customer in this state to register with the department,
25 obtain a registration number from the department, and pay a registration fee to the

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1 department in quarterly installments. The amount of the registration fee shall be
2 based on the cost of establishing the nonsolicitation directory, and the amount that
3 an individual telephone solicitor is required to pay shall be based on the number of
4 telephone lines used by the telephone solicitor to make telephone solicitations. The
5 rules shall also require a telephone solicitor that registers with the department to
6 pay an annual registration renewal fee to the department. The amount of the
7 registration renewal fee shall be based on the cost of maintaining the nonsolicitation
8 directory.

9 **SECTION 8.** 100.52 (3) (am) of the statutes is created to read:

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

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

19 100.52 (4) (a) 3. Make a telephone solicitation to a residential customer or
20 nonresidential customer if the residential customer or nonresidential customer has
21 provided notice by mail or previously stated to the telephone solicitor or an employee
22 or contractor of the telephone solicitor that the residential customer or
23 nonresidential customer does not wish to receive telephone solicitations.

24 **SECTION 10.** 100.52 (10) (a) of the statutes is renumbered 100.52 (10) and
25 amended to read:

