



2007 BILL

1 **AN ACT** *to repeal* 100.52 (1) (b), (d), (f) and (h), 100.52 (10) (b) and 134.72 (4); *to*
2 *renumber* 134.72 (title) and (1) to (3); *to renumber and amend* 100.52 (10)
3 (a); *to amend* 100.52 (2) (a), 100.52 (2) (b), 100.52 (3) (a), 100.52 (4) (a) 2., 100.52
4 (4) (a) 3., 100.52 (4) (c), 134.95 (2), 767.75 (2r) and 968.01 (1); and *to create*
5 13.101 (18), 100.52 (1) (bm), 100.52 (3) (am) and 100.55 (4) of the statutes;
6 **relating to:** prohibitions against certain telephone and facsimile solicitations
7 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 broadens current law to include cellular telephone customers. As a result, the directory may include a customer's cellular telephone number, and

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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 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, telephone solicitors must register with DATCP and pay an annual fee that is based on the cost of maintaining the 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 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, telephone, or facsimile request not to receive facsimile solicitations, and may not disclose such a recipient's facsimile number to another person. Under current law, district attorneys are authorized to enforce these provisions through forfeiture actions. This bill increases the maximum forfeiture and transfers investigation and enforcement authority for these provisions to DATCP. Under the bill, DATCP also administers these provisions.

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) (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

BILL

1 customer does not want to receive any telephone solicitation 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

BILL

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~~ person does not wish to receive telephone solicitations.

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

3 100.52 (10) ~~Except as provided in par. (b), a~~ A person who violates this section
4 may be required to forfeit \$100 not less than \$1,000 nor more than \$10,000 for each
5 violation.

6 **SECTION 12.** 100.52 (10) (b) of the statutes is repealed.

7 **SECTION 13.** 100.55 (4) of the statutes is created to read:

8 100.55 (4) **ENFORCEMENT.** (a) The department may use its authority in ss. 93.14
9 and 93.15 to investigate violations of this section.

10 (b) The department may commence an action in circuit court in the name of the
11 state to restrain by temporary or permanent injunction the violation of this section.

12 (c) The department, or, after consulting with the department, the department
13 of justice or any district attorney may commence an action in the name of the state
14 to recover a civil forfeiture to the state of not less than \$1,000 nor more than \$10,000
15 for each violation of this section.

16 **SECTION 14.** 134.72 (title) and (1) to (3) of the statutes are renumbered 100.55
17 (title) and (1) to (3).

18 **SECTION 15.** 134.72 (4) of the statutes is repealed.

19 **SECTION 16.** 134.95 (2) of the statutes is amended to read:

20 134.95 (2) **SUPPLEMENTAL FORFEITURE.** If a fine or a forfeiture is imposed on a
21 person for a violation under s. 100.171, 100.173, 100.174, 100.175, 100.177, 134.71,
22 ~~134.72~~, 134.73, or 134.87 or ch. 136 or a rule promulgated under these sections or that
23 chapter, the person shall be subject to a supplemental forfeiture not to exceed
24 \$10,000 for that violation if the conduct by the defendant, for which the fine or

BILL**SECTION 16**

1 forfeiture was imposed, was perpetrated against an elderly person or disabled person
2 and if any of the factors under s. 100.264 (2) (a), (b), or (c) is present.

3 **SECTION 17.** 767.75 (2r) of the statutes is amended to read:

4 767.75 (2r) NOTICE OF ASSIGNMENT TO INCOME SOURCE. Upon entry of each order
5 for child support, maintenance, family support, support by a spouse, or the annual
6 receiving and disbursing fee, and upon approval of each stipulation for child support,
7 unless the court finds that income withholding is likely to cause the payer
8 irreparable harm or unless s. 767.76 applies, the court or county child support agency
9 under s. 59.53 (5) shall provide notice of the assignment by regular mail or by
10 facsimile machine, as defined in s. ~~134.72~~ 100.55 (1) (a), or other electronic means
11 to the last-known address of the person from whom the payer receives or will receive
12 money. The notice shall provide that the amount withheld may not exceed the
13 maximum amount that is subject to garnishment under 15 USC 1673 (b) (2). If the
14 department or its designee does not receive the money from the person notified, the
15 court or county child support agency under s. 59.53 (5) shall provide notice of the
16 assignment to any other person from whom the payer receives or will receive money.
17 Notice under this subsection may be a notice of the court, a copy of the executed
18 assignment, or a copy of that part of the court order directing payment.

19 **SECTION 18.** 968.01 (1) of the statutes is amended to read:

20 968.01 (1) "Facsimile machine" has the meaning given in s. ~~134.72~~ 100.55 (1)
21 (a).

22 **SECTION 19. Initial applicability.**

23 (1) The treatment of sections 100.55 (4) and 134.72 (4) of the statutes first
24 applies to violations committed on the effective date of this subsection.

25 (END)

2/7/07 Scott Ross/Erpcubach

Just wants SB-116 (2005), not sub, as
redraft.

Today

Mar 2/7/07 (LPS: redraft from)
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1339/2
LRB-0208/1
CTS:lmk:pg

2005 - 2006 LEGISLATURE

PWF

2005 SENATE BILL 116

2007 BILL

CTS:kjf

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:

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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

SENATE BILL 116

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).

SENATE BILL 116

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

SENATE BILL 116

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:

SENATE BILL 116

1 100.52 (10) ~~Except as provided in par. (b), a~~ [↓] ~~Δ~~ person who violates this section
2 may be required to forfeit \$100 not less than \$1,000 nor more than \$10,000 for each
3 violation.

4 SECTION 11. 100.52 (10) (b) of the statutes is repealed.

5 SECTION 12. 100.52 (11) of the statutes is created to read:

6 100.52 (11) PRIVATE CAUSE OF ACTION. Any person who suffers damages as the
7 result of another person's violation of this section or any rule promulgated by the
8 department under this section may bring an action against the violator for injunctive
9 relief and to recover the amount of those damages or \$500 for each violation,
10 whichever is greater. Notwithstanding s. 814.04 (1), in an action under this
11 subsection, the court shall award a prevailing plaintiff reasonable attorney fees.

12 SECTION 13. 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 14. Initial applicability.

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

18 (END)

Barman, Mike

From: Ross, Scot
Sent: Monday, February 12, 2007 10:14 AM
To: LRB.Legal
Subject: Draft Review: LRB 07-1339/2 Topic: Telephone solicitations: remove restrictions relating to residential vs. nonresidential customers.

Please Jacket LRB 07-1339/2 for the SENATE.

Sundberg, Christopher

From: Ross, Scot
Sent: Tuesday, February 20, 2007 3:09 PM
To: Sundberg, Christopher
Subject: RE: Fax language

Chris --

Here's what we'd like to do with LRB 1339/2. Keep all the current language in, and add from the Sub from 2005 SB116

- Putting enforcement authority under DATCP
- Allowing a small business to add a landline or cell phone

We would also like to remove language which allows unsolicited faxes in non-business hours (134.72(2)(a)1.), per our discussion.

Thanks much on this. We'd like to throw is out there for cospons late this week or early next week. Think that'll be possible?

From: Sundberg, Christopher
Sent: Tuesday, February 20, 2007 1:42 PM
To: Ross, Scot
Subject: RE: Fax language

Under current law, a person who violates s. 134.72 can be required to forfeit \$500, but that's enforced by district attorneys, not by DATCP. I don't see anything in 2005 SB 116 as introduced that changes the way s.134.72 is enforced or that changes penalties for violating s. 134.72.

If I remember right, the subs to SB 116 did transfer s. 134.72 to DATCP.

CS

From: Ross, Scot
Sent: Tuesday, February 20, 2007 1:29 PM
To: Sundberg, Christopher
Subject: RE: Fax language

I have a press release from when we did in Feb. 2002 that said under SB116 (the basis for LRB 1339/2) it allows DATCP to bring a forfeiture against those who violate the laws against fax solicitations. Wouldn't that be covered as result already?

From: Sundberg, Christopher
Sent: Tuesday, February 20, 2007 12:06 PM
To: Ross, Scot
Subject: RE: Fax language

If you want to eliminate the 9-6 window, you could do it that way, resulting in a flat prohibition on unsolicited faxes. Note, though, that the unsolicited fax provisions under current law are enforced by local DAs, while the current no-call provisions are enforced and administered by DATCP.

CS

From: Ross, Scot
Sent: Friday, February 16, 2007 10:14 AM
To: Sundberg, Christopher
Subject: Fax language

Would eliminating all of the language after the word "solicited" in 134.72(2)(a) be the way to go on this? There is some prohibition in law, but if we wanted to expand it, would this work?

134.72



In: 2/21/07 Wanted Monday if possible

State of Wisconsin
2007 - 2008 LEGISLATURE

3
LRB-1339/29
CTS:kjf:pe

PWF for
2005 amended
inserts

2007 BILL

Current law regulates telephone solicitations made to traditional "land line" customers.

1 AN ACT ^{reagan} 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. and facsimile

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 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 may be

solicitations made to
expands the current provisions

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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.

3 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.

4 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.

5 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.

6 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.

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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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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 residential customer, who is furnished with telecommunications service or commercial mobile service by a telecommunications utility.

③

④

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 with basic local exchange service or commercial mobile service by a telecommunications utility, but does not include an individual who operates a business at his or her residence.

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

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

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

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

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

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100.52 (3) (a) The department shall promulgate rules that require any telephone solicitor who requires an employee or contractor to make a telephone solicitation to a ~~residential~~ customer in this state to register with the department,

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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 ^{person} or previously stated to the telephone solicitor ^{person} or an employee
22 or contractor of the telephone solicitor that the residential customer or
23 ~~nonresidential customer~~ ^{person} 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:

INS
4-17

INS
4-23

BILL

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

INS
5-11

4 **SECTION 11.** 100.52 (10) (b) of the statutes is repealed.

5 **SECTION 12.** 100.52 (11) of the statutes is created to read:

6 100.52 (11) PRIVATE CAUSE OF ACTION. Any person who suffers damages as the
7 result of another person's violation of this section or any rule promulgated by the
8 department under this section may bring an action against the violator for injunctive
9 relief and to recover the amount of those damages or \$500 for each violation,
10 whichever is greater. Notwithstanding s. 814.04 (1), in an action under this
11 subsection, the court shall award a prevailing plaintiff reasonable attorney fees.

11

12 **SECTION 13.** 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.

14

15 **SECTION 14. Initial applicability.**

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

18

(END)

INS
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INS
2-A

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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

INS
3-9

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3-20

INSERT 3-20
CONTINUES →

INSERT 3-20 CONTINUES:

1

customer does not want to receive ^{any} telephone solicitations made on behalf of a telephone solicitor.

2

3

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

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

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END INSERT 3-20

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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 telephone solicitor who requires an employee or contractor to make a telephone solicitation to a residential customer in this state to register with the department, obtain a registration number from the department, and pay a registration fee to the department in quarterly installments. The amount of the registration fee shall be based on the cost of establishing the nonsolicitation directory, and the amount that an individual telephone solicitor is required to pay shall be based on the number of telephone lines used by the telephone solicitor to make telephone solicitations. The rules shall also require a telephone solicitor that registers with the department to pay an annual registration renewal fee to the department. The amount of the

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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).

INS
4-17

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.