



## 2005 ASSEMBLY BILL 416

May 12, 2005 - Introduced by Representatives SHILLING, AINSWORTH, ALBERS, BENEDICT, BERCEAU, BLACK, BOYLE, CULLEN, GRIGSBY, GRONEMUS, GUNDERSON, HEBL, HINES, JESKEWITZ, KRUSICK, LEHMAN, LOEFFELHOLZ, MOLEPSKE, NELSON, NERISON, OTT, OWENS, PARISI, PETROWSKI, POCAN, POPE-ROBERTS, PRIDEMORE, SCHNEIDER, SEIDEL, SHERIDAN, SHERMAN, SINICKI, STASKUNAS, TOLES, TRAVIS, TURNER and VAN AKKEREN, cosponsored by Senators ERPENBACH, BRESKE, CARPENTER, COGGS, DARLING, HANSEN, KANAVAS, LASSA, MILLER, OLSEN, RISSER and TAYLOR. Referred to Committee on Energy and Utilities.

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 (3) (a) and 100.52 (4)  
3           (a) 3.; and **to create** 13.101 (18), 100.52 (1) (bm), 100.52 (1) (f) 2., 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.

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### ***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 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

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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 defines a telephone solicitation as an unsolicited call for the purpose of encouraging the recipient to purchase property, goods, or services. The bill expands the definition to include calls encouraging the recipient to make a gift.

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 \$100 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.

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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).

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

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1           100.52 (1) (d) “Nonresidential customer” means a person, other than a  
2 residential customer, who is furnished with telecommunications service or  
3 commercial mobile service by a telecommunications utility.

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

5           100.52 (1) (f) “Residential customer” means either of the following:

6           1. an An individual who is furnished with basic local exchange service by a  
7 telecommunications utility, ~~but does not include an~~ unless the individual who  
8 operates a business at his or her residence.

9           **SECTION 5.** 100.52 (1) (f) 2. of the statutes is created to read:

10           100.52 (1) (f) 2. An individual who is furnished with commercial mobile service.

11           **SECTION 6.** 100.52 (1) (i) of the statutes is amended to read:

12           100.52 (1) (i) “Telephone solicitation” means the unsolicited initiation of a  
13 telephone conversation for the purpose of encouraging the recipient of the telephone  
14 call to purchase property, goods, or services or to make a gift of anything of value.

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

16           100.52 (3) (a) The department shall promulgate rules that require any  
17 telephone solicitor who requires an employee or contractor to make a telephone  
18 solicitation to a residential customer in this state to register with the department,  
19 obtain a registration number from the department, and pay a registration fee to the  
20 department in quarterly installments. The amount of the registration fee shall be  
21 based on the cost of establishing the nonsolicitation directory, and the amount that  
22 an individual telephone solicitor is required to pay shall be based on the number of  
23 telephone lines used by the telephone solicitor to make telephone solicitations. The  
24 rules shall also require a telephone solicitor that registers with the department to  
25 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) 3. of the statutes is amended to read:

13 100.52 (4) (a) 3. Make a telephone solicitation to a residential customer or  
14 nonresidential customer if the residential customer or nonresidential customer has  
15 provided notice by mail or previously stated to the telephone solicitor or an employee  
16 or contractor of the telephone solicitor that the residential customer or  
17 nonresidential customer does not wish to receive telephone solicitations.

18 **SECTION 10.** 100.52 (10) (a) of the statutes is renumbered 100.52 (10) and  
19 amended to read:

20 100.52 (10) ~~Except as provided in par. (b), a~~ A person who violates this section  
21 may be required to forfeit not less than \$100 nor more than \$10,000 for each  
22 violation.

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

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

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

7           **SECTION 13.** 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 14. Initial applicability.**

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

13           **(END)**