

2007 Assembly Bill 502

Date of enactment: **March 12, 2008**

Date of publication\*: **March 26, 2008**

## 2007 WISCONSIN ACT 76

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

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

**SECTION 1.** 100.55 of the statutes is created to read:

**100.55 Furnishing or using certain consumer loan information to make solicitations.** (1) In this section:

(a) “Consumer” has the meaning given in 15 USC 1681a (c).

(b) “Consumer report” has the meaning given in 15 USC 1681a (d).

(c) “Consumer reporting agency” has the meaning given in 15 USC 1681a (f).

(d) “Lender” means any of the following:

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

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

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

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

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

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

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

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

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

1. The consumer has applied to a lender, other than the 3rd party to whom the information is furnished, for an extension of credit and the lender has provided the consumer’s credit application, or information derived from

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\* Section 991.11, WISCONSIN STATUTES 2005–06 : Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated” by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

or related to the consumer's credit application, to a consumer reporting agency or personal financial data provider for purposes of obtaining a consumer report or otherwise evaluating or rating the consumer's credit-worthiness.

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

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

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

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

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

(2) (a) If any trigger lead is not a prescreened consumer report, no person may furnish the trigger lead to a nonaffiliated 3rd party unless the person reasonably believes that the 3rd party will not use the trigger lead to solicit any consumer identified in the trigger lead.

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

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

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

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

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

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

3. Knowingly or negligently utilizing information regarding consumers who have made an election under 15 USC 1681b (e) to be excluded from prescreened consumer reports, who have registered their telephone numbers on the national do-not-call registry as provided in 47 CFR 64.1200, or who are listed in the nonsolicitation directory under s. 100.52 (2).

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

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

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

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

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

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

(c) In addition to any other remedies, any person aggrieved by a violation of sub. (2) or (3) may bring a civil action for damages. In such an action, any person who violates sub. (2) or (3) shall be liable for twice the amount of actual damages caused by the violation or \$500, whichever is greater, and, notwithstanding s. 814.04 (1), the costs of the action, including reasonable attorney fees. In such an action, the court may also award any equitable relief that the court determines is appropriate.

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

165.25 (4) (ar) The department of justice shall furnish all legal services required by the department of agriculture, trade and consumer protection relating to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18, 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50, 100.51, 100.55, and 100.195 and chs. 126, 136, 344, 704,

707, and 779, together with any other services as are necessarily connected to the legal services.

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