2013 DRAFTING REQUEST

Bill

Received:	**11/17/2013**	Received By:	**phurley**
Wanted:	**As time permits**	Same as LRB:	
For:	**Jill Billings (608) 266-5780**	By/Representing:	**Christina Tenuta**
May Contact:		Drafter:	**phurley**
Subject:	**Courts - civil procedure** **Courts - damages**	Addl. Drafters:	
		Extra Copies:	

Submit via email: **YES**
Requester's email: **Rep.Billings@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Civil cause of action for victims of sex trafficking

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	phurley 11/19/2013			_____ _____			
/P1	chanaman 12/18/2013	scalvin 12/18/2013	jfrantze 12/3/2013	_____ _____	sbasford 12/3/2013		
/1			jmurphy 12/18/2013	_____ _____	lparisi 12/18/2013	sbasford 1/15/2014	

FE Sent For:

→ Not Needed <END>

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/1			jmurphy 12/18/2013	_____ _____	lparisi 12/18/2013		

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/?	phurley 11/19/2013			_____ _____			
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FE Sent For:		/1 sac 12/18/2013	/1 sac 12/18/2013	Jm 12/18			

<END>

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Instructions:

See attached

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Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	phurley	P1 12/3 jld	jd	RS 12/3			

FE Sent For:

<END>

CIVIL LIABILITIES
(740 ILCS 128/) Predator Accountability Act.

(740 ILCS 128/1)
Sec. 1. Short title. This Act may be cited as the Predator Accountability Act.
(Source: P.A. 94-998, eff. 7-3-06.)

(740 ILCS 128/5)
Sec. 5. Purpose. The purpose of this Act is to allow persons who have been or who are subjected to the sex trade to seek civil damages and remedies from individuals and entities that recruited, harmed, profited from, or maintained them in the sex trade.
(Source: P.A. 94-998, eff. 7-3-06.)

(740 ILCS 128/10)
Sec. 10. Definitions. As used in this Act:
"Sex trade" means any act, which if proven beyond a reasonable doubt could support a conviction for a violation or attempted violation of any of the following Sections of the Criminal Code of 1961 or the Criminal Code of 2012: 11-14.3 (promoting prostitution); 11-14.4 (promoting juvenile prostitution); 11-15 (soliciting for a prostitute); 11-15.1 (soliciting for a juvenile prostitute); 11-16 (pandering); 11-17 (keeping a place of prostitution); 11-17.1 (keeping a place of juvenile prostitution); 11-19 (pimping); 11-19.1 (juvenile pimping and aggravated juvenile pimping); 11-19.2 (exploitation of a child); 11-20 (obscenity); 11-20.1 (child pornography); or 11-20.1B or 11-20.3 (aggravated child pornography); or Section 10-9 (trafficking in persons and involuntary servitude).
"Sex trade" activity may involve adults and youth of all genders and sexual orientations.
"Victim of the sex trade" means, for the following sex trade acts, the person or persons indicated:
(1) soliciting for a prostitute: the prostitute who is the object of the solicitation;
(2) soliciting for a juvenile prostitute: the juvenile prostitute, or severely or profoundly intellectually disabled person, who is the object of the solicitation;
(3) promoting prostitution as described in subdivision (a)(2)(A) or (a)(2)(B) of Section 11-14.3 of the Criminal Code of 1961 or the Criminal Code of 2012, or pandering: the person intended or compelled to act as a prostitute;
(4) keeping a place of prostitution: any person intended or compelled to act as a prostitute, while present at the place, during the time period in question;
(5) keeping a place of juvenile prostitution: any

juvenile intended or compelled to act as a prostitute, while present at the place, during the time period in question;
(6) promoting prostitution as described in subdivision (a)(2)(C) of Section 11-14.3 of the Criminal Code of 1961 or the Criminal Code of 2012, or pimping: the prostitute from whom anything of value is received;
(7) promoting juvenile prostitution as described in subdivision (a)(2) or (a)(3) of Section 11-14.4 of the Criminal Code of 1961 or the Criminal Code of 2012, or juvenile pimping and aggravated juvenile pimping: the juvenile, or severely or profoundly intellectually disabled person, from whom anything of value is received for that person's act of prostitution;
(8) promoting juvenile prostitution as described in subdivision (a)(4) of Section 11-14.4 of the Criminal Code of 1961 or the Criminal Code of 2012, or exploitation of a child: the juvenile, or severely or profoundly intellectually disabled person, intended or compelled to act as a prostitute or from whom anything of value is received for that person's act of prostitution;
(9) obscenity: any person who appears in or is described or depicted in the offending conduct or material;
(10) child pornography or aggravated child pornography: any child, or severely or profoundly intellectually disabled person, who appears in or is described or depicted in the offending conduct or material; or
(11) trafficking of persons or involuntary servitude: a "trafficking victim" as defined in Section 10-9 of the Criminal Code of 1961 or the Criminal Code of 2012.
(Source: P.A. 96-710, eff. 1-1-10; 96-1551, eff. 7-1-11; 97-227, eff. 1-1-12; 97-897, eff. 1-1-13; 97-1109, eff. 1-1-13; 97-1150, eff. 1-25-13.)

(740 ILCS 128/15)
Sec. 15. Cause of action.
(a) Violations of this Act are actionable in civil court.
(b) A victim of the sex trade has a cause of action against a person or entity who:
(1) recruits, profits from, or maintains the victim in any sex trade act;
(2) intentionally abuses, as defined in Section 103 of the Illinois Domestic Violence Act of 1986, or causes bodily harm, as defined in Section 11-0.1 of the Criminal Code of 2012, to the victim in any sex trade act; or
(3) knowingly advertises or publishes advertisements for purposes of recruitment into sex trade activity.
(c) This Section shall not be construed to create liability to any person or entity who provides goods or services to the general public, who also provides those goods or services to persons who would be liable under subsection (b) of this Section, absent a showing that the person or entity either:
(1) knowingly markets or provides its goods or services primarily to persons or entities liable under

subsection (b) of this Section;
(2) knowingly receives a higher level of compensation from persons or entities liable under subsection (b) of this Section than it generally receives from customers; or
(3) supervises or exercises control over persons or entities liable under subsection (b) of this Section.
(Source: P.A. 96-1551, eff. 7-1-11; 97-1150, eff. 1-25-13.)

(740 ILCS 128/20)
Sec. 20. Relief. A prevailing victim of the sex trade shall be entitled to all relief that would make him or her whole. This includes, but is not limited to:
(1) declaratory relief;
(2) injunctive relief;
(3) recovery of costs and attorney fees including, but not limited to, costs for expert testimony and witness fees;
(4) compensatory damages including, but not limited to:
(A) economic loss, including damage, destruction, or loss of use of personal property, and loss of past or future earning capacity; and
(B) damages for death, personal injury, disease, and mental and emotional harm, including medical, rehabilitation, burial expenses, pain and suffering, and physical impairment;
(5) punitive damages; and
(6) damages in the amount of the gross revenues received by the defendant from, or related to, the sex trade activities of the plaintiff.
(Source: P.A. 94-998, eff. 7-3-06; 95-331, eff. 8-21-07.)

(740 ILCS 128/25)
Sec. 25. Non-defenses.
(a) It is not a defense to an action brought under this Act that:
(1) the victim of the sex trade and the defendant had a marital or consenting sexual relationship;
(2) the defendant is related to the victim of the sex trade by blood or marriage, or has lived with the defendant in any formal or informal household arrangement;
(3) the victim of the sex trade was paid or otherwise compensated for sex trade activity;
(4) the victim of the sex trade engaged in sex trade activity prior to any involvement with the defendant;
(5) the victim of the sex trade made no attempt to escape, flee, or otherwise terminate contact with the defendant;
(6) the victim of the sex trade consented to engage in acts of the sex trade;

(7) it was a single incident of activity; or
(8) there was no physical contact involved.
(b) Any illegality of the sex trade activity on the part of the victim of the sex trade shall not be an affirmative defense to any action brought under this Act.
(Source: P.A. 94-998, eff. 7-3-06.)

(740 ILCS 128/30)
Sec. 30. Evidence. Related to a cause of action under this Act, the fact that a plaintiff or other witness has testified under oath or given evidence relating to an act that may be a violation of any provision of the Criminal Code of 2012 shall not be construed to require the State's Attorney to criminally charge any person for such violation.
(Source: P.A. 97-1150, eff. 1-25-13.)

(740 ILCS 128/35)
Sec. 35. Remedies preserved. This Act does not affect the right of any person to bring an action or use any remedy available under other law, including common law, to recover damages arising out of the use of the victim of the sex trade in the sex trade nor does this Act limit or restrict the liability of any person under other law. This Act does not reflect a determination of a policy regarding the applicability of strict liability to activities relating to the sex trade.
(Source: P.A. 94-998, eff. 7-3-06.)

(740 ILCS 128/40)
Sec. 40. Double recovery prohibited. Any person who recovers damages under this Act may not recover the same costs or damages under any other Act. A person who recovers damages under any other Act may not recover for the same costs or damages under this Act.
(Source: P.A. 94-998, eff. 7-3-06.)

(740 ILCS 128/45)
Sec. 45. No avoidance of liability. No person may avoid liability under this Act by means of any conveyance of any right, title, or interest in real property, or by any indemnification, hold harmless agreement, or similar agreement that purports to show consent of the victim of the sex trade.
(Source: P.A. 94-998, eff. 7-3-06.)

(740 ILCS 128/55)
Sec. 55. Severability. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity of that provision or its application does not affect other provisions or application of this Act that can be given effect without the invalid provision or application.
(Source: P.A. 94-998, eff. 7-3-06.)

(740 ILCS 128/80)
Sec. 80. (Amendatory provisions; text omitted).
(Source: P.A. 94-998, eff. 7-3-06; text omitted.)

(740 ILCS 128/99)
Sec. 99. Effective date. This Act takes effect upon becoming law.
(Source: P.A. 94-998, eff. 7-3-06.)

Hurley, Peggy

From: Tenuta2, Christina
Sent: Thursday, November 14, 2013 12:35 PM
To: Hurley, Peggy
Subject: Predator Accountability Act
Attachments: IL Predator Accountability Act.docx

Hi Peggy,

How are you?

Rep. Billings is interested in working on legislation that would allow victims of the sex trade to sue those people who perpetuate and profit from the exploitation of women and children. Basically, a law that would allow sex-workers to sue their "pimps" for civil monetary damages. Illinois has a law that allows for this, called the Predator Accountability Act – see attached.

Can you help draft a Predator Accountability Act under Wisconsin law?

Thanks much,

Christina

Christina M. Tenuta
Legislative Aide
Representative Billings – 95th Assembly District
608-266-5780

State of Wisconsin
2013 – 2014 LEGISLATURE

LRB–3657/P1
PJH:...

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** creating a civil cause of action for victims of commercial sexual exploitation.

Analysis by the Legislative Reference Bureau

This bill creates a civil cause of action for a person who is the victim of commercial sexual exploitation. Under the bill, any of the following may be an act of commercial sexual exploitation: human trafficking, sexual exploitation of a child, soliciting a child for prostitution or sex trafficking of a child, possession or production of child pornography, soliciting a prostitute, pandering, or keeping a place of prostitution.

Under the bill, a person who is a victim of an act of commercial sexual exploitation (victim) may bring a civil action against the person who committed the act of commercial sexual exploitation, who recruited victims, or who earned revenue or other compensation as a result of the victim's commercial sexual exploitation (actor) regardless of whether criminal charges are brought or proved against the actor. If the victim prevails in his or her action, he or she may collect actual damages, punitive damages, costs and attorneys' fees, and any gross revenues earned by the actor related to his or her commercial sexual exploitation of the victim.

The bill prohibits the actor from raising several possible defenses in a civil action, including that the victim willingly engaged in the act of commercial sexual exploitation, that the victim had a consensual sexual relationship with the actor or with another person, that the victim did not attempt to flee or terminate the act of commercial sexual exploitation, that the victim was compensated for his or her acts,

or that the victim was not physically contacted by the actor or by another participant in the act of commercial sexual exploitation.

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

SECTION 1. 893.16 (5) (d) of the statutes is created to read:

893.16 **(5)** (d) Actions for commercial sexual exploitation subject to the time limits of s. 893.575 (1).

SECTION 2. 893.575 of the statutes is created to read:

893.575 Commercial sexual exploitation. Actions based on acts of commercial sexual exploitation, as defined in s. 895.438, shall be commenced within 10 years after the cause of action accrues or if the person entitled to bring an action is a minor, within 10 years after his or her 18th birthday, or be barred.

SECTION 3. 895.438 of the statutes is created to read:

895.438 Commercial sexual exploitation; action for. (1) DEFINITIONS. In this section:

(a) "Commercial sexual exploitation" means an act that is a violation of s. 940.302 and that involves a commercial sex act, 944.32, 944.33, 944.34, 948.05, 948.051, 948.08, or 948.12, whether or not the act has resulted in criminal charges, prosecution, or conviction.

(b) "Victim" means any of the following:

1. The person who was trafficked for the purpose of committing a commercial sex act, if the act of commercial sexual exploitation is a violation of s. 940.302.

2. The person who committed or who was recruited, hired, or paid to commit an act of prostitution, if the act of commercial sexual exploitation is a violation of s. 944.32, 944.33, or 944.34.

3. The person who is or was, at the time of the act of commercial sexual exploitation, the child involved if the act of commercial sexual exploitation is a violation of s. 948.05, 948.051, 948.08, or 948.12.

(2) CIVIL CAUSE OF ACTION. (a) *Cause of action.* A victim has a cause of action against any person who does any of the following:

1. Commits an act of commercial sexual exploitation involving the victim.

2. Advertises or publishes advertisements for the purpose of recruiting a victim for an act of commercial sexual exploitation.

3. Receives money or other compensation as a result of committing an act of commercial sexual exploitation involving the victim.

(b) *Remedies.* A victim who brings an action under this section may obtain the following remedies:

1. Actual damages.

2. Punitive damages.

3. Damages in the amount of the gross revenues or value of other compensation received by the defendant from, or related to, his or her act of commercial sexual exploitation involving the victim.

4. Injunctive relief in the form of a temporary restraining order, temporary injunction, or injunction ordering the defendant to refrain from perpetrating any further acts of commercial sexual exploitation, or providing any other remedy that is appropriate. Notwithstanding the existence of any claims for monetary damages, a victim may seek injunctive relief against the defendant on an ex parte basis or schedule injunctive relief proceedings on an expedited basis.

5. Notwithstanding s. 814.04, reasonable attorney fees and costs of the litigation.

(c) *Effect of Criminal Judgment.* If there is a final judgment or decree rendered in favor of the state in any criminal proceeding against the defendant arising out of acts enumerated in sub. (1) (a) by the defendant involving the victim, the defendant may not deny the essential allegations of the criminal offense in any civil action or proceeding.

(d) *Statute of Limitations; tolling.* An action under this section is subject to s. 893.575, except that the statute of limitations for an action under this section is tolled during the period beginning with the commencement of a criminal proceeding charging the person with a violation of any statute enumerated in sub. (1) (a) and ending with the final disposition, as defined in s. 893.13 (1), of the criminal proceeding.

(e) *Exceptions.* A person is not liable under this section for providing a good or service to the general public, who also provides the good or service to a person who commits an act described in par. (a), unless one the following apply: applies

1. He or she knowingly markets or provides the good or service primarily to a person who commits an act described in par. (a).

2. He or she receives greater compensation for the good or service from a person who commits an act described in par. (a) than he or she does from a member of the general public.

3. He or she supervises or exercises control of a person who commits an act described in par. (a).

(f) *Defenses not available.* It is not a defense to an action brought under this section that:

1. The victim and the defendant had a marital or consenting sexual relationship.

2. The victim was paid or otherwise compensated for participating in the act of commercial sexual exploitation.

3. The victim participated in an activity related to commercial sexual exploitation prior to any involvement with the defendant.

4. The victim made no attempt to escape, flee, or otherwise terminate contact with the defendant.

5. The victim consented to engage in acts of commercial sexual exploitation.

6. The act of commercial sexual exploitation was a single or isolated incident.

7. There was no physical contact between the victim and the defendant or between the victim and another participant in an act of commercial sexual exploitation involving the victim.

8. The victim committed an act of commercial sexual exploitation against another person.

SECTION 4. Initial applicability.

(1) This act first applies to acts of commercial sexual exploitation occurring on the effective date of this subsection.

(END)

d-note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

date

LRB-3657/~~2~~ P1 dn
PJH:...:...
jld

Representative Billings,

Please review this preliminary draft to ensure that it is consistent with your intent. Please let me know if you would like to discuss any part of the draft or if you would like changes. When the draft meets your approval, I will redraft it in introducible form.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3657/P1dn
PJH:jld:jf

December 3, 2013

Representative Billings,

Please review this preliminary draft to ensure that it is consistent with your intent. Please let me know if you would like to discuss any part of the draft or if you would like changes. When the draft meets your approval, I will redraft it in introducible form.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov

State of Wisconsin
2013 – 2014 LEGISLATURE

LRB–3657/~~P1~~ 1
PJH:jld:~~jf~~ oe
stays

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

no changes today please

regen cat

AN ACT ***to create*** 893.16 (5) (d), 893.575 and 895.438 of the statutes; **relating to:** creating a civil cause of action for victims of commercial sexual exploitation.

Analysis by the Legislative Reference Bureau

This bill creates a civil cause of action for a person who is the victim of commercial sexual exploitation. Under the bill, any of the following may be an act of commercial sexual exploitation: human trafficking, sexual exploitation of a child, soliciting a child for prostitution or sex trafficking of a child, possession or production of child pornography, soliciting a prostitute, pandering, or keeping a place of prostitution.

Under the bill, a person who is a victim of an act of commercial sexual exploitation (victim) may bring a civil action against the person who committed the act of commercial sexual exploitation, who recruited victims, or who earned revenue or other compensation as a result of the victim's commercial sexual exploitation (actor) regardless of whether criminal charges are brought or proved against the actor. If the victim prevails in his or her action, he or she may collect actual damages, punitive damages, costs and attorney fees, and any gross revenues earned by the actor related to his or her commercial sexual exploitation of the victim.

The bill prohibits the actor from raising several possible defenses in a civil action, including that the victim willingly engaged in the act of commercial sexual exploitation, that the victim had a consensual sexual relationship with the actor or with another person, that the victim did not attempt to flee or terminate the act of commercial sexual exploitation, that the victim was compensated for his or her acts,

or that the victim was not physically contacted by the actor or by another participant in the act of commercial sexual exploitation.

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

1 **SECTION 1.** 893.16 (5) (d) of the statutes is created to read:

2 893.16 **(5)** (d) Actions for commercial sexual exploitation subject to the time
3 limits of s. 893.575.

4 **SECTION 2.** 893.575 of the statutes is created to read:

5 **893.575 Commercial sexual exploitation.** Actions based on acts of
6 commercial sexual exploitation, as defined in s. 895.438 (1) (a), shall be commenced
7 within 10 years after the cause of action accrues or, if the person entitled to bring an
8 action is a minor, within 10 years after his or her 18th birthday, or be barred.

9 **SECTION 3.** 895.438 of the statutes is created to read:

10 **895.438 Commercial sexual exploitation; action for. (1)** DEFINITIONS. In
11 this section:

12 (a) "Commercial sexual exploitation" means an act that is a violation of s.
13 940.302 and that involves a commercial sex act, or of s. 944.32, 944.33, 944.34,
14 948.05, 948.051, 948.08, or 948.12, whether or not the act has resulted in criminal
15 charges, prosecution, or conviction.

16 (b) "Victim" means any of the following:

17 1. The person who was trafficked for the purpose of committing a commercial
18 sex act, if the act of commercial sexual exploitation is a violation of s. 940.302.

19 2. The person who committed or who was recruited, hired, or paid to commit
20 an act of prostitution, if the act of commercial sexual exploitation is a violation of s.
21 944.32, 944.33, or 944.34.

3. The person who is or was, at the time of the act of commercial sexual exploitation, the child involved if the act of commercial sexual exploitation is a violation of s. 948.05, 948.051, 948.08, or 948.12.

(2) CIVIL CAUSE OF ACTION. (a) *Cause of action.* A victim has a cause of action against any person who does any of the following:

1. Commits an act of commercial sexual exploitation involving the victim.

2. Advertises or publishes advertisements for the purpose of recruiting a victim for an act of commercial sexual exploitation.

3. Receives money or other compensation as a result of committing an act of commercial sexual exploitation involving the victim.

(b) *Remedies.* A victim who brings an action under this section may obtain the following remedies:

1. Actual damages.

2. Punitive damages.

3. Damages in the amount of the gross revenues or value of other compensation received by the defendant from, or related to, his or her act of commercial sexual exploitation involving the victim.

4. Injunctive relief in the form of a temporary restraining order, temporary injunction, or injunction ordering the defendant to refrain from perpetrating any further acts of commercial sexual exploitation, or providing any other remedy that is appropriate. Notwithstanding the existence of any claims for monetary damages, a victim may seek injunctive relief against the defendant on an ex parte basis or schedule injunctive relief proceedings on an expedited basis.

5. Notwithstanding s. 814.04, reasonable attorney fees and costs of the litigation.

1 (c) *Effect of criminal judgment.* If there is a final judgment or decree rendered
2 in favor of the state in any criminal proceeding against the defendant arising out of
3 acts enumerated in sub. (1) (a) by the defendant involving the victim, the defendant
4 may not deny the essential allegations of the criminal offense in any civil action or
5 proceeding.

6 (d) *Statute of limitations; tolling.* An action under this section is subject to s.
7 893.575, except that the statute of limitations for an action under this section is
8 tolled during the period beginning with the commencement of a criminal proceeding
9 charging the person with a violation of any statute enumerated in sub. (1) (a) and
10 ending with the final disposition, as defined in s. 893.13 (1), of the criminal
11 proceeding.

12 (e) *Exceptions.* A person is not liable under this section for providing a good or
13 service to the general public, who also provides the good or service to a person who
14 commits an act described in par. (a), unless one the following applies:

15 1. He or she knowingly markets or provides the good or service primarily to a
16 person who commits an act described in par. (a).

17 2. He or she receives greater compensation for the good or service from a person
18 who commits an act described in par. (a) than he or she does from a member of the
19 general public.

20 3. He or she supervises or exercises control of a person who commits an act
21 described in par. (a).

22 (f) *Defenses not available.* It is not a defense to an action brought under this
23 section that:

24 1. The victim and the defendant had a marital or consenting sexual
25 relationship.

1 2. The victim was paid or otherwise compensated for participating in the act
2 of commercial sexual exploitation.
3 3. The victim participated in an activity related to commercial sexual
4 exploitation prior to any involvement with the defendant.
5 4. The victim made no attempt to escape, flee, or otherwise terminate contact
6 with the defendant.
7 5. The victim consented to engage in acts of commercial sexual exploitation.
8 6. The act of commercial sexual exploitation was a single or isolated incident.
9 7. There was no physical contact between the victim and the defendant or
10 between the victim and another participant in an act of commercial sexual
11 exploitation involving the victim.
12 8. The victim committed an act of commercial sexual exploitation against
13 another person.
14 **SECTION 4. Initial applicability.**
15 (1) This act first applies to acts of commercial sexual exploitation occurring on
16 the effective date of this subsection.
17 **(END)**

Basford, Sarah

From: Hurley, Peggy
Sent: Tuesday, January 14, 2014 3:31 PM
To: Basford, Sarah
Cc: Rep.Billings
Subject: Jacketing

Sarah,

Can you please jacket LRB 13-3657 for Representative Billings' office?

Peggy Hurley
Legislative Reference Bureau
608 266 8906