



State of Wisconsin
2005 - 2006 LEGISLATURE

LRBs0292/1
CTS:wlj&lmk:pg

**SENATE SUBSTITUTE AMENDMENT 2,
TO 2005 SENATE BILL 320**

January 17, 2006 – Offered by Senator KANAVAS.

1 **AN ACT** *to amend* 20.455 (1) (gh), 100.263, 100.264 (2) (intro.) and 165.25 (4) (ar);
2 and *to create* 20.115 (1) (gs), 100.54 and 943.201 (2m) of the statutes; **relating**
3 **to:** regulating certain electronic mail solicitations and practices related to
4 electronic mail solicitations, providing penalties, and making an appropriation.

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

5 **SECTION 1.** 20.115 (1) (gs) of the statutes is created to read:

6 20.115 (1) (gs) *Investigations; electronic mail solicitations.* Twenty percent of
7 all moneys received as awards under s. 100.263 for the costs of investigating a
8 violation of s. 100.54, for the purpose of the investigation of violations of s. 100.54.

9 **SECTION 2.** 20.455 (1) (gh) of the statutes is amended to read:

10 20.455 (1) (gh) *Investigation and prosecution.* Moneys received under ss. 49.49
11 (6), 100.263, 133.16, 281.98 (2), 283.91 (5), 289.96 (3) (b), 292.99 (2), 293.87 (4) (b),
12 295.19 (3) (b) 2., and 299.97 (2), and 10 percent of all moneys received as awards

1 under s. 100.263 for the costs of investigation and the expenses of prosecution,
2 including attorney fees, from a person who violates ch. 100, except moneys received
3 for the costs of investigating a violation of s. 100.54, for the purpose of the expenses
4 of investigation and prosecution of violations, including attorney fees.

5 **SECTION 3.** 100.263 of the statutes is amended to read:

6 **100.263 Recovery.** In addition to other remedies available under this chapter,
7 the court may award the department the reasonable and necessary costs of
8 investigation and an amount reasonably necessary to remedy the harmful effects of
9 the violation and the court may award the department of justice the reasonable and
10 necessary expenses of prosecution, including attorney fees, from any person who
11 violates this chapter. The department and the department of justice shall deposit in
12 the state treasury for deposit in the general fund all moneys that the court awards
13 to the department, the department of justice, or the state under this section. ~~Ten~~
14 ~~percent of the money deposited in the general fund that was awarded under this~~
15 ~~section for the costs of investigation and the expenses of prosecution, including~~
16 ~~attorney fees, shall be credited to the appropriation account under s. 20.455 (1) (gh).~~

17 **SECTION 4.** 100.264 (2) (intro.) of the statutes is amended to read:

18 **100.264 (2) SUPPLEMENTAL FORFEITURE.** (intro.) If a fine or a forfeiture is
19 imposed on a person for a violation under s. 100.16, 100.17, 100.18, 100.182, 100.183,
20 100.20, 100.205, 100.207, 100.21, 100.30 (3), 100.35, 100.44 ~~or~~, 100.46, or 100.54 or
21 a rule promulgated under one of those sections, the person shall be subject to a
22 supplemental forfeiture not to exceed \$10,000 for that violation if the conduct by the
23 defendant, for which the violation was imposed, was perpetrated against an elderly
24 person or disabled person and if the court finds that any of the following factors is
25 present:

1 **SECTION 5.** 100.54 of the statutes is created to read:

2 **100.54 Electronic mail solicitations. (1) DEFINITIONS.** In this section:

3 (a) “Consent” means express consent given upon a person’s own initiative or in
4 response to a clear and conspicuous request for consent.

5 (am) “Electronic mail service provider” means any person that is an
6 intermediary in providing Internet users with an electronic mail address and the
7 ability to send or receive electronic mail.

8 (b) “Electronic mail solicitation” means an electronic mail message, including
9 any program or document attached to the messages, that is sent by one or more
10 persons without the consent of the recipient for the purpose of selling, leasing, or
11 offering to sell or lease, property, goods, or services to the recipient, or for the purpose
12 of inducing the recipient to provide identifying information. “Electronic mail
13 solicitation” does not include an electronic mail solicitation sent by any of the
14 following:

15 1. An organization, if the electronic mail solicitation is sent to a member of the
16 organization.

17 2. An agency of the federal government, of the state, or of a city, village, town,
18 or county, including the University of Wisconsin System and public schools in this
19 state.

20 (bg) “Identifying information” means any of the following:

21 1. The unique identifying driver number assigned to an individual by the
22 department of transportation under s. 343.17 (3) (a) 4.

23 2. An individual’s social security number.

24 3. The identifying number of an individual’s depository account, as defined in
25 s. 815.18 (2) (e).

1 4. An individual's unique biometric data, including fingerprint, voice, retina or
2 iris image, or other unique physical representation.

3 5. An individual's electronic signature, as defined in s. 178.46 (1g) (c).

4 6. Any other unique code, number, information, or data pertaining to an
5 individual that can be used, alone or in conjunction with another object or device, to
6 obtain, access, or transfer the individual's money, goods, services, benefits, or any
7 other thing of value.

8 (br) "Internet" means the international computer network of both federal and
9 nonfederal interoperable packet switched data networks, including the graphical
10 subnetwork known as the World Wide Web.

11 (c) "Internet user" means a person that maintains an electronic mail address
12 with an electronic mail service provider.

13 (e) "Send" means to originate or transmit an electronic mail message or to
14 procure the origination or transmission of an electronic mail message, but does not
15 include actions that constitute routine conveyance of an electronic mail message,
16 such as the transmission of an electronic mail message by an electronic mail service
17 provider.

18 (em) "Sender" means a person who sends an electronic mail solicitation.

19 (fm) "Web site" means a location on the Internet with a single uniform resource
20 locator or any other single location on the Internet.

21 **(2) PROHIBITIONS.** (a) Except as provided in par. (b), no person may do any of
22 the following:

23 1. Send an electronic mail solicitation that misrepresents or obscures the
24 identity, telephone number, return electronic mail address, or street mailing address
25 of the person sending the electronic mail solicitation.

1 2. Send, or assist another in sending, an electronic mail solicitation that
2 misrepresents or obscures information identifying the origin or transmission path
3 of the electronic mail solicitation.

4 2m. Send to a person a request for the person's consent to receive an electronic
5 mail solicitation from a 3rd party, unless the request for consent contains clear and
6 conspicuous notice that the person's electronic mail address could be transferred to
7 the 3rd party for the purpose of sending electronic mail solicitations to the person.

8 3. Send more than one electronic mail solicitation if any of the following apply:

9 a. The person obtains 15 or more electronic mail accounts or Internet user
10 accounts by misrepresenting the person's identity and uses one of the accounts to
11 knowingly send the electronic mail solicitations.

12 b. The person obtains 2 or more Internet domain names by misrepresenting the
13 person's identity and uses one of the domain names to send the electronic mail
14 solicitations.

15 c. The person misrepresents the right to use 5 or more Internet protocol
16 addresses and uses one of the Internet protocol addresses to send the electronic mail
17 solicitations.

18 d. The person accesses the computer or Internet user account of another
19 without the consent of the owner of the computer or Internet user account and sends
20 the electronic mail solicitations using the computer or Internet user account.

21 4. Sell, give, or otherwise distribute, or possess with the intent to sell, give, or
22 otherwise distribute, software that is any of the following:

23 a. Primarily designed or produced for the purpose of facilitating or enabling the
24 falsification of electronic mail transmission information or other routing
25 information.

1 b. Of limited commercially significant purpose other than to facilitate or enable
2 the falsification of electronic mail transmission information or other routing
3 information.

4 c. Marketed by that person or someone in concert with that person for use in
5 facilitating or enabling the falsification of electronic mail transmission information
6 or other routing information.

7 5. Sell an electronic mail address to another person for the purpose of
8 facilitating or enabling the falsification of commercial electronic mail transmission
9 information unless the seller first obtains the electronic mail address holder's
10 consent to sell that electronic mail address.

11 6. Collect electronic mail addresses appearing on the Internet for the purpose
12 of sending, or advertising in, an electronic mail solicitation that contains untrue,
13 deceptive, or misleading information or that solicits the sale or lease of fraudulent
14 products or services.

15 7. Take any action by means of a Web site, electronic mail message, or other use
16 of the Internet to induce another person to provide identifying information by
17 misrepresenting the identity or affiliation of the person making the request or
18 misrepresenting the purpose of a solicitation or request.

19 (b) Paragraph (a) 1. to 3. does not apply to a person who, through an automatic
20 technical process, transmits, routes, relays, handles, or stores an electronic mail
21 solicitation, if the identity or address of the recipient of the electronic mail
22 solicitation is determined by another.

23 **(3) ENFORCEMENT.** (a) The department may investigate violations of this
24 section.

1 (b) The department shall make available to the public, in an electronic format,
2 information that explains how a person who receives an electronic mail solicitation
3 that violates this section may file a complaint with the department.

4 (4) CRIMINAL PENALTIES. (a) Except as provided in pars. (b) to (d), whoever
5 violates this section is guilty of a Class A misdemeanor.

6 (b) Whoever violates this section is guilty of a Class I felony if any of the
7 following apply:

8 1. The person sends more than 250 electronic mail solicitations in any 24-hour
9 period.

10 2. The violation causes a loss of more than \$500 in any 12-month period.

11 3. The person acts in concert with 3 or more others as a leader or organizer of
12 the conduct that violates this section.

13 (c) Whoever violates sub. (2) (a) 3. is guilty of a Class I felony, if the person
14 obtains 20 or more electronic mail accounts or Internet user accounts by
15 misrepresenting the person's identity.

16 (cm) Whoever violates sub. (2) (a) 7. is guilty of a class H felony.

17 (d) Whoever violates this section is guilty of a Class H felony, if any of the
18 following apply:

19 1. The person acted in furtherance of a felony.

20 2. The person has previously been convicted of violating any law of this state
21 or another state, or a federal law, that regulates the transmission of electronic mail
22 solicitations.

23 (e) In addition to the penalties authorized under this section, a court may order
24 that a person who is guilty of violating this section forfeit to the state any of the
25 following:

1 1. Money or other things of value the person obtained as a result of violating
2 this section.

3 2. Personal property used in connection with a violation of this section, if the
4 owner of the personal property knew it was used in connection with a violation of this
5 section.

6 **(5) CIVIL FORFEITURES.** (a) The department may initiate a civil action against
7 a person who violates this section and recover a civil penalty in the following
8 amounts:

9 1. Not more than the greater of \$25,000 per day of violation, or \$8 per electronic
10 mail solicitation sent in violation of this section.

11 2. If the court finds the person sent an electronic mail solicitation in violation
12 of this section to a computer that the person knew or should have known was
13 accessible to a minor, the amount under subd. 1. plus an additional forfeiture not to
14 exceed \$10,000 per violation.

15 (b) An action under this subsection shall be initiated not later than 2 years after
16 the last violation.

17 **(5m) PRIVATE ACTION.** (a) If a person, other than an electronic mail service
18 provider, is injured by an electronic mail solicitation that violates this section, the
19 person may bring an action against the sender of the electronic mail solicitation to
20 recover damages not to exceed \$500 or twice the amount of the person's pecuniary
21 loss, whichever is greater, if the electronic mail solicitation is one of 250 or more
22 electronic mail solicitations that violate this section sent by a person in a 24-hour
23 period.

24 (b) If a person is injured by an electronic mail solicitation that violates sub. (2)
25 (a) 7., the person may bring an action against the sender of the electronic mail

1 solicitation to recover damages not to exceed \$500 or twice the amount of the person's
2 pecuniary loss.

3 (c) 1. If an electronic mail service provider is injured by an electronic mail
4 solicitation that violates this section and that is one of 250 or more electronic mail
5 solicitations that violate this section sent by a person in a 24-hour period, the
6 electronic mail service provider may bring an action against the sender of the
7 electronic mail solicitation to recover damages as specified in subd. 2., if all of the
8 following are true:

9 a. The electronic mail solicitation violates a policy of the electronic mail service
10 provider.

11 b. The sender has knowledge of the policy or the policy is available at the
12 electronic mail service provider's Web site.

13 2. An electronic mail service provider that prevails in an action under subd. 1.
14 shall recover damages in one of the following amounts, as selected by the electronic
15 mail service provider:

16 a. The amount of the electronic mail service provider's pecuniary loss.

17 b. \$1 for each electronic mail solicitation sent during the 24-hour period to an
18 Internet user of the electronic mail service provider.

19 c. \$25,000 for each 24-hour period in which the electronic mail service provider
20 is injured by an electronic mail solicitation as described in subd. 1.

21 (d) In an action under this subsection, the court shall award reasonable
22 attorney fees, notwithstanding s. 814.04 (1), to a person who obtains equitable relief,
23 damages, or both.

24 **(6) AFFIRMATIVE DEFENSE.** (a) It is an affirmative defense to the sending of an
25 electronic mail solicitation in violation of this section if the person who sent the

1 electronic mail solicitation demonstrates, by a preponderance of the evidence, that
2 the electronic mail solicitation was sent in error and the person did all of the
3 following:

4 1. Provided to recipients of the electronic mail solicitations a reasonable
5 opportunity to request that the person send no further electronic mail solicitations.

6 2. Established and implemented, with due care, reasonable practices and
7 procedures effectively to prevent the sending of electronic mail solicitations from
8 that person in violation of this section.

9 3. Trained the person's employees, if any, with regard to the requirements of
10 this section.

11 4. Maintained records documenting compliance with this section.

12 (b) No person may exercise the defense under par. (a) more than once in any
13 12-month period. A person exercises the defense if the defense is asserted in
14 response to any complaint made to the department about a violation of this section,
15 regardless of whether litigation has been initiated.

16 **(7) IMMUNITY.** An electronic mail service provider is immune from civil liability
17 for any good faith acts or omissions related to the blocking of electronic mail
18 solicitations sent in violation of this section.

19 **(8) TERRITORIAL APPLICATION.** This section applies to any interstate electronic
20 mail solicitation sent or received by a person in this state and any intrastate
21 electronic mail solicitation.

22 **SECTION 6.** 165.25 (4) (ar) of the statutes is amended to read:

23 165.25 (4) (ar) The department of justice shall furnish all legal services
24 required by the department of agriculture, trade and consumer protection relating
25 to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,

1 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50
2 and, 100.51, and 100.54 and chs. 126, 136, 344, 704, 707, and 779, together with any
3 other services as are necessarily connected to the legal services.

4 **SECTION 7.** 943.201 (2m) of the statutes is created to read:

5 943.201 **(2m)** Notwithstanding the maximum fine specified in s. 939.50 (3) (h),
6 a person who violates sub. (2) may be fined not more than \$20,000 if, in committing
7 that violation, the person used identifying information, as defined in s. 100.54 (1)
8 (bg), obtained through a violation of s. 100.54 (2) (a) 7.

9 **SECTION 8. Nonstatutory provisions.**

10 (1) The assembly chief clerk shall send a copy of this act to the attorney general
11 of each state and to the attorney general of the United States.

12

(END)