



State of Wisconsin
2005 - 2006 LEGISLATURE

LRBs0476/1
CTS:lmk:ch

**SENATE SUBSTITUTE AMENDMENT 1,
TO 2005 SENATE BILL 116**

February 20, 2006 – Offered by Senator ERPENBACH.

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), 767.265 (2r) and 968.01 (1); and **to create**
5 13.101 (18), 100.52 (1) (bm), 100.52 (3) (am) and 100.54 (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 substitute amendment alters current law regarding telephone solicitations as follows.

1. Current law regulates telephone solicitations made to traditional “land line” customers. This substitute amendment broadens current law to include cellular telephone customers. As a result, the directory may include a customer’s cellular 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. Under current law, district attorneys are authorized to enforce these provisions through forfeiture actions. This substitute amendment increases the maximum forfeiture and transfers investigation and enforcement authority for these provisions to DATCP. Under the substitute amendment, 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).

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

2 100.52 **(2)** (a) Upon a request by a residential customer, the department shall
3 include in the nonsolicitation directory a listing indicating that the residential
4 customer does not want to receive telephone solicitations made on behalf of a
5 telephone solicitor.

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

7 100.52 **(2)** (b) The department shall promulgate rules for establishing,
8 maintaining, and semiannually updating a directory that includes listings of
9 residential customers who do not wish to receive telephone solicitations made on
10 behalf of telephone solicitors. The rules promulgated under this paragraph shall
11 establish requirements and procedures for a residential customer to request a listing
12 in the directory. The rules shall also require a residential customer who requests a
13 listing in the directory to notify the department on a biennial basis if the residential
14 customer wishes to continue to be included in the directory. The department shall
15 eliminate a residential customer from the directory if the customer does not make
16 the biennial notification.

17 **SECTION 6.** 100.52 (3) (a) of the statutes is amended to read:

18 100.52 **(3)** (a) The department shall promulgate rules that require any
19 telephone solicitor who requires an employee or contractor to make a telephone
20 solicitation to a residential customer in this state to register with the department,
21 obtain a registration number from the department, and pay a registration fee to the
22 department in quarterly installments. The amount of the registration fee shall be
23 based on the cost of establishing the nonsolicitation directory, and the amount that
24 an individual telephone solicitor is required to pay shall be based on the number of
25 telephone lines used by the telephone solicitor to make telephone solicitations. The

1 rules shall also require a telephone solicitor that registers with the department to
2 pay an annual registration renewal fee to the department. The amount of the
3 registration renewal fee shall be based on the cost of maintaining the nonsolicitation
4 directory.

5 **SECTION 7.** 100.52 (3) (am) of the statutes is created to read:

6 100.52 (3) (am) Annually, no later than January 1, the department shall
7 estimate the total expenditures from the appropriation under s. 20.115 (8) (jm) in
8 that fiscal year and the unencumbered balance that will remain in the appropriation
9 under s. 20.115 (8) (jm) at the end of that fiscal year. If the estimated unencumbered
10 balance exceeds 15 percent of the estimated expenditures from that appropriation
11 the department shall reduce or waive one or more quarterly installments under par.
12 (a). The department shall apply any reduction or waiver under this paragraph
13 proportionally to all telephone solicitors registered under par. (a).

14 **SECTION 8.** 100.52 (4) (a) 2. of the statutes is amended to read:

15 100.52 (4) (a) 2. Make a telephone solicitation to a residential customer if the
16 nonsolicitation directory that is provided or made available to the telephone solicitor
17 under sub. (2) (d) includes a listing for the residential customer.

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 ~~nonresidential customer~~
20 person in this state if the ~~nonresidential customer~~ person has provided notice by mail
21 to the telephone solicitor that the ~~nonresidential customer~~ person does not wish to
22 receive telephone solicitations.

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

24 100.52 (4) (c) A telephone solicitor or employee or contractor of a telephone
25 solicitor that makes a telephone solicitation to a ~~nonresidential customer~~ person in

1 this state shall, upon the request of the ~~nonresidential customer~~ person, provide the
2 mailing address for notifying the telephone solicitor that the ~~nonresidential~~
3 ~~customer~~ person does not wish to receive telephone solicitations.

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

6 100.52 (10) ~~Except as provided in par. (b), a~~ A person who violates this section
7 may be required to forfeit ~~\$100~~ not less than \$1,000 nor more than \$10,000 for each
8 violation.

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

10 **SECTION 13.** 100.54 (4) of the statutes is created to read:

11 100.54 (4) ENFORCEMENT. (a) The department may use its authority in ss. 93.14
12 and 93.15 to investigate violations of this section.

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

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

19 **SECTION 14.** 134.72 (title) and (1) to (3) of the statutes are renumbered 100.54
20 (title) and (1) to (3).

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

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

23 134.95 (2) SUPPLEMENTAL FORFEITURE. If a fine or a forfeiture is imposed on a
24 person for a violation under s. 100.171, 100.173, 100.174, 100.175, 100.177, 134.71,
25 ~~134.72~~, 134.73, or 134.87 or ch. 136 or a rule promulgated under these sections or that

1 chapter, the person shall be subject to a supplemental forfeiture not to exceed
2 \$10,000 for that violation if the conduct by the defendant, for which the fine or
3 forfeiture was imposed, was perpetrated against an elderly person or disabled person
4 and if any of the factors under s. 100.264 (2) (a), (b), or (c) is present.

5 **SECTION 17.** 767.265 (2r) of the statutes is amended to read:

6 767.265 (2r) Upon entry of each order for child support, maintenance, family
7 support, support by a spouse or the annual receiving and disbursing fee, and upon
8 approval of each stipulation for child support, unless the court finds that income
9 withholding is likely to cause the payer irreparable harm or unless s. 767.267
10 applies, the court, circuit court commissioner or county child support agency under
11 s. 59.53 (5) shall provide notice of the assignment by regular mail or by facsimile
12 machine, as defined in s. ~~134.72 (1) (a)~~ 100.54 (1) (a), or other electronic means to the
13 last-known address of the person from whom the payer receives or will receive
14 money. The notice shall provide that the amount withheld may not exceed the
15 maximum amount that is subject to garnishment under 15 USC 1673 (b) (2). If the
16 department or its designee, whichever is appropriate, does not receive the money
17 from the person notified, the court, circuit court commissioner or county child
18 support agency under s. 59.53 (5) shall provide notice of the assignment to any other
19 person from whom the payer receives or will receive money. Notice under this
20 subsection may be a notice of the court, a copy of the executed assignment or a copy
21 of that part of the court order directing payment.

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

23 968.01 (1) "Facsimile machine" has the meaning given in s. ~~134.72 (1) (a)~~
24 100.54 (1) (a).

25 **SECTION 19. Initial applicability.**

