



2007 ASSEMBLY BILL 502

1 **AN ACT** *to amend* 165.25 (4) (ar); and *to create* 100.55 of the statutes; **relating**
2 **to:** furnishing or using certain consumer loan information to make solicitations
3 and providing a penalty.

Analysis by the Legislative Reference Bureau

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

4 **SECTION 1.** 100.55 of the statutes is created to read:
5 **100.55 Furnishing or using certain consumer loan information to**
6 **make solicitations. (1)** In this section:
7 (a) “Consumer” has the meaning given in 15 USC 1681a (c).
8 (b) “Consumer report” has the meaning given in 15 USC 1681a (d).
9 (c) “Consumer reporting agency” has the meaning given in 15 USC 1681a (f).
10 (d) “Lender” means any of the following:

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1 1. A financial institution, as defined in s. 214.01 (1) (jn).

2 2. A finance company licensed under ss. 138.09 or 218.0101 to 218.0163.

3 3. A mortgage banker, loan originator, or mortgage broker registered under s.
4 224.72.

5 4. Any other person, not identified in subds. 1. to 3., the primary business of
6 which is to make loans or engage in lending activities in this state.

7 (e) “Nonaffiliated 3rd party” means a person that is not related by common
8 ownership or affiliated by common corporate control.

9 (f) “Person” has the meaning given in 15 USC 1681a (b).

10 (g) “Personal financial data provider” means any person, other than a
11 consumer reporting agency, that regularly engages in whole or in part in the practice
12 of assembling and furnishing to 3rd parties, for a fee or payment of dues, the identity
13 of particular consumers and financial information relating to such consumers that
14 is not generally available to the public, including information derived from any
15 application by these consumers for an extension of credit or other nonpublic personal
16 information, as defined in 15 USC 6809 (4), relating to these consumers.

17 (h) “Prescreened consumer report” means a consumer report furnished by a
18 consumer reporting agency under authority of 15 USC 1681b (a) (3) (A) and (c) (1)
19 (B) to a person that the consumer reporting agency has reason to believe intends to
20 use the information in connection with any credit transaction that involves the
21 consumer on whom the information is to be furnished and that is not initiated by this
22 consumer.

23 (i) “Trigger lead” means information relating to a consumer that is furnished
24 by a consumer reporting agency or personal financial data provider to a nonaffiliated
25 3rd party if all of the following apply:

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1 1. The consumer has applied to a lender, other than the 3rd party to whom the
2 information is furnished, for an extension of credit and the lender has provided the
3 consumer's credit application, or information derived from or related to the
4 consumer's credit application, to a consumer reporting agency or personal financial
5 data provider for purposes of obtaining a consumer report or otherwise evaluating
6 or rating the consumer's creditworthiness.

7 2. The information furnished to the 3rd party includes the consumer's name
8 and address or telephone number, or other information that allows the 3rd party to
9 identify the consumer.

10 3. The information furnished to the 3rd party contains, with respect to the
11 extension of credit for which the consumer has applied under subd. 1., any
12 identification of the amount of credit for which the consumer has applied or any other
13 information that is related to the terms and conditions of credit for which the
14 consumer has applied and that is not generally available to the public.

15 4. The consumer has not authorized the consumer reporting agency or personal
16 financial data provider to provide the information to 3rd parties and has not initiated
17 any credit transaction with the 3rd party.

18 5. The 3rd party to whom the information is furnished has not extended credit
19 to the consumer on which an unpaid balance remains.

20 (j) "Solicit" means the initiation of a communication to a consumer for the
21 purpose of encouraging the consumer to purchase property, goods, or services or
22 apply for an extension of credit. "Solicit" does not include communications initiated
23 by the consumer or directed to the general public.

24 **(2)** (a) If any trigger lead is not a prescreened consumer report, no person may
25 furnish the trigger lead to a nonaffiliated 3rd party unless the person reasonably

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1 believes that the 3rd party will not use the trigger lead to solicit any consumer
2 identified in the trigger lead.

3 (b) Any person that furnishes a trigger lead described in par. (a) to a
4 nonaffiliated 3rd party shall establish and maintain procedures to reasonably
5 ensure that the trigger lead will not be used to solicit any consumer identified in the
6 trigger lead. These procedures shall include requiring any person that obtains a
7 trigger lead described in par. (a) to identify the user of the trigger lead and to certify,
8 in a manner similar to that required under 15 USC 1681e (a), the purpose for which
9 the trigger lead is obtained and that the person will not use the trigger lead to solicit
10 any consumer identified in the trigger lead.

11 (c) No person that obtains a trigger lead described in par. (a) may use the trigger
12 lead to solicit any consumer identified in the trigger lead.

13 **(3)** (a) If any trigger lead is a prescreened consumer report, a person that
14 obtains a trigger lead and uses the trigger lead to solicit any consumer identified in
15 the trigger lead may not utilize unfair or deceptive practices in soliciting the
16 consumer.

17 (b) For purposes of this subsection, unfair or deceptive practices include all of
18 the following:

19 1. Failure to state in the initial phase of the solicitation that the person
20 soliciting is not the lender, and is not affiliated with the lender, to which the
21 consumer has applied for an extension of credit.

22 2. Failure in the initial solicitation to comply with any applicable requirement
23 under 15 USC 1681b (a), (c), (e), and (f), 1681e (a), and 1681m (d).

24 3. Knowingly or negligently utilizing information regarding consumers who
25 have made an election under 15 USC 1681b (e) to be excluded from prescreened

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1 consumer reports, who have registered their telephone numbers on the national
2 do-not-call registry as provided in 47 CFR 64.1200, or who are listed in the
3 nonsolicitation directory under s. 100.52 (2).

4 4. Soliciting consumers with offers of certain rates, terms, and costs, with
5 intent to subsequently raise the rates or change the terms to the consumers'
6 detriment.

7 5. Making false or misleading statements in connection with a credit
8 transaction that is not initiated by the consumer.

9 **(4)** (a) Any person who violates sub. (2) or (3) may be required to forfeit not less
10 than \$100 nor more than \$1,000 for each violation.

11 (b) The department shall investigate violations of this section. The department
12 or the department of justice, after consulting with the department, or any district
13 attorney, upon informing the department, may on behalf of the state:

14 1. Bring an action for temporary or permanent injunctive or other relief for any
15 violation of this section. In such an action for injunctive relief, irreparable harm is
16 presumed. The court may, upon entry of final judgment, award restitution when
17 appropriate to any person suffering loss because of a violation of this section if proof
18 of such loss is submitted to the satisfaction of the court.

19 2. Bring an action in any court of competent jurisdiction for the penalties
20 authorized under par. (a).

21 (c) In addition to any other remedies, any person aggrieved by a violation of sub.
22 (2) or (3) may bring a civil action for damages. In such an action, any person who
23 violates sub. (2) or (3) shall be liable for twice the amount of actual damages caused
24 by the violation or \$500, whichever is greater, and, notwithstanding s. 814.04 (1), the

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1 costs of the action, including reasonable attorney fees. In such an action, the court
2 may also award any equitable relief that the court determines is appropriate.

3 **SECTION 2m.** 165.25 (4) (ar) of the statutes, as affected by 2005 Wisconsin Act
4 458, is amended to read:

5 165.25 (4) (ar) The department of justice shall furnish all legal services
6 required by the department of agriculture, trade and consumer protection relating
7 to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,
8 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50,
9 100.51, 100.55, and 100.195 and chs. 126, 136, 344, 704, 707, and 779, together with
10 any other services as are necessarily connected to the legal services.

11 (END)