

2007 SENATE BILL 99

March 20, 2007 – Introduced by Senators ERPENBACH, KREITLOW, HANSEN, BRESKE, LEHMAN, MILLER, PLALE, ROBSON, ROESSLER, DECKER, DARLING, COGGS, RISSER, LASSA, CARPENTER, TAYLOR, VINEHOUT, SULLIVAN and JAUCH, cosponsored by Representatives SHILLING, SMITH, NELSON, SOLETSKI, SEIDEL, GUNDERSON, HUBLER, KREUSER, TRAVIS, SHERMAN, FIELDS, RICHARDS, WOOD, BERCEAU, CULLEN, SHERIDAN, BALLWEG, TURNER, BLACK, MURTHA, MUSSER, BOYLE, PARISI, HEBL, GRIGSBY, POCAN, GARTHWAITE, STASKUNAS, STEINBRINK, JORGENSEN, HINTZ, TOLES, KRUSICK, GRONEMUS, YOUNG, ZEPNICK, VRUWINK, WASSERMAN, BIES, ZIEGELBAUER, HILGENBERG, HIXSON, BENEDICT, VAN AKKEREN, SCHNEIDER, MOULTON, MASON, POPE-ROBERTS, MOLEPSKE, COLON, HRAYCHUCK, KESSLER, SINICKI and A. WILLIAMS. Referred to Committee on Small Business, Emergency Preparedness, Workforce Development, Technical Colleges and Consumer Protection.

1 **AN ACT to repeal** 100.52 (10) (b) and 134.72 (2) (a) 1. to 3., (b) and (c); **to**
 2 **renumber** 134.72 (title), 134.72 (1), 134.72 (2) (title), 134.72 (3) and 134.72 (4);
 3 **to renumber and amend** 100.52 (10) (a) and 134.72 (2) (a) (intro.); **to amend**
 4 100.52 (2) (a), 100.52 (2) (b), 100.52 (3) (a), 100.52 (4) (a) 2., 100.52 (4) (a) 3.,
 5 100.52 (4) (c), 100.52 (4) (c), 134.95 (2), 767.75 (2r) and 968.01 (1); and **to create**
 6 13.101 (18), 100.52 (1) (bm), 100.52 (3) (am), 100.52 (11) and 893.93 (5) of the
 7 statutes; **relating to:** prohibitions against certain telephone and facsimile
 8 solicitations, authorizing a private cause of action, 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 bill alters current law regarding telephone solicitations as follows:

1. Current law regulates telephone solicitations made to traditional "land line" customers. This bill expands the current provisions to include solicitations made to

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persons who have cellular telephone service. As a result, under the bill, cellular telephone numbers may be included in the directory of 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 allows only individuals to request inclusion in the directory. Under the bill, a small business, as defined in the bill, may request inclusion of a land line number or cellular telephone number in the directory.

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 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.

Current law also prohibits facsimile solicitations without the consent of the recipient, except under certain conditions. 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. Under this bill, no facsimile solicitation may be sent without the recipient's consent. The bill transfers enforcement and administrative authority to DATCP.

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:

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

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

5 100.52 (2) (a) Upon a request by a residential customer, the department shall
6 include in the nonsolicitation directory a listing indicating that the residential
7 customer does not want to receive any telephone solicitation made on behalf of a
8 telephone solicitor.

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

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

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

21 100.52 (3) (a) The department shall promulgate rules that require any
22 telephone solicitor who requires an employee or contractor to make a telephone
23 solicitation to a residential customer in this state to register with the department,
24 obtain a registration number from the department, and pay a registration fee to the
25 department in quarterly installments. The amount of the registration fee shall be

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

8 **SECTION 6.** 100.52 (3) (am) of the statutes is created to read:

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

17 **SECTION 7.** 100.52 (4) (a) 2. of the statutes is amended to read:

18 100.52 (4) (a) 2. Make a telephone solicitation to a ~~residential~~ customer if the
19 nonsolicitation directory that is provided or made available to the telephone solicitor
20 under sub. (2) (d) includes a listing for the ~~residential~~ customer.

21 **SECTION 8.** 100.52 (4) (a) 3. of the statutes is amended to read:

22 100.52 (4) (a) 3. Make a telephone solicitation to a ~~nonresidential customer~~
23 person if the ~~nonresidential customer~~ person has provided notice by mail or
24 previously stated to the telephone solicitor or an employee or contractor of the

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1 telephone solicitor that the ~~nonresidential customer~~ person does not wish to receive
2 telephone solicitations.

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

4 100.52 (4) (c) A telephone solicitor or employee or contractor of a telephone
5 solicitor that makes a telephone solicitation to a ~~nonresidential~~ person that is not a
6 customer shall, upon the request of the ~~nonresidential customer~~ person, provide the
7 mailing address for notifying the telephone solicitor that the ~~nonresidential~~
8 customer person does not wish to receive telephone solicitations.

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

10 100.52 (4) (c) A telephone solicitor or employee or contractor of a telephone
11 solicitor that makes a telephone solicitation to a ~~nonresidential~~ person that is not a
12 customer shall, upon the request of the ~~nonresidential customer~~ person, provide the
13 mailing address for notifying the telephone solicitor that the ~~nonresidential~~
14 customer person does not wish to receive telephone solicitations.

15 **SECTION 11.** 100.52 (10) (a) of the statutes is renumbered 100.52 (10) and
16 amended to read:

17 100.52 (10) ~~Except as provided in par. (b), a~~ A person who violates this section
18 may be required to forfeit \$100 not less than \$1,000 nor more than \$10,000 for each
19 violation.

20 **SECTION 12.** 100.52 (10) (b) of the statutes is repealed.

21 **SECTION 13.** 100.52 (11) of the statutes is created to read:

22 100.52 (11) PRIVATE CAUSE OF ACTION. Any person who suffers damages as the
23 result of another person's violation of this section or any rule promulgated by the
24 department under this section may bring an action against the violator for injunctive
25 relief and to recover the amount of those damages or \$500 for each violation,

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1 whichever is greater. Notwithstanding s. 814.04 (1), in an action under this
2 subsection, the court shall award a prevailing plaintiff reasonable attorney fees.

3 **SECTION 14.** 134.72 (title) of the statutes is renumbered 100.524 (title).

4 **SECTION 15.** 134.72 (1) of the statutes is renumbered 100.524 (1).

5 **SECTION 16.** 134.72 (2) (title) of the statutes is renumbered 100.524 (2) (title).

6 **SECTION 17.** 134.72 (2) (a) (intro.) of the statutes is renumbered 100.524 (2) and
7 amended to read:

8 100.524 (2) A person may not make a facsimile solicitation without the consent
9 of the person solicited ~~unless all of the following apply:~~.

10 **SECTION 18.** 134.72 (2) (a) 1. to 3., (b) and (c) of the statutes are repealed.

11 **SECTION 19.** 134.72 (3) of the statutes is renumbered 100.524 (3).

12 **SECTION 20.** 134.72 (4) of the statutes is renumbered 100.524 (4).

13 **SECTION 21.** 134.95 (2) of the statutes is amended to read:

14 134.95 (2) SUPPLEMENTAL FORFEITURE. If a fine or a forfeiture is imposed on a
15 person for a violation under s. 100.171, 100.173, 100.174, 100.175, 100.177, 134.71,
16 ~~134.72~~, 134.73, or 134.87 or ch. 136 or a rule promulgated under these sections or that
17 chapter, the person shall be subject to a supplemental forfeiture not to exceed
18 \$10,000 for that violation if the conduct by the defendant, for which the fine or
19 forfeiture was imposed, was perpetrated against an elderly person or disabled person
20 and if any of the factors under s. 100.264 (2) (a), (b), or (c) is present.

21 **SECTION 22.** 767.75 (2r) of the statutes is amended to read:

22 767.75 (2r) NOTICE OF ASSIGNMENT TO INCOME SOURCE. Upon entry of each order
23 for child support, maintenance, family support, support by a spouse, or the annual
24 receiving and disbursing fee, and upon approval of each stipulation for child support,
25 unless the court finds that income withholding is likely to cause the payer

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1 irreparable harm or unless s. 767.76 applies, the court or county child support agency
2 under s. 59.53 (5) shall provide notice of the assignment by regular mail or by
3 facsimile machine, as defined in s. ~~134.72~~ 100.524 (1) (a), or other electronic means
4 to the last-known address of the person from whom the payer receives or will receive
5 money. The notice shall provide that the amount withheld may not exceed the
6 maximum amount that is subject to garnishment under 15 USC 1673 (b) (2). If the
7 department or its designee does not receive the money from the person notified, the
8 court or county child support agency under s. 59.53 (5) shall provide notice of the
9 assignment to any other person from whom the payer receives or will receive money.
10 Notice under this subsection may be a notice of the court, a copy of the executed
11 assignment, or a copy of that part of the court order directing payment.

12 **SECTION 23.** 893.93 (5) of the statutes is created to read:

13 893.93 (5) An action under s. 100.52 shall be commenced within 3 years after
14 the cause of action accrues or be barred.

15 **SECTION 24.** 968.01 (1) of the statutes is amended to read:

16 968.01 (1) "Facsimile machine" has the meaning given in s. ~~134.72~~ 100.524 (1)
17 (a).

18 **SECTION 25. Initial applicability.**

19 (1) The treatment of section 100.52 (11) of the statutes, as created by this act,
20 first applies to violations committed on the effective date of this subsection.

21 (END)