

## 2005 DRAFTING REQUEST

### Bill

Received: **12/20/2004**

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **Gary Sherman (608) 266-7690**

By/Representing: **Judy Kelly**

This file may be shown to any legislator: **NO**

Drafter: **csundber**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Sherman@legis.state.wi.us**

Carbon copy (CC:) to:

---

#### Pre Topic:

No specific pre topic given

---

#### Topic:

Prohibit prescription drug advertising

---

#### Instructions:

See Attached

---

#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	csundber 01/28/2005	kfollett 01/28/2005	pgreensl 01/28/2005	_____	lemery 01/28/2005		
/1	csundber 02/14/2005 csundber 02/22/2005	jdyer 02/14/2005 wjackson 02/22/2005	pgreensl 02/14/2005	_____ _____ _____	sbasford 02/14/2005		
/2	csundber 03/29/2005	jdyer 03/29/2005	pgreensl 02/23/2005	_____	sbasford 02/23/2005		

Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

/3

jfrantze \_\_\_\_\_  
03/29/2005 \_\_\_\_\_

sbasford  
03/29/2005

sbasford  
03/31/2005

FE Sent For:

<END>

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	csundber 02/22/2005	wjackson 02/22/2005		_____			
/2		<i>13/29 jld</i> pgreensl 02/23/2005		_____	sbasford 02/23/2005		

*J. Sherman*  
*2/29*

Vers.    Drafted    Reviewed    Typed    Proofed    Submitted    Jacketed    Required

FE Sent For:

**<END>**

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FE Sent For:

*12/14/2004*

*Handwritten initials*

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/P1	csundber 01/28/2005	kfollett 01/28/2005	pgreensl 01/28/2005	<u>7/14</u>	lemery 01/28/2005		

FE Sent For:

1 2/14 jld  
7/14  
R  
pg/10/05  
<END>



05-1311

**Sundberg, Christopher**

---

**From:** LRB.Legal  
**Sent:** Monday, December 20, 2004 10:06 AM  
**To:** Sundberg, Christopher  
**Cc:** Kelly, Judy  
**Subject:** FW:

Kelly,

This one will actually be going to Chris Sundberg.

-----Original Message-----

**From:** Kelly, Judy  
**Sent:** Monday, December 20, 2004 9:54 AM  
**To:** LRB.Legal  
**Subject:** FW:

Please let me know who the drafter will be on the following. Thank you

Judy Kelly  
 Legislative Aide to  
 Rep. Gary Sherman

-----  
 Here is another drafting request.

I want a bill drafted that would outlaw the advertizing in any medium of prescription drugs, other than directly to doctors.

Gary

This is a follow up to my previous message about drug advertising.

1. This is a first amendment issue, but commercial speech has only limited first amendment protection. The secret to success in defending restrictions on commercial speech is "legislative finding" which show that the problem is real and that the solution suggested is the least restrictive alternative for achieving the goal. Therefore, although the drafting attorneys do not like nonstatutory provisions, I absolutely insist that the bill contain a nonstatutory legislative finding section that addresses all the following:

- a. It is the public policy of the United States that some drugs are so dangerous that they are only available upon the prescription of a physician, because the consumer/patient lacks the background, training and knowledge to make a safe choice regarding whether to consume that substance. Drug advertising in the popular media directly to consumer/patients undermines this public policy by placing pressure on physicians to prescribe drugs for reaasons other than their own independent profession judgment.
- b. In recent months, several of the most advertised prescription drugs have been found to have side effects so dangerous, even fatal, that they may have to be removed from the market.
- c. The cost of prescription drugs to the consumer/patient is a national crisis that needs to be addressed. Some people are forced to choose between life saving drugs and proper nutrition. Advertising in the popular media adds considerable cost to these drugs, but adds nothing to public health or safety.

12/20/2004

d. No measure less restrictive than banning such advertising addresses these major threats to public health and safety.

2. Another potential pitfall is the commerce clause of the US Constitution. We have to make it clear that this applies only to advertising that originates in Wisconsin, so that it doesn't interfere with interstate commerce. That would be broadcasts originating in Wisconsin, ads in Wisconsin based publications and advertisements in any publication printed and sent within Wisconsin to Wisconsin consumers.

Gary



TODAY

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1/28/05  
Oct 30  
D-note  
Gen

1 AN ACT ...; relating to: advertising for prescription drugs.

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. A complete analysis will be provided in a later version.

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

2 SECTION 1. 100.32 of the statutes is created to read:

3 **100.32 Prescription drug advertising.** (1) Except as provided in sub. (2),  
4 no person may advertise a prescription drug. In this subsection, "prescription drug"  
5 means a drug, drug product, or drug-containing preparation that is subject to 21  
6 USC 353 (b) or 21 CFR 201.105.

7 (2) Subsection (1) does not apply to any of the following:

8 (a) An advertisement that originates outside this state.

9 (b) An advertisement that is sent directly to a practitioner, as defined in s.

10 450.01 (17).

1           **SECTION 2. Nonstatutory provisions.**

2           (1) The legislature finds that prescription drug advertising that is directed to  
3 consumers undermines the efforts of this state to protect the health and welfare of  
4 the citizens of this state from drugs that are sufficiently dangerous to require a  
5 prescription from a licensed practitioner.

6           (2) The legislature finds that prescription drug advertising that is directed to  
7 consumers undermines the efforts of this state to ensure that practitioners who are  
8 licensed to prescribe and administer prescription drugs do so on the basis of their  
9 independent professional judgment.

10          (3) The legislature finds that the health and welfare of the citizens of this state  
11 has been threatened by prescription drugs that have been heavily advertised in the  
12 popular media and <sup>that</sup> have subsequently been determined to pose substantial risk to  
13 human health.

14          (4) The legislature finds that the increasing cost of prescription drugs poses a  
15 serious threat to the health of the citizens of this state, and that prescription drug  
16 advertising directed to consumers aggravates this threat by adding considerable cost  
17 to such drugs without concomitant benefit to the health of the citizens of this state.

18          (5) The legislature finds that the provisions of section 100.32<sup>✓</sup> of the statutes,  
19 as created by this act, constitute the least restrictive means of addressing the threats  
20 to the health and welfare of the citizens of this state by prescription drug advertising  
21 that is directed at consumers.

22           **SECTION 3. Initial applicability.**

23          (1) This act first applies to advertisements broadcast or published on the  
24 effective date of this subsection.<sup>✓</sup>

25           **SECTION 4. Effective date.**

1

(1) This act takes effect on the first day of the <sup>6th</sup>~~sixth~~ month beginning after

2

publication.

3

(END)

D-Note

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1311/P1dn

CTS: *[Signature]*

*Date*

*Although LRB policy strongly disfavors legislative findings, I have incorporated your proposed findings (edited to conform to LRB drafting conventions and for readability) because of the constitutional issue apparent on the face of the draft.*

Representative Sherman:

- \* This is a preliminary draft. In its present form, the draft leaves ambiguous the meaning of "advertisement that originates outside this state," particularly in the context of electronic media. For instance, may a local television station that is affiliated with a major network broadcast a drug commercial that is provided to the station by the network along with regular network programming? Does an internet advertisement originate in Wisconsin if the advertisement is received by a person who obtains internet service from a provider based in this state?

*PS*  
\* It is also likely that a court would find this draft's restriction of commercial speech unconstitutional. Although the regulation of advertising falls within the state's historic police powers, and the state interests identified in the draft are likely to be viewed as substantial, a restriction of commercial speech must directly advance these interests and must be narrowly tailored to attain desired objectives. *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 555-56 (2001). A court is likely to decide that this draft either fails to directly advance the objectives identified in the legislative findings or burdens more speech than is necessary to advance those objectives. *Cf. Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 417 (1993) (the costs and benefits associated with advertising restriction were not "carefully calculated"). Also, I do not believe a court would accord substantial weight to the legislative finding that the provisions of the draft are the least restrictive means of advancing the objectives identified in the draft.

*would*  
\* Further, despite the draft's exclusion of advertising that originates outside this state, a court may view this draft as unconstitutionally burdening interstate commerce. *Cf. Knoll Pharm. Co. v. Sherman*, 57 F. Supp. 2d 615, 623-24 (1999) (invalidating Illinois restrictions on drug advertising in part because of impermissible burden on drug-maker's national advertising campaign).

Please contact me if you have any questions or if you would like to make any changes to the draft.

Christopher T. Sundberg  
Legislative Attorney  
Phone: (608) 266-9739  
E-mail: christopher.sundberg@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1311/P1dn  
CTS:kjf:pg

January 28, 2005

Representative Sherman:

This is a preliminary draft. Although LRB policy strongly disfavors legislative findings, I have incorporated your proposed findings (edited to conform to LRB drafting conventions and for readability) because of the constitutional issue apparent on the face of the draft.

In its present form, the draft leaves ambiguous the meaning of "advertisement that originates outside this state," particularly in the context of electronic media. For instance, may a local television station that is affiliated with a major network broadcast a drug commercial that is provided to the station by the network along with regular network programming? Does an Internet advertisement originate in Wisconsin if the advertisement is received by a person who obtains Internet service from a provider based in this state?

It is also likely that a court would find this draft's restriction of commercial speech unconstitutional. Although the regulation of advertising falls within the state's historic police powers, and the state's interests identified in the draft are likely to be viewed as substantial, a restriction of commercial speech must directly advance these interests and must be narrowly tailored to attain desired objectives. *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 555-56 (2001). A court is likely to decide that this draft either fails to directly advance the objectives identified in the legislative findings or burdens more speech than is necessary to advance those objectives. *Cf. Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 417 (1993) (the costs and benefits associated with advertising restriction were not "carefully calculated"). Also, I do not believe a court would accord substantial weight to the legislative finding that the provisions of the draft are the least restrictive means of advancing the objectives identified in the draft.

Further, despite the draft's exclusion of advertising that originates outside this state, a court may view this draft as unconstitutionally burdening interstate commerce. *Cf. Knoll Pharm. Co. v. Sherman*, 57 F. Supp. 2d 615, 623-24 (1999) (invalidating Illinois restrictions on drug advertising in part because of impermissible burden on drugmakers' national advertising campaign).

Please contact me if you have any questions or if you would like to make any changes to the draft.

Christopher T. Sundberg  
Legislative Attorney  
Phone: (608) 266-9739  
E-mail: christopher.sundberg@legis.state.wi.us

**Sundberg, Christopher**

---

**From:** Emery, Lynn  
**Sent:** Friday, January 28, 2005 3:23 PM  
**To:** Sundberg, Christopher  
**Subject:** FW: Draft review: LRB 05-1311/P1 Topic: Prohibit prescription drug advertising

-----Original Message-----

**From:** Sherman, Gary  
**Sent:** Friday, January 28, 2005 3:22 PM  
**To:** Emery, Lynn  
**Cc:** Tribys, Eleanora; Kelly, Judy  
**Subject:** RE: Draft review: LRB 05-1311/P1 Topic: Prohibit prescription drug advertising

For advertising, I think that the point of origin is the determining factor. Thus, a local affiliate of a national network could not broadcast the ads if the transmitter and tower were housed in Wisconsin. This is pretty typical local nexus stuff.

Further, I rather strongly disagree with you on the constitutional issue. Not only do we ban tobacco advertising, but two states tightly regulate lawyer advertising, Iowa and Florida. In both states, the legislative findings were the most important factor in surviving the constitutional challenge in federal court, and both were found constitutional. Iowa, relevantly, totally bans lawyer advertising on television.

If you think that there is a less restrictive means that can be argued, I would like to know what it is. Recent studies have found that patients who request a particular drug are many times more likely to get that drug than those who do not. That is why the big drug companies spend hundreds of millions of dollars on this advertising that serves no legitimate purpose. Many of the ads don't even say what condition the drug is allegedly useful for, but doctors are coerced into abandoning their independent professional judgment and prescribing toxic substances, several of which have recently been removed from the market for lethal side effects, just because people have been hoodwinked into requesting them. This is little short of deliberate battery. Would there be any constitutional impediment to banning the advertising of heroin? This is not particularly different. Heroin and cocaine can be prescribed. Only marijuana cannot.

Unless you can buttress your opinion that this is "likely" to be found unconstitutional with something solid, I do not think it would be appropriate for you to use the word "likely" when that is pure speculation and contrary to the experience of states that regulate other forms of commercial speech.

Gary

---

**From:** Emery, Lynn  
**Sent:** Friday, January 28, 2005 12:01 PM  
**To:** Rep.Sherman  
**Subject:** Draft review: LRB 05-1311/P1 Topic: Prohibit prescription drug advertising

**Following is the PDF version of draft LRB 05-1311/P1 and drafter's note.**

01/28/2005

2/1/05 1311 (Sheman)

→ Add finding that DTC ads  
are inherently misleading

→ Note Thompson in D-note,  
conversation re const. concerns.

→ Add pharmacists



State of Wisconsin  
2005 - 2006 LEGISLATURE

1 RMR  
LRB-1311/P1  
CTS:kjf:pg  
KJP  
ATS xld:

Today

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

In: 2/14/05

Regen

1 AN ACT to create 100.32 of the statutes; relating to: advertising for prescription  
2 drugs.

✓  
INS  
A

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. A complete analysis will be provided in a later version.

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

3 SECTION 1. 100.32 of the statutes is created to read:  
4 **100.32 Prescription drug advertising.** (1) Except as provided in sub. (2),  
5 no person may advertise a prescription drug. In this subsection, "prescription drug"  
6 means a drug, drug product, or drug-containing preparation that is subject to 21  
7 USC 353 (b) or 21 CFR 201.105.  
8 (2) Subsection (1) does not apply to any of the following:  
9 (a) An advertisement that originates outside this state.

1 (b) An advertisement that is sent directly to a practitioner, as defined in s.  
2 450.01 (17). *or to a pharmacist licensed under s. 450.03*

3 **SECTION 2. Nonstatutory provisions.**

4 (1) The legislature finds that prescription drug advertising that is directed to  
5 consumers undermines the efforts of this state to protect the health and welfare of  
6 the citizens of this state from drugs that are sufficiently dangerous to require a  
7 prescription from a licensed practitioner.

8 (2) The legislature finds that prescription drug advertising that is directed to  
9 consumers undermines the efforts of this state to ensure that practitioners who are  
10 licensed to prescribe and administer prescription drugs do so on the basis of their  
11 independent professional judgment.

12 (3) The legislature finds that the health and welfare of the citizens of this state  
13 has been threatened by prescription drugs that have been heavily advertised in the  
14 popular media and that have subsequently been determined to pose substantial risk  
15 to human health.

16 ~~(4)~~ <sup>e</sup> (4) The legislature finds that the increasing cost of prescription drugs poses a  
17 serious threat to the health of the citizens of this state, and that prescription drug  
18 advertising directed to consumers aggravates this threat by adding considerable cost  
19 to such drugs without concomitant benefit to the health of the citizens of this state.

20 ~~(5)~~ <sup>e</sup> (5) The legislature finds that the provisions of section 100.32 of the statutes,  
21 as created by this act, constitute the least restrictive means of addressing the threats  
22 to the health and welfare of the citizens of this state by prescription drug advertising  
23 that is directed at consumers.

24 **SECTION 3. Initial applicability.**

INS  
2-16

INS 2-19

1

**Insert A:**

This bill prohibits advertising for prescription drugs. This prohibition does not apply to advertising that originates outside this state or to advertising sent directly to pharmacists or to practitioners who are authorized to prescribe prescription drugs. The bill contains legislative findings, including the following: (1) that prescription drug advertising directed to consumers (drug advertising) undermines the state's efforts to ensure that practitioners prescribe medication based on independent professional judgment; (2) that the health of Wisconsin citizens is threatened by drug advertising for products that have subsequently been determined to pose substantial health risks; (3) that drug advertising is inherently misleading, because it promotes consumer purchases of products that state law does not permit consumers to purchase independently; (4) that drug advertising adds considerably to the cost of drugs; (5) that current law prohibiting fraudulent drug advertising has failed to adequately protect consumers from drug advertising; and (6) that the provisions of this bill are the least restrictive means of addressing the dangers posed by drug advertising.

The bill also contains legislative findings, including findings that (1) prescription drug advertising that is directed to consumers is inherently misleading; (2) prescription drug advertising that is directed to consumers adds to the cost of such drugs but does not benefit consumers; and (3) current law prohibiting fraudulent drug advertising has failed to adequately protect Wisconsin's citizens.

delete

2

3

**Insert 2-16:**

non stat

#

(4) The legislature finds that prescription drug advertising that is directed to consumers is inherently misleading, in that it promotes the sale of products so dangerous that state law does not permit consumers to independently purchase.

5

6

7

**Insert 2-19:**

non stat

#

(6) The legislature finds that current law prohibiting fraudulent drug advertising has failed to adequately protect the citizens of this state from this inherently misleading form of advertising.

9

10

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1311/1

CTS:

JLd

Representative Sherman:

This is a redraft of LRB-1311. Please review it carefully to ensure it is consistent with your intent.

Pursuant to our conversation about the constitutional issue involved in this draft, I have added a legislative finding to the effect that direct-to-consumer prescription drug advertising is inherently misleading. States may impose restrictions on commercial speech if it is inherently misleading or if experience has proved that in fact such advertising is subject to abuse. *In re R. M. J.*, 455 U.S. 191, 203 (1982). On the other hand, it is possible that this bill, if it becomes law, could be challenged under *Thompson v. Western States Medical Center*, 535 U.S. 357 (2002), though I am uncertain how a court would rule on such a challenge. Please contact me if you have any questions or if you would like to make any changes to the draft.

draft

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**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1311  
CTS:jld:pg

February 14, 2005

Representative Sherman:

This is a redraft of LRB-1311. Please review it carefully to ensure it is consistent with your intent.

Pursuant to our conversation about the constitutional issue involved in this draft, I have added a legislative finding to the effect that direct-to-consumer prescription drug advertising is inherently misleading. States may impose restrictions on commercial speech if it is inherently misleading or if experience has proved that in fact such advertising is subject to abuse. *In re R. M. J.*, 455 U.S. 191, 203 (1982). On the other hand, it is possible that this draft, if it becomes law, could be challenged under *Thompson v. Western States Medical Center*, 535 U.S. 357 (2002), though I am uncertain how a court would rule on such a challenge. Please contact me if you have any questions or if you would like to make any changes to the draft.

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Legislative Attorney  
Phone: (608) 266-9739  
E-mail: christopher.sundberg@legis.state.wi.us

## Sundberg, Christopher

---

**From:** Sherman, Gary  
**Sent:** Monday, February 21, 2005 10:06 AM  
**To:** Sundberg, Christopher  
**Subject:** Submitted: LRB 05-1311/1 Topic: Prohibit prescription drug advertising?body=

I think we should look at page 2, line 1 a little more closely, as we could inadvertently leave a giant loophole if we are not careful. I think we should say something on the order of "media that is broadcast from, printed in or mailed from outside the state." Or words of like effect. The ad itself originating outside the state could be stretched to include where the ad agency is located or where the money comes from.

G



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-1311/2  
CTS:kjf&jld:pg  
stays ~~by~~  
RMNR

2005 BILL

ln: 2/22/05

note

SOON

is broadcast from, mailed from, or printed

1 AN ACT to create 100.32 of the statutes; relating to: advertising for prescription  
2 drugs.

*Analysis by the Legislative Reference Bureau*

This bill prohibits advertising for prescription drugs. This prohibition does not apply to advertising that originates outside this state or to advertising sent directly to pharmacists or to practitioners who are authorized to prescribe prescription drugs.

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6 means a drug, drug product, or drug-containing preparation that is subject to 21  
7 USC 353 (b) or 21 CFR 201.105.  
8 (2) Subsection (1) does not apply to any of the following:

**BILL**

(2)  
is broadcast from, is mailed from,  
or is printed  
or

- 1 (a) An advertisement that originates outside this state.
- 2 (b) An advertisement that is sent directly to a practitioner, as defined in s.
- 3 450.01 (17), or to a pharmacist licesned under s. 450.03.

4 **SECTION 2. Nonstatutory provisions.**

5 (1) The legislature finds that prescription drug advertising that is directed to

6 consumers undermines the efforts of this state to protect the health and welfare of

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18 consumers is inherently misleading, in that it promotes the sale of products so

19 dangerous that state law does not permit consumers to independently purchase.

20 (5) The legislature finds that the increasing cost of prescription drugs poses a

21 serious threat to the health of the citizens of this state, and that prescription drug

22 advertising directed to consumers aggravates this threat by adding considerable cost

23 to such drugs without concomitant benefit to the health of the citizens of this state.

24 (6) The legislature finds that the provisions of section 100.32 of the statutes,

25 as created by this act, constitute the least restrictive means of addressing the threats

**BILL**

1 to the health and welfare of the citizens of this state by prescription drug advertising  
2 that is directed at consumers.

3 **SECTION 3. Initial applicability.**

4 (1) This act first applies to advertisements broadcast or published on the  
5 effective date of this subsection.

6 **SECTION 4. Effective date.**

7 (1) This act takes effect on the first day of the 6th month beginning after  
8 publication.

9 (END)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1311/2dn

CTS: f:...

Wlj

Representative Sherman:

This is a redraft of LRB-1311. In this version, the exception for "advertising that originates outside this state" is changed to "advertising that is broadcast from, <sup>is</sup> mailed from, or <sup>is</sup> printed outside this state." The draft does not define "broadcast," "mailed," or "printed." Please contact me if you have any questions or if you would like to make additional changes.

Christopher T. Sundberg  
Legislative Attorney  
Phone: (608) 266-9739  
E-mail: christopher.sundberg@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1311/2dn  
CTS:wlj:pg

February 22, 2005

Representative Sherman:

This is a redraft of LRB-1311. In this version, the exception for "advertising that originates outside this state" is changed to "advertising that is broadcast from, is mailed from, or is printed outside this state." The draft does not define "broadcast," "mailed," or "printed." Please contact me if you have any questions or if you would like to make additional changes.

Christopher T. Sundberg  
Legislative Attorney  
Phone: (608) 266-9739  
E-mail: [christopher.sundberg@legis.state.wi.us](mailto:christopher.sundberg@legis.state.wi.us)

## Sundberg, Christopher

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**From:** Sherman, Gary  
**Sent:** Wednesday, March 23, 2005 9:25 AM  
**To:** Sundberg, Christopher  
**Subject:** Submitted: LRB 05-1311/2 Topic: Prohibit prescription drug advertising?body=

I think we should alter lines 1 - 2 on page two, as follows:

(a) An advertisement that is broadcast from or is mailed or shipped to the ultimate recipient from outside this state.

I think that will tighten it up, while still keeping out of interstate commerce.

G



State of Wisconsin  
2005 - 2006 LEGISLATURE

3  
LRB-1311/2  
CTS:kjf&jld:pg

ln: 3/29/05  
Due: soon, please

**2005 BILL**

B-note

is  
or ~~may~~ mailed or shipped to  
the ultimate recipient of  
the advertisement from

Regen

1 AN ACT to create 100.32 of the statutes; relating to: advertising for prescription  
2 drugs.

an advertisement <sup>is</sup> that ~~is~~ <sup>are</sup>

**Analysis by the Legislative Reference Bureau**

This bill prohibits advertising for prescription drugs. This prohibition does not apply to advertising that is broadcast from, mailed from, or printed outside this state or to advertising sent directly to pharmacists or to practitioners who are authorized to prescribe prescription drugs.

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

3 SECTION 1. 100.32 <sup>x</sup> of the statutes is created to read:

4 **100.32 Prescription drug advertising.** (1) Except as provided in sub. (2),  
5 no person may advertise a prescription drug. In this subsection, "prescription drug"  
6 means a drug, drug product, or drug-containing preparation that is subject to 21  
7 USC 353 (b) or 21 CFR 201.105.

8 (2) Subsection (1) does not apply to any of the following:

**BILL**

1

(a) An advertisement that is broadcast from, is mailed from, or is printed  
outside this state.

or is mailed or shipped  
to the ultimate recipient  
of the advertisement from

3

(b) An advertisement that is sent directly to a practitioner, as defined in s.  
450.01 (17), or to a pharmacist licensed under s. 450.03.

**SECTION 2. Nonstatutory provisions.**

6

(1) The legislature finds that prescription drug advertising that is directed to  
consumers undermines the efforts of this state to protect the health and welfare of  
the citizens of this state from drugs that are sufficiently dangerous to require a  
prescription from a licensed practitioner.

10

(2) The legislature finds that prescription drug advertising that is directed to  
consumers undermines the efforts of this state to ensure that practitioners who are  
licensed to prescribe and administer prescription drugs do so on the basis of their  
independent professional judgment.

14

(3) The legislature finds that the health and welfare of the citizens of this state  
has been threatened by prescription drugs that have been heavily advertised in the  
popular media and that have subsequently been determined to pose substantial risk  
to human health.

18

(4) The legislature finds that prescription drug advertising that is directed to  
consumers is inherently misleading, in that it promotes the sale of products so  
dangerous that state law does not permit consumers to independently purchase.

21

(5) The legislature finds that the increasing cost of prescription drugs poses a  
serious threat to the health of the citizens of this state, and that prescription drug  
advertising directed to consumers aggravates this threat by adding considerable cost  
to such drugs without concomitant benefit to the health of the citizens of this state.



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1311/3dn

CTS:.....

Jed

Representative Sherman:

This is a redraft of LRB-1311/2 based on your instructions via e-mail. This version eliminates the reference to advertisements "printed outside this state" from proposed s. 100.32 (2) (a). Proposed par. (a) now refers to advertisements that are broadcast from or "mailed or shipped to the ultimate recipient of the advertisement from outside this state."

Please contact me if you have any questions or if you would like to make further changes to the draft.

Christopher T. Sundberg  
Legislative Attorney  
Phone: (608) 266-9739  
E-mail: christopher.sundberg@legis.state.wi.us

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1311/3dn  
CTS:jld:jf

March 29, 2005

Representative Sherman:

This is a redraft of LRB-1311/2 based on your instructions via e-mail. This version eliminates the reference to advertisements "printed outside this state" from proposed s. 100.32 (2) (a). Proposed par. (a) now refers to advertisements that are broadcast from or "mailed or shipped to the ultimate recipient of the advertisement from outside this state."

Please contact me if you have any questions or if you would like to make further changes to the draft.

Christopher T. Sundberg  
Legislative Attorney  
Phone: (608) 266-9739  
E-mail: christopher.sundberg@legis.state.wi.us

**Northrop, Lori**

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**From:** Sherman, Gary  
**Sent:** Wednesday, March 30, 2005 2:48 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 05-1311/3 Topic: Prohibit prescription drug advertising

It has been requested by <Sherman, Gary> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-1311/3 Topic: Prohibit prescription drug advertising