

1 **Insert 2-B:**

☞ 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.

2 **Insert 4-23:**

3 **SECTION 1.** 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.

History: 2001 a. 16 ss. 2435 to 2446f, 2819b, 2821b.

9 **Insert 5-11:**

10 **SECTION 2.** 134.72 (1) of the statutes is renumbered 100.524 (1).
11 **SECTION 3.** 134.72 (2) (a) (intro.) of the statutes is renumbered 100.524 (2) and
12 amended to read:

13 100.524 (2) A person may not make a facsimile solicitation without the consent
14 of the person solicited unless all of the following apply:

History: 1977 c. 301; 1989 a. 336; 1995 a. 351; 1997 a. 27; 2001 a. 16; 2005 a. 61.

15 **SECTION 4.** 134.72 (2) (a) 1. to 3., (b) and (c) of the statutes are repealed.

16 **SECTION 5.** 100.72 (3) of the statutes is renumbered 100.524 (3).

17 **SECTION 6.** 134.72 (4) of the statutes is renumbered 100.524 (4).

18 **SECTION 7.** 134.95 (2) of the statutes is amended to read:

1 134.95 (2) SUPPLEMENTAL FORFEITURE. If a fine or a forfeiture is imposed on a
 2 person for a violation under s. 100.171, 100.173, 100.174, 100.175, 100.177, 134.71,
 3 ~~134.72~~, 134.73, or 134.87 or ch. 136 or a rule promulgated under these sections or that
 4 chapter, the person shall be subject to a supplemental forfeiture not to exceed
 5 \$10,000 for that violation if the conduct by the defendant, for which the fine or
 6 forfeiture was imposed, was perpetrated against an elderly person or disabled person
 7 and if any of the factors under s. 100.264 (2) (a), (b), or (c) is present.

8 History: 1995 a. 382; 1997 a. 111; 2001 a. 16.

SECTION 8. 767.75 (2r) of the statutes is amended to read:

9 767.75 (2r) NOTICE OF ASSIGNMENT TO INCOME SOURCE. Upon entry of each order
 10 for child support, maintenance, family support, support by a spouse, or the annual
 11 receiving and disbursing fee, and upon approval of each stipulation for child support,
 12 unless the court finds that income withholding is likely to cause the payer
 13 irreparable harm or unless s. 767.76 applies, the court or county child support agency
 14 under s. 59.53 (5) shall provide notice of the assignment by regular mail or by
 15 facsimile machine, as defined in s. ~~134.72~~ (1) (a) ^{plain} 100.524 (1) ^{move} ~~or~~, or other electronic
 16 means to the last-known address of the person from whom the payer receives or will
 17 receive money. The notice shall provide that the amount withheld may not exceed
 18 the maximum amount that is subject to garnishment under 15 USC 1673 (b) (2). If
 19 the department or its designee does not receive the money from the person notified,
 20 the court or county child support agency under s. 59.53 (5) shall provide notice of the
 21 assignment to any other person from whom the payer receives or will receive money.
 22 Notice under this subsection may be a notice of the court, a copy of the executed
 23 assignment, or a copy of that part of the court order directing payment.

History: 1971 c. 110; 1975 c. 94 s. 91 (3); 1975 c. 199; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196, 221; Stats. 1979 s. 767.265; 1981 c. 20, 186; 1983 a. 27, 384; 1985 a. 29; 1987 a. 38 s. 136; 1987 a. 332 s. 64; 1987 a. 398, 403; 1989 a. 31, 56, 212, 336; 1991 a. 287; 1993 a. 16, 326, 389, 481; 1995 a. 27 s. 9130 (4); 1995 a. 279, 404; 1997 a. 27, 191; 1999 a. 9; 2001 a. 16, 61, 105; 2005 a. 443 ss. 116 to 118, 237; Stats. 2005 s. 767.75.

1 **Insert 5-14:**

2 **SECTION 9.** 968.01 (1) of the statutes is amended to read:

3 968.01 (1) "Facsimile machine" has the meaning given in s. 134.72 (1) (a)

4 *max* 100.524 ~~100.524~~

plai

History: 1989 a. 336; 1995 a. 351.

3/1/07

scot/Erpenbach: redraft LRB-1339/2

to remove provisions re: def. of nonprofit
and tel. solicitations (analysis #3)





ln: 3/1/07
State of Wisconsin
2007 - 2008 LEGISLATURE

Wanted today, if possible

4
LRB-1339/8 RMWR
CTS:kjf:awn

2007 BILL

regen

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 (1) (i), 100.52 (1) (j), 100.52 (2) (a), 100.52 (2) (b), 100.52 (3) (a), 100.52
5 (4) (a) 2., 100.52 (4) (a) 3., 100.52 (4) (c), 100.52 (4) (c), 134.95 (2), 767.75 (2r) and
6 968.01 (1); and *to create* 13.101 (18), 100.52 (1) (bm), 100.52 (3) (am), 100.52
7 (11) and 893.93 (5) of the statutes; **relating to:** prohibitions against certain
8 telephone and facsimile solicitations, authorizing a private cause of action, and
9 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. Current law regulates telephone solicitations made to traditional "land line" customers. This bill expands the current provisions to include solicitations made to 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. 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. 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.

5. 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. 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.

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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) "Customer" means an individual or small business in this state
6 that is furnished with telecommunications service. In this paragraph, "small
7 business" has the meaning given in s. 227.114 (1).

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

9 100.52 (1) (i) "Telephone solicitation" means the unsolicited initiation of a
10 telephone conversation for the purpose of encouraging the recipient of the telephone
11 call to purchase property, goods, or services or to make a gift of anything of value.

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

13 100.52 (1) (j) "Telephone solicitor" means a person, other than ~~a nonprofit~~
14 ~~organization or an employee or contractor of a nonprofit organization~~ an
15 organization described in section 501 (c) (3) of the Internal Revenue Code or an
16 employee or contractor of an organization described in section 501 (c) (3) of the
17 Internal Revenue Code, that employs or contracts with an individual to make a
18 telephone solicitation.

19 **SECTION 5.** 100.52 (2) (a) of the statutes is amended to read:

20 100.52 (2) (a) Upon a request by a residential customer, the department shall
21 include in the nonsolicitation directory a listing indicating that the residential

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1 customer does not want to receive any telephone solicitation made on behalf of a
2 telephone solicitor.

3 **SECTION 6.** 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 7.** 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

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1 registration renewal fee shall be based on the cost of maintaining the nonsolicitation
2 directory.

3 **SECTION 8.** 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 9.** 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 10.** 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
18 person if the nonresidential customer person has provided notice by mail or
19 previously stated to the telephone solicitor or an employee or contractor of the
20 telephone solicitor that the nonresidential customer person does not wish to receive
21 telephone solicitations.

22 **SECTION 11.** 100.52 (4) (c) of the statutes is amended to read:

23 100.52 (4) (c) A telephone solicitor or employee or contractor of a telephone
24 solicitor that makes a telephone solicitation to a nonresidential person that is not a
25 customer shall, upon the request of the nonresidential customer person, provide the

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

3 **SECTION 12.** 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 13.** 100.52 (10) (a) of the statutes is renumbered 100.52 (10) and
10 amended to read:

11 100.52 (10) ~~Except as provided in par. (b), a~~ A person who violates this section
12 may be required to forfeit ~~\$100~~ not less than \$1,000 nor more than \$10,000 for each
13 violation.

14 **SECTION 14.** 100.52 (10) (b) of the statutes is repealed.

15 **SECTION 15.** 100.52 (11) of the statutes is created to read:

16 100.52 (11) PRIVATE CAUSE OF ACTION. Any person who suffers damages as the
17 result of another person's violation of this section or any rule promulgated by the
18 department under this section may bring an action against the violator for injunctive
19 relief and to recover the amount of those damages or \$500 for each violation,
20 whichever is greater. Notwithstanding s. 814.04 (1), in an action under this
21 subsection, the court shall award a prevailing plaintiff reasonable attorney fees.

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

23 **SECTION 17.** 134.72 (1) of the statutes is renumbered 100.524 (1).

24 **SECTION 18.** 134.72 (2) (title) of the statutes is renumbered 100.524 (2) (title).

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1 **SECTION 19.** 134.72 (2) (a) (intro.) of the statutes is renumbered 100.524 (2) and
2 amended to read:

3 100.524 (2) A person may not make a facsimile solicitation without the consent
4 of the person solicited ~~unless all of the following apply:~~

5 **SECTION 20.** 134.72 (2) (a) 1. to 3., (b) and (c) of the statutes are repealed.

6 **SECTION 21.** 134.72 (3) of the statutes is renumbered 100.524 (3).

7 **SECTION 22.** 134.72 (4) of the statutes is renumbered 100.524 (4).

8 **SECTION 23.** 134.95 (2) of the statutes is amended to read:

9 134.95 (2) SUPPLEMENTAL FORFEITURE. If a fine or a forfeiture is imposed on a
10 person for a violation under s. 100.171, 100.173, 100.174, 100.175, 100.177, 134.71,
11 ~~134.72~~, 134.73, or 134.87 or ch. 136 or a rule promulgated under these sections or that
12 chapter, the person shall be subject to a supplemental forfeiture not to exceed
13 \$10,000 for that violation if the conduct by the defendant, for which the fine or
14 forfeiture was imposed, was perpetrated against an elderly person or disabled person
15 and if any of the factors under s. 100.264 (2) (a), (b), or (c) is present.

16 **SECTION 24.** 767.75 (2r) of the statutes is amended to read:

17 767.75 (2r) NOTICE OF ASSIGNMENT TO INCOME SOURCE. Upon entry of each order
18 for child support, maintenance, family support, support by a spouse, or the annual
19 receiving and disbursing fee, and upon approval of each stipulation for child support,
20 unless the court finds that income withholding is likely to cause the payer
21 irreparable harm or unless s. 767.76 applies, the court or county child support agency
22 under s. 59.53 (5) shall provide notice of the assignment by regular mail or by
23 facsimile machine, as defined in s. ~~134.72~~ 100.524 (1) (a), or other electronic means
24 to the last-known address of the person from whom the payer receives or will receive
25 money. The notice shall provide that the amount withheld may not exceed the

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1 maximum amount that is subject to garnishment under 15 USC 1673 (b) (2). If the
2 department or its designee does not receive the money from the person notified, the
3 court or county child support agency under s. 59.53 (5) shall provide notice of the
4 assignment to any other person from whom the payer receives or will receive money.
5 Notice under this subsection may be a notice of the court, a copy of the executed
6 assignment, or a copy of that part of the court order directing payment.

7 **SECTION 25.** 893.93 (5) of the statutes is created to read:

8 893.93 (5) An action under s. 100.52 shall be commenced within 3 years after
9 the cause of action accrues or be barred.

10 **SECTION 26.** 968.01 (1) of the statutes is amended to read:

11 968.01 (1) "Facsimile machine" has the meaning given in s. ~~134.72~~ 100.524 (1)
12 (a).

13 **SECTION 27. Initial applicability.**

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

16 (END)

Barman, Mike

From: Ross, Scot
Sent: Thursday, March 01, 2007 2:02 PM
To: LRB.Legal
Subject: Draft Review: LRB 07-1339/4 Topic: Telephone solicitations: remove restrictions relating to residential vs. nonresidential customers.

Please Jacket LRB 07-1339/4 for the SENATE.