



State of Wisconsin
2001 - 2002 LEGISLATURE

LRBs0045/2
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**SENATE SUBSTITUTE AMENDMENT 1,
TO 2001 SENATE BILL 40**

February 28, 2001 – Offered by COMMITTEE ON PRIVACY, ELECTRONIC COMMERCE AND FINANCIAL INSTITUTIONS.

1 **AN ACT to repeal** 134.72 (2) (a) (title) and 134.72 (2) (b) (title); **to renumber and**
2 **amend** 134.72 (1) (c), 134.72 (2) (a) and 134.72 (2) (b); **to amend** 100.264 (2)
3 (intro.), 134.72 (title), 134.72 (3) (a), 134.72 (3) (b) and 134.72 (4); and **to create**
4 20.115 (8) (jm), 100.52 (title), 100.52 (1) (title), 100.52 (1) (a), 100.52 (1) (b),
5 100.52 (1) (c), 100.52 (1) (d), 100.52 (1) (e), 100.52 (1) (f), 100.52 (1) (g), 100.52
6 (1) (h), 100.52 (1) (j), 100.52 (2), 100.52 (3), 100.52 (4) (title), 100.52 (4) (a) 2. and
7 3., 100.52 (4) (b), 100.52 (4) (c), 100.52 (5), 100.52 (6), 100.52 (7), 100.52 (8),
8 100.52 (9) and 100.52 (10) of the statutes; **relating to:** prohibiting certain
9 telephone solicitations, requiring the registration of telephone solicitors,
10 requiring the exercise of rule-making authority, making an appropriation, and
11 providing penalties.

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

12 **SECTION 1.** 20.115 (8) (jm) of the statutes is created to read:

1 20.115 (8) (jm) *Telephone solicitation regulation.* All moneys received from
2 telephone solicitor registration and registration renewal fees paid under the rules
3 promulgated under s. 100.52 (3) (a) for establishing and maintaining the
4 nonsolicitation directory under s. 100.52 (2).

5 **SECTION 2.** 100.264 (2) (intro.) of the statutes is amended to read:

6 100.264 (2) SUPPLEMENTAL FORFEITURE. (intro.) If a fine or a forfeiture is
7 imposed on a person for a violation under s. 100.16, 100.17, 100.18, 100.182, 100.183,
8 100.20, 100.205, 100.207, 100.21, 100.30 (3), 100.35, 100.44 ~~or~~, 100.46, or 100.52 (10)
9 (b) or a rule promulgated under one of those sections, the person shall be subject to
10 a supplemental forfeiture not to exceed \$10,000 for that violation if the conduct by
11 the defendant, for which the violation was imposed, was perpetrated against an
12 elderly person or disabled person and if the court finds that any of the following
13 factors is present:

14 **SECTION 3.** 100.52 (title) of the statutes is created to read:

15 **100.52 (title) Telephone solicitations.**

16 **SECTION 4.** 100.52 (1) (title) of the statutes is created to read:

17 100.52 (1) (title) DEFINITIONS.

18 **SECTION 5.** 100.52 (1) (a) of the statutes is created to read:

19 100.52 (1) (a) “Affiliate,” when used in relation to any person, means another
20 person who owns or controls, is owned or controlled by, or is under common
21 ownership or control with such person.

22 **SECTION 6.** 100.52 (1) (b) of the statutes is created to read:

23 100.52 (1) (b) “Basic local exchange service” has the meaning in s. 196.01 (1g).

24 **SECTION 7.** 100.52 (1) (c) of the statutes is created to read:

1 100.52 (1) (c) “Nonprofit organization” means a corporation, association, or
2 organization described in section 501 (c) (3), (4), or (5) of the Internal Revenue Code
3 that is exempt from taxation under section 501 (a) of the Internal Revenue Code.

4 **SECTION 8.** 100.52 (1) (d) of the statutes is created to read:

5 100.52 (1) (d) “Nonresidential customer” means a person, other than a
6 residential customer, who is furnished with telecommunications service by a
7 telecommunications utility.

8 **SECTION 9.** 100.52 (1) (e) of the statutes is created to read:

9 100.52 (1) (e) “Nonsolicitation directory” means the directory established in
10 rules promulgated by the department under sub. (2) (b).

11 **SECTION 10.** 100.52 (1) (f) of the statutes is created to read:

12 100.52 (1) (f) “Residential customer” means an individual who is furnished
13 with basic local exchange service by a telecommunications utility.

14 **SECTION 11.** 100.52 (1) (g) of the statutes is created to read:

15 100.52 (1) (g) “Telecommunications service” has the meaning given in s. 196.01
16 (9m).

17 **SECTION 12.** 100.52 (1) (h) of the statutes is created to read:

18 100.52 (1) (h) “Telecommunications utility” has the meaning given in s. 196.01
19 (10).

20 **SECTION 13.** 100.52 (1) (j) of the statutes is created to read:

21 100.52 (1) (j) “Telephone solicitor” means a person, other than a nonprofit
22 organization, that employs or contracts with an individual to make a telephone
23 solicitation.

24 **SECTION 14.** 100.52 (2) of the statutes is created to read:

1 100.52 (2) NONSOLICITATION DIRECTORY LISTING. (a) Upon a request by a
2 residential customer, the department shall include in the nonsolicitation directory
3 a listing indicating that the residential customer does not want to receive any
4 telephone solicitation made on behalf of a telephone solicitor.

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

15 (c) Except for copies of the nonsolicitation directory that are provided to
16 registered telephone solicitors under par. (d), the nonsolicitation directory is not
17 subject to inspection, copying, or receipt under s. 19.35 (1) and may not be released
18 by the department.

19 (d) The department shall, on a semiannual basis, make the nonsolicitation
20 directory available by electronic transmission only to telephone solicitors who are
21 registered under sub. (3). Upon the request of a telephone solicitor registered under
22 sub. (3), the department shall also provide a printed copy of the nonsolicitation
23 directory to the telephone solicitor. A telephone solicitor who receives a copy of the
24 directory, or to whom the directory is made available by electronic transmission,
25 under this paragraph may not solicit or accept from any person, directly or indirectly,

1 anything of value in exchange for providing the person with any information
2 included in the copy.

3 **SECTION 15.** 100.52 (3) of the statutes is created to read:

4 100.52 (3) REGISTRATION OF TELEPHONE SOLICITORS. (a) The department shall
5 promulgate rules that require any telephone solicitor who requires an employee or
6 contractor to make a telephone solicitation to a residential customer in this state to
7 register with the department, obtain a registration number from the department,
8 and pay a registration fee to the department. The amount of the registration fee shall
9 be based on the cost of establishing the nonsolicitation directory, and the amount that
10 an individual telephone solicitor is required to pay shall be based on the number of
11 telephone lines used by the telephone solicitor to make telephone solicitations. The
12 rules shall also require a telephone solicitor that registers with the department to
13 pay an annual registration renewal fee to the department. The amount of the
14 registration renewal fee shall be based on the cost of maintaining the nonsolicitation
15 directory.

16 (b) The department shall promulgate rules that require an individual who
17 makes a telephone solicitation on behalf of a telephone solicitor to identify at the
18 beginning of the telephone conversation each of the following:

19 1. The telephone solicitor.

20 2. If different than the telephone solicitor, the person selling the property,
21 goods, or services, or receiving the contribution, donation, grant, or pledge of money,
22 credit, property, or other thing of any kind, that is the reason for the telephone
23 solicitation.

24 **SECTION 16.** 100.52 (4) (title) of the statutes is created to read:

25 100.52 (4) (title) TELEPHONE SOLICITOR REQUIREMENTS.

1 **SECTION 17.** 100.52 (4) (a) 2. and 3. of the statutes are created to read:

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

5 3. Make a telephone solicitation to a nonresidential customer if the
6 nonresidential customer has provided notice by mail to the telephone solicitor that
7 the nonresidential customer does not wish to receive telephone solicitations.

8 **SECTION 18.** 100.52 (4) (b) of the statutes is created to read:

9 100.52 (4) (b) A telephone solicitor may not do any of the following:

10 1. Require an employee or contractor to make a telephone solicitation to a
11 person in this state unless the telephone solicitor is registered with the department
12 under the rules promulgated under sub. (3) (a).

13 2. Require an employee or contractor to make a telephone solicitation that
14 violates par. (a).

15 **SECTION 19.** 100.52 (4) (c) of the statutes is created to read:

16 100.52 (4) (c) A telephone solicitor or employee or contractor of a telephone
17 solicitor that makes a telephone solicitation to a nonresidential customer shall, upon
18 the request of the nonresidential customer, provide the mailing address for notifying
19 the telephone solicitor that the nonresidential customer does not wish to receive
20 telephone solicitations.

21 **SECTION 20.** 100.52 (5) of the statutes is created to read:

22 100.52 (5) **NONPROFIT ORGANIZATION REQUIREMENTS.** A nonprofit organization or
23 an employee or contractor of a nonprofit organization may not make a telephone
24 solicitation to a residential customer if the residential customer has provided notice
25 by telephone or mail to the nonprofit organization that the residential customer does

1 not wish to receive telephone solicitations. A nonprofit organization may not require
2 an employee or contractor to make a telephone solicitation that violates this
3 subsection.

4 **SECTION 21.** 100.52 (6) of the statutes is created to read:

5 100.52 (6) EXCEPTIONS. Subsections (4) (a) 2. and 3. and (5) do not apply to a
6 telephone solicitation that satisfies any of the following:

7 (a) The telephone solicitation is made to a recipient in response to the
8 recipient's express written request for the telephone solicitation.

9 (b) The telephone solicitation is made to a recipient who is a current client of
10 the person selling the property, goods, or services, or receiving the contribution,
11 donation, grant, or pledge of money, credit, property, or other thing of any kind, that
12 is the reason for the telephone solicitation. This paragraph does not apply if the
13 recipient is a current client of an affiliate of such a person, but is not a current client
14 of such a person.

15 **SECTION 22.** 100.52 (7) of the statutes is created to read:

16 100.52 (7) TERRITORIAL APPLICATION. This section applies to any interstate
17 telephone solicitation received by a person in this state and to any intrastate
18 telephone solicitation.

19 **SECTION 23.** 100.52 (8) of the statutes is created to read:

20 100.52 (8) PRIVATE CAUSE OF ACTION. Any person who suffers damages as the
21 result of another person violating this section may bring an action against the person
22 who violated this section to recover the amount of those damages.

23 **SECTION 24.** 100.52 (9) of the statutes is created to read:

1 100.52 (9) ENFORCEMENT. The department shall investigate violations of this
2 section and may bring an action for temporary or permanent injunctive or other relief
3 for any violation of this section.

4 **SECTION 25.** 100.52 (10) of the statutes is created to read:

5 100.52 (10) PENALTIES. (a) Except as provided in par. (b), a person who violates
6 this section may be required to forfeit not less than \$100 nor more than \$500 for each
7 violation.

8 (b) A telephone solicitor that violates sub. (4) or a nonprofit organization that
9 violates sub. (5) may be required to forfeit not less than \$1,000 nor more than \$10,000
10 for each violation.

11 **SECTION 26.** 134.72 (title) of the statutes is amended to read:

12 **134.72 (title) Prohibition of certain unsolicited messages by telephone**
13 **or facsimile machine.**

14 **SECTION 27.** 134.72 (1) (c) of the statutes is renumbered 100.52 (1) (i) and
15 amended to read:

16 100.52 (1) (i) "Telephone solicitation" means the unsolicited initiation of a
17 telephone conversation for the purpose of encouraging a person the recipient of the
18 telephone call to purchase property, goods or services or to make a contribution,
19 donation, grant, or pledge of money, credit, property, or other thing of any kind or
20 value.

21 **SECTION 28.** 134.72 (2) (a) (title) of the statutes is repealed.

22 **SECTION 29.** 134.72 (2) (a) of the statutes is renumbered 100.52 (4) (a) (intro.)
23 and amended to read:

24 100.52 (4) (a) (intro.) No person may use A telephone solicitor or an employee
25 or contractor of a telephone solicitor may not do any of the following:

