

1999 DRAFTING REQUEST

Bill

Received: **01/06/2000**

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **David Ward (608) 266-3790**

By/Representing: **Kim**

This file may be shown to any legislator: NO

Drafter: **kunkemd**

May Contact:

Alt. Drafters:

Subject: **Trade Regulation**

Extra Copies: **MGG, RNK**

Pre Topic:

No specific pre topic given

Topic:

Regulation of facsimile solicitations

Instructions:

Prepare bill based on 1999 **AB 578**, but limit coverage to facsimile solicitations

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Reaured</u>
/1	kunkemd 01/06/2000	jgeller 01/06/2000	jfrantze 01/07/2000	_____	lrb_docadmin 01/07/2000	lrb_docadminS&L 01/26/2000	
				_____		lrb_docadmin	
				_____		lrb_docadmin	

FE Sent For:

<END>

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FE Sent For:

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State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-4155/1
MDK:;:...

JLg

O-NOTE

1999 BILL

By WED
1/12

gen cat

1 AN ACT **relating to:** prohibiting certain facsimile solicitations, requiring
2 registration of facsimile solicitors, requiring the exercise of rule-making
3 authority, making an appropriation and providing a penalty. ✓

Analysis by the Legislative Reference Bureau

two

Under current law, a person who sends facsimile solicitations is subject to ~~2~~ prohibitions. "Facsimile solicitation" is defined as the unsolicited transmission of a document by a facsimile machine for the purpose of encouraging the recipient to make purchases. Under the first prohibition, a person may not make a facsimile solicitation if the recipient has notified the person in writing or by facsimile transmission that the recipient does not want to receive facsimile solicitations. Second, if a recipient has not made the notification required under the first prohibition, a person may not send a facsimile solicitation without the recipient's consent unless all of the following apply: 1) the facsimile solicitation does not exceed one page in length; 2) the facsimile solicitation is received by the recipient after 9 p.m. and before 6 a.m.; and 3) the person making the facsimile solicitation has had a previous business relationship with the recipient.

This bill changes the first prohibition by requiring the department of agriculture, trade and consumer protection (DATCP) to establish a nonsolicitation directory that includes listings for persons who do not wish to receive facsimile solicitations. The bill requires DATCP to promulgate rules establishing requirements and procedures for a person to request a listing in the directory. DATCP must provide copies of the directory to the public free of charge and must also

BILL

make the directory available to the public in a manner that facilitates public access to the directory. Under the first prohibition, as affected by the bill, a person may not make a facsimile solicitation to a recipient if the directory that is available to the public at the time of solicitation includes a listing for the recipient. The bill eliminates the requirement under the first prohibition that a recipient must notify a person that the recipient does not want to receive facsimile solicitations.

This bill also requires DATCP to promulgate rules that require a[✓]facsimile solicitor to register annually with DATCP and pay an annual registration fee. "Facsimile solicitor" is defined as a person that employs an individual to make a facsimile solicitation. The amount of the registration fee must be based on the cost for DATCP to establish and maintain the nonsolicitation directory. The bill prohibits a facsimile solicitor that is not registered from requiring an employe to make a facsimile solicitation to a recipient in this state.

A facsimile solicitor who violates the bill's prohibitions is subject to a forfeiture of up to \$10,000. A facsimile solicitor is also subject to this forfeiture amount if the facsimile solicitor requires an employe to violate the first prohibition, as affected by the bill, or the^{2nd} prohibition, which is not affected by the bill.

For further information *see* the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

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

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

2 20.115 (8) (jm)[✓] *Facsimile solicitation regulation*. All moneys received from
3 facsimile solicitor registration fees paid under the rules promulgated under s. 134.72
4 (lr)[✓] for establishing and maintaining the nonsolicitation directory under s. 134.72
5 (1g)[✓].

6 SECTION 2. 134.72 (1) (a)^X of the statutes is renumbered 134.72 (1) (ar)[✓].

7 SECTION 3. 134.72 (1) (ag)^X of the statutes is created to read:

8 134.72 (1) (ag)[✓] "Department" means the department of agriculture, trade and
9 consumer protection.

10 SECTION 4, 134.72 (1) (bg)^X of the statutes is created to read:

11 134.72 (1) (bg)[✓] "Facsimile solicitor" means a person that employs an individual
12 to make a facsimile solicitation.

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1 **SECTION 5.** 134.72 (1) (br) of the statutes is created to read:

2 134.72 (1) (br) "Nonsolicitation directory" means the directory established in
3 rules promulgated by the department under sub. (lg) (b).

4 **SECTION 6.** 134.72 (lg) of the statutes is created to read:

5 134.72 **(1g) NONSOLICITATION DIRECTORY LISTING.** (a) Upon a request by any
6 person, the department shall include in the nonsolicitation directory a listing
7 indicating that the person does not want to receive any facsimile solicitation,

8 (b) The department shall promulgate rules establishing a directory that
9 includes listings of persons who do not wish to receive facsimile solicitations. The
10 rules promulgated under this paragraph shall establish requirements and
11 procedures for a person to request a listing in the directory.

12 (c) The department shall provide copies of the nonsolicitation directory to the
13 public free of charge and make the nonsolicitation directory available to the public
14 in a manner that, as determined by the department, facilitates public access to the
15 directory.

16 **SECTION 7.** 134.72 (lr) of the statutes is created to read:

17 134.72 (lr) **REGISTRATION OF FACSIMILE SOLICITORS.** The department shall
18 promulgate rules that require any facsimile solicitor who requires an employe to
19 make a facsimile solicitation to a person in this state to register with the department
20 on an annual basis and pay an annual registration fee to the department. The
21 amount of the registration fee shall be based on the cost of establishing and
22 maintaining the nonsolicitation directory.

23 **SECTION 8.** 134.72 (2) (b) 2. of the statutes is amended to read:

24 134.72 (2) (b) 2. Notwithstanding subd. 1., a person may not make a facsimile
25 solicitation to a person ~~who has notified the facsimile solicitor in writing or by~~

.. BILL

SECTION 8

1 ~~facsimile transmission that the person does not want to receive facsimile solicitation~~
 2 if the nonsolicitation directory that is available to the public at the time of the
 3 facsimile solicitation includes a listing for the person.

History: 1977 c. 301; 1989 a. 336; 1995 a. 351; 1997 a. 27.

4 **SECTION 9.** 134.72 (2) (b) 3. of the statutes is created to read:

5 134.72 (2) (b) 3. A facsimile solicitor may not require an employe to make a
 6 facsimile solicitation to a person in this state unless the facsimile solicitor is
 7 registered with the department under the rules promulgated under sub. (1r).

8 **SECTION 10.** 134.72 (2) (b) 4. of the statutes is created to read:

9 134.72 (2) (b) 4. A facsimile solicitor may not require an employe to make a
 10 facsimile solicitation that violates subd. 1. or 2.

11 **SECTION 11.** 134.72 (4) of the statutes is renumbered 134.72 (4) (a) and
 12 amended to read:

13 134.72 (4) (a) ~~A~~ Except as provided in par. (b), a person who violates this
 14 section may forfeit up to ~~no~~ ^{not} more than \$500.

History: 1977 c. 301; 1989 a. 336; 1995 a. 351; 1997 a. 27.

15 **SECTION 12.** 134.72 (4) (b) of the statutes is created to read:

16 134.72 (4) (b) A facsimile solicitor that violates sub. (2) (b) 3. or 4. may forfeit ~~not~~
 17 ~~no~~ more than \$10,000.

18 **SECTION 13.** 767.265 (2r) of the statutes, as affected by ¹⁹⁹⁹ Wisconsin Act ⁹ 131,
 19 is amended to read:

20 767.265 (2r) Upon entry of each order for child support, maintenance, family
 21 support, ~~on~~ support by a spouse ^{or the annual receiving and disbursing fees} and upon approval of each stipulation for child
 22 support, ^{← plain comma} unless the court finds that income withholding is likely to cause the payer
 23 irreparable harm or unless s. 767.267 applies, the court, family court commissioner
 24 or county child support agency under s. 59.53 (5) shall provide notice of the

PROOF w/ ACT 9

(1999) (9)

(plain)

2000

BILL

1 assignment by regular mail or by facsimile machine, as defined in s. 134.72 (1) ~~(a)~~
 2 ^{as} ~~(a)~~ or other electronic means to the last-known address of the person from whom
 3 the payer receives or will receive money. The notice shall provide that the amount
 4 withheld may not exceed the maximum amount that is subject to garnishment under
 5 15 USC 1673 (b) (2). If the department or its designee, whichever is appropriate, does
 6 not receive the money from the person notified, the court, family court commissioner
 7 or county child support agency under s. 59.53 (5) shall provide notice of the
 8 assignment to any other person from whom the payer receives or will receive money.
 9 Notice under this subsection may be a notice of the court, a copy of the executed
 10 assignment or a copy of that part of the court order directing payment.

History: 1971 c. 110; 1975 c. 94s. 91 (3); 1975 c. 199; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196,221; Stats. 1979s. 767,265; 1981 c. 20, 186, 1983 a. 27,384; 1985 a. 29; 1987 a. 38 s. 136; 1987 a. 332 s. 64; 1987 a. 398,403; 1989 a. 31, 56, 212, 336; 1991 a. 287; 1993 a. 16, 326, 389, 481; 1995 a. 27 s. 9130 (4); 1995 a. 279,404; 1997 a. 27, 191.

11 **SECTION 14. 968.01 (1) of the statutes is amended to read:**

12 **968.01 (1) "Facsimile machine" has the meaning given in s. 134.72 (1) ~~(a)~~ ^{as} ~~(a)~~.**

13

(END)

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

LRB-4155/1dn

MDK:.....

↑
JK

Representative Ward:

This bill is based on 1999 Assembly Bill 578, except that it applies to facsimile solicitations, rather than telephone solicitations. If you have any questions or redraft instructions, please contact me.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-O 13 1
E-mail: Mark.Kunkel@legis.state.wi.us

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

LRB-4155/1dn
MDK:jlj:jf

January 7, 2000

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Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

Date: 01/07/2000

To: Representative Ward

Relating to LRB drafting number: LRB-4155

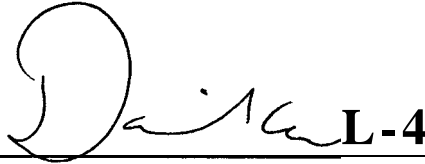
Topic

Regulation of facsimile solicitations

Subject(s)

Trade Regulation

1. **JACKET** the draft for introduction

 L-4

in the **Senate** or **the Assembly** (check only one). Only the requester under whose name the drafting request is entered in the **LRB's** drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon **introduction**. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-356 1. If you have any questions relating to the attached draft, please feel free to call me.

Mark D. Kunkel, Legislative Attorney
Telephone: (608) 266-013 1