

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2755/1dn
MDK:jlg:ch

April 8, 1999

Representative Schneider:

Please review this bill very carefully to make sure that it achieves your intent. In particular, please note the following:

1. The bill's prohibitions are included in s. 134.72, stats. Therefore, under s. 134.72 (3) (b), stats., the bill prohibits a person in another state from using a blocking service when making a telephone solicitation to a person in this state. Please note that this aspect of the bill may be subject to an attack that it violates the interstate commerce clause of the federal constitution. In general, a court will resolve this issue by asking the following 3 questions:

- 1) Does the legislation pursue a legitimate state end?
- 2) Is the legislation rationally related to that legitimate state end?
- 3) Is the burden imposed on interstate commerce outweighed by the state's interest in enforcing the legislation?

If the court answers "yes" to all 3 questions, it will uphold the legislation. Although I have not researched this issue thoroughly, I think that you should at least be aware of this potential attack. If you want, I would be happy to look more closely at this issue for you.

2. Under s. 134.72 (4), stats., a person who violates the bill is subject to a forfeiture of up to \$500. In addition, under s. 134.95 (2), stats., a person who violates the bill is subject to a supplemental forfeiture of up to \$10,000 if the recipient of the telephone solicitation is an elderly or disabled person and certain other factors are present. Are these penalties okay, or do you want something different?

If you have any questions or redraft instructions, please contact me.

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