

**1999 DRAFTING REQUEST**

**Bill**

Received: **03/08/1999**

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Jon Erpenbach (608) 266-6670**

By/Representing: **Julie**

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

Drafter: **kunkemd**

May Contact:

Alt. Drafters:

Subject: **Public Util. - telco and cable**

Extra Copies:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Regulation of telephone solicitations


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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>		<u>Required</u>
/?	kunkemd 09/15/1999	chanaman 09/16/1999		_____			S&L
/1			mclark 09/17/1999	_____	lrb_docadmin 09/17/1999	lrb_docadmin 09/28/1999	

FE Sent For:

<END>

cc  
10/28/99

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/?	kunkemd	CMD /1	MRC 9/16	MRC/JF 9/17			

FE Sent For:

9/16

<END>

Erpenbach - Julie - 6-6070

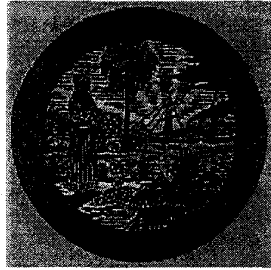
Based on - create "no-call" registration ✓  
Florida - prohibit junk mail - ?  
Janis - DATCA to regulate ✓  
- no fee to consumer; charge filer/retailer  
(licensing?)

- any ~~one~~  
fine goes to filer, not  
ind. making the call ✓



# Florida Department of Agriculture and Consumer Services

Bob Crawford



Commissioner

No Sales Solicitation Law

Residential Application

The Florida Telephonic Sales law, s.501.059, Florida Statutes, directs the Florida Department of Agriculture and Consumer Services to compile and maintain a "No Sales Solicitation" list for **residential, mobile, or telephonic paging device** telephone subscribers for area codes located in the State of Florida. Business numbers may not be included on the list.

The law prohibits those persons attempting to sell consumer goods and services by telephone from calling telephone numbers which appear on the "No Sales Solicitation" list. However, there are some exemptions: Solicitors may still call 1) in response to an express request of the person being called; 2) in connection with an existing debt or contract; 3) any person with whom the solicitor has an existing or previous business relationship; 4) if it is a newspaper in connection with newspaper business; and 5) if requesting a contribution or donation.

The list is updated on a quarterly basis. The initial fee is \$10 for the first year and the renewal fee is \$5 per year. You will be notified when it is time to renew your registration. Your check must be received by the date indicated in the following schedule to be included on that quarter's list:

QUARTER	RECEIPT DEADLINE
January - March	November 1
April - June	February 1
July - September	May 1
October - December	August 1

-----detach here-----

**To register your residential, mobile, or telephonic paging device telephone number with the Department, return this portion with your initial payment of \$10 per telephone number. Make check payable to: FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, POST OFFICE BOX 6700, TALLAHASSEE FL 32314.**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City Florida Zip

Telephone Number: ( \_\_\_\_\_ ) \_\_\_\_\_  
(Must be a Florida Area Code)

DACS - 10400E Rev.6/98

Amount Remitted: \$ \_\_\_\_\_

**501.059 Telephone solicitation.--**

(1) As used in this section:

(a) "Telephonic sales call" means a call made by a telephone solicitor to a consumer, for the purpose of soliciting a sale of any consumer goods or services, or for the purpose of soliciting an extension of credit for consumer goods or services, or for the purpose of obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.

(b) "Consumer goods or services" means any real property or any tangible or intangible personal property which is normally used for personal, family, or household purposes, including, without limitation, any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed, as well as cemetery lots and timeshare estates, and any services related to such property.

(c) "Unsolicited telephonic sales call" means a telephonic sales call other than a call made:

1. In response to an express request of the person called;
2. Primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of such call;
3. To any person with whom the telephone solicitor has a prior or existing business relationship; or
4. By a newspaper publisher or his or her agent or employee in connection with his or her business.

(d) "Commission" means the Florida Public Service Commission.

(e) "Telephone solicitor" means any natural person, firm, organization, partnership, association, or corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call, including, but not limited to, calls made by use of automated dialing or recorded message devices.

(f) "Consumer" means an actual or prospective purchaser, lessee, or recipient of consumer goods or services.

(g) "Merchant" means a person who, directly or indirectly, offers or makes available to consumers any consumer goods or services.

(h) "Doing business in this state" refers to businesses who conduct telephonic sales calls from a location in Florida or from other states or nations to consumers located in Florida.

(i) "Department" means the Department of Agriculture and Consumer Services.

(2) Any telephone solicitor who makes an unsolicited telephonic sales call to a residential, mobile, or telephonic paging device telephone number shall identify himself or herself by his or her true first and last names and the business on whose behalf he or she is soliciting immediately upon making contact by telephone with the person who is the object of the telephone solicitation.

(3)

(a) Any residential, mobile, or telephonic paging device telephone subscriber desiring to be placed on a "no sales solicitation calls" listing indicating that the subscriber does not wish to receive unsolicited telephonic sales calls may notify the department and be placed on that listing upon receipt by the department of a \$10 initial listing charge. This listing shall be renewed by the department annually for each consumer upon receipt of a renewal notice and a \$5 assessment.

(b) The department shall update its "no sales solicitation calls" listing upon receipt of initial consumer subscriptions or renewals and provide this listing for a fee to telephone solicitors upon request.

(c) All fees imposed pursuant to this section shall be deposited in the General Inspection Trust Fund for the administration of this section.

(4) No telephone solicitor shall make or cause to be made any unsolicited telephonic sales call to any residential, mobile, or telephonic paging device telephone number if the number for that telephone appears in the then-current quarterly listing published by the department. Any telephone solicitor or person who offers for sale any consumer information which includes residential, mobile, or telephonic paging device telephone numbers, except directory assistance and telephone directories sold by telephone companies and organizations exempt under s. 501(c)(3) or (6) of the Internal Revenue Code, shall screen and exclude those numbers which appear on the division's then-current "no sales solicitation calls" list. This subsection does not apply to any person licensed pursuant to chapter 475 who calls an actual or prospective seller or lessor of real property when such call is made in response to a yard sign or other form of advertisement placed by the seller or lessor.

(5)

(a) A contract made pursuant to a telephonic sales call is not valid and enforceable against a consumer unless made in compliance with this subsection.

(b) A contract made pursuant to a telephonic sales call:

1. Shall be reduced to writing and signed by the consumer.
2. Shall comply with all other applicable laws and rules.



3. Shall match the description of goods or services as principally used in the telephone solicitations.

4. Shall contain the name, address, and telephone number of the seller, the total price of the contract, and a detailed description of the goods or services being sold.

5. Shall contain, in bold, conspicuous type, immediately preceding the signature, the following statement:

"You are not obligated to pay any money unless you sign this contract and return it to the seller."

6. May not exclude from its terms any oral or written representations made by the telephone solicitor to the consumer in connection with the transaction.

(c) The provisions of this subsection do not apply to contractual sales regulated under other sections of the Florida Statutes, or to the sale of financial services, security sales, or sales transacted by companies or their wholly owned subsidiaries or agents, which companies are regulated by chapter 364, or to the sale of cable television services to the duly franchised cable television operator's existing subscribers within that cable television operator's franchise area, or to any sales where no prior payment is made to the merchant and an invoice accompanies the goods or services allowing the consumer 7 days to cancel or return without obligation for any payment.

(6)

(a) A merchant who engages a telephone solicitor to make or cause to be made a telephonic sales call shall not make or submit any charge to the consumer's credit card account or make or cause to be made any electronic transfer of funds until after the merchant receives from the consumer a copy of the contract, signed by the purchaser, which complies with this section.

(b) A merchant who conducts a credit card account transaction pursuant to this section shall be subject to the provisions of s. 817.62.

(c) The provisions of this subsection do not apply to a transaction:

1. Made in accordance with prior negotiations in the course of a visit by the consumer to a merchant operating a retail business establishment which has a fixed permanent location and where consumer goods are displayed or offered for sale on a continuing basis;

2. In which the consumer may obtain a full refund for the return of undamaged and unused goods or a cancellation of services notice to the seller within 7 days after receipt by the consumer, and the seller will process the refund within 30 days after receipt of the returned merchandise by the consumer;

3. In which the consumer purchases goods or services pursuant to an

examination of a television, radio, or print advertisement or a sample, brochure, or catalog of the merchant that contains:

- a. The name, address, and telephone number of the merchant;
  - b. A description of the goods or services being sold; and
  - c. Any limitations or restrictions that apply to the offer; or
4. In which the merchant is a bona fide charitable organization or a newspaper as defined in chapter 50.

(7)

(a) No person shall make or knowingly allow a telephonic sales call to be made if such call involves an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called.

(b) Nothing herein prohibits the use of an automated telephone dialing system with live messages if the calls are made or messages given solely in response to calls initiated by the persons to whom the automatic calls or live messages are directed or if the telephone numbers selected for automatic dialing have been screened to exclude any telephone subscriber who is included on the department's then-current "no sales solicitation calls" listing or any unlisted telephone number, or if the calls made concern goods or services that have been previously ordered or purchased.

(8) The department shall investigate any complaints received concerning violations of this section. If, after investigating any complaint, the department finds that there has been a violation of this section, the department or the Department of Legal Affairs may bring an action to impose a civil penalty and to seek other relief, including injunctive relief, as the court deems appropriate against the telephone solicitor. The civil penalty shall not exceed \$10,000 per violation and shall be deposited in the General Inspection Trust Fund if the action or proceeding was brought by the department, or the Consumer Frauds Trust Fund if the action or proceeding was brought by the Department of Legal Affairs. This civil penalty may be recovered in any action brought under this part by the department, or the department may terminate any investigation or action upon agreement by the person to pay a stipulated civil penalty. The department or the court may waive any civil penalty if the person has previously made full restitution or reimbursement or has paid actual damages to the consumers who have been injured by the violation.

(9)

(a) In any civil litigation resulting from a transaction involving a violation of this section, the prevailing party, after judgment in the trial court and exhaustion of all appeals, if any, shall receive his or her reasonable attorney's fees and costs from the nonprevailing party.

(b) The attorney for the prevailing party shall submit a sworn affidavit of his or her time spent on the case and his or her costs incurred for all the motions, hearings, and appeals to the trial judge who presided over the civil case.

(c) The trial judge shall award the prevailing party the sum of reasonable costs incurred in the action plus a reasonable legal fee for the hours actually spent on the case as sworn to in an affidavit.

(d) Any award of attorney's fees or costs shall become a part of the judgment and subject to execution as the law allows.

(e) In any civil litigation initiated by the department or the Department of Legal Affairs, the court may award to the prevailing party reasonable attorney's fees and costs if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party or if the court finds bad faith on the part of the losing party.

(10) The commission shall by rule ensure that telecommunications companies inform their customers of the provisions of this section. The notification may be made by:

(a) Annual inserts in the billing statements mailed to customers; and

(b) Conspicuous publication of the notice in the consumer information pages of the local telephone directories.

**History.**--s. 1, ch. 87-253; s. 1, ch. 90-143; ss. 3, 5, ch. 91-237; s. 1, ch. 92-186; s. 59, ch. 92-291; s. 3, ch. 94-298; s. 616, ch. 97-103.

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## Consumer FAQ

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1. Q: What is the difference between the Telephonic Sales law and the Florida Telemarketing Act?

A: The telephonic sales law requires the Division to produce a list of telephone numbers of subscribers who do not wish to receive solicitation calls for the sale of consumer goods or services. It requires certain disclosures and prohibits the use of an automated solicitation device with a recorded message.

The Florida Telemarketing Act requires non-exempt businesses that solicit the sale of consumer goods or services to be licensed, to post some form of security (a surety bond, certificate of deposit, or a letter of credit) of no less than \$50,000, and their salespersons to be licensed prior to doing business in Florida. The Act defines doing business in this state as a call from Florida or a call to a purchaser in Florida.

2. Q: What hours can a telemarketer call? Can they call me on Sunday, too?

A: There is nothing in the Florida Telemarketing Act or the telephonic sales law that limits the hours or days that a solicitor may call. (The Federal Telemarketing Sales Rule limits the hours to 8:00 A.M. to 9:00 P.M. local time at the consumers location.) There are no restrictions regarding calls on Sundays, other than the aforementioned hour restrictions.

3. Q: I am being solicited by faxes, isn't that against the law?

A: Nothing in the Florida Telemarketing Act or the telephonic sales law prohibits sending advertisements by fax. However, there is a law found in §365.1657, Florida Statutes, that prohibits sending an unsolicited advertisement by fax machine within the state. The law is enforced by the Office of the Attorney General.

4. Q: Can you tell me what the telemarketing law requires?

A: The law requires businesses that solicit the sale of consumer goods or services to be licensed, to post some form of security, and that their salespersons be licensed. It also requires the solicitor to identify him or herself by true first and last name and the name of the business on whose behalf he or she is calling. It requires a written contract that matches the description of the goods or services offered in the telephone solicitation, contains the name, address, telephone number and license number of the seller, and states the buyers right to cancel immediately preceding the signature. The written contract is not required if the consumer is

given a full refund for the return of undamaged and unused goods or a cancellation of services within 7 days of receipt of the goods or a cancellation of the services and the seller processes the refund within 30 days after receipt of the returned merchandise by the consumer.

5. Q: A solicitor told me they only accept credit cards, is that legal?

A: No. Section 501.616(1), Florida Statutes, states it is unlawful for any commercial telephone seller or salesperson to require that payment be by credit card authorization or otherwise to announce a preference for that method of payment.

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## No Sales

### What is the "No Sales Solicitation" List?

A Message From Bob Crawford, Commissioner of Agriculture and Consumer Services:

Unwanted telemarketing calls can be annoying and intrusive. One of the many consumer protection programs that the Department provides is the "No Sales Solicitation" List. Thousands of Floridians have taken steps to prevent unwanted telephone calls into their home by placing their residential telephone numbers on the state's "No Sales Solicitation" List. Most commercial telemarketers are prohibited by law from calling any telephone number on this list. The law also requires callers to accurately identify themselves and their business name so that anyone receiving such a call will know who is calling.

Complaints about telephone solicitation calls are among the top consumer complaints received by our office. Florida consumers can help ensure their privacy and avoid many unwanted calls by joining our program.

This service has become an excellent tool in restoring our basic right to privacy in our own home, as well as preventing telemarketing fraud. I invite you to learn more about this program by reading the rest of this information, and I encourage all consumers to participate in this program if they wish to prevent many telemarketing calls to their home.

### The "No Sales Solicitation" List

The Florida Department of Agriculture and Consumer Services maintains the State's "No Sales Solicitation" List. Florida residents who do not wish to receive sales calls may have their residential, mobile or paging device telephone number included on this list by paying an initial fee of \$10. A \$5 renewal fee is required each year thereafter. The fees are used to pay the expenses of operating the program and enforcing the law. Residents who wish to join the program may do so by sending their name, mailing address and telephone number with area code, along with a check, to the **Florida Department of Agriculture and Consumer Services, P.O. Box 6700, Tallahassee, Florida 32314-6700.**

The list is updated quarterly, published on the first business day of January, April,

July and October and is then made available telemarketers throughout the country. While being on the list spares residents from most telephone sales calls, some telemarketers are exempt from the law. Solicitors may still call in response to a request of the person being called, to enforce a contract or collect a debt, or to sell newspaper subscriptions. Solicitors may also call any person with whom the solicitor has an existing or previous business relationship, on behalf of political candidates, and to solicit donations for a charitable organization.

### If You Are On The List And Receive A Call.....

Anyone who is on the list and receives a call that does not meet the exemptions outlined above should attempt to obtain as much information as possible from the caller and immediately report it to the Department on pre-printed postcards that are provided to all subscribers to help them file a complaint. You can also submit this information through the Internet at [www.800helpfla.com](http://www.800helpfla.com).

If possible, try to include the following information about the caller:

- 1) Name, address and telephone number of the company
- 2) Name of person making the call
- 3) Your name, address and telephone number
- 4) Date and time of call
- 5) Products or services offered

The Department has the authority to contact the solicitation firm, inform it of the requirements of the law and require it to conform. The Department will initially warn the offender of the violation(s). If the offender does not comply, the law provides for civil penalties of up to \$10,000 per violation and injunctive relief through the courts.

### Exemptions To The Law....

Some telephone sales solicitation firms are exempt from the provisions of the law. Solicitors may make calls:

- In response to an express request by the person called.
- In reference to an existing debt, contract, payment or performance.
- To any person with whom the telephone solicitor has a prior or existing business relationship.
- About the newspaper business, including newspaper publishers, agents or employees.
- On behalf of charitable organizations.
- On behalf of political candidates and political parties.

**Deadlines...**

The "No Sales Solicitation" List is updated on a quarterly basis. In order to be included on the next quarter's listing, your check must be received by the date indicated below:

<b>Quarter</b>	<b>Receipt Deadline</b>
January-March	November 1
April-June	February 1
July-September	May 1
October-December	August 1

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**501.601 Short title.**--This part may be cited as the "Florida Telemarketing Act."

**History.**--ss. 1, 2, ch. 91-237; s. 4, ch. 91-429.

**501.602 Purpose.**--The provisions of this part shall be construed liberally to promote the general welfare of the public and the integrity of the telemarketing industry.

**History.**--ss. 1, 2, ch. 91-237; s. 4, ch. 91-429.

**501.603 Definitions.**--As used in this part, unless the context otherwise requires, the term:

(1) "Commercial telephone solicitation" means:

(a) An unsolicited telephone call to a person initiated by a commercial telephone seller or salesperson, or an automated dialing machine used in accordance with the provisions of s. 501.059(7) for the purpose of inducing the person to purchase or invest in consumer goods or services;

(b) Other communication with a person where:

1. A gift, award, or prize is offered; or
2. A telephone call response is invited; and
3. The salesperson intends to complete a sale or enter into an agreement to purchase during the course of the telephone call; or

(c) Other communication with a person which represents a price, quality, or availability of consumer goods or services and which invites a response by telephone or which is followed by a call to the person by a salesperson.

For purposes of this section, "other communication" means a written or oral notification or advertisement transmitted through any means. Also, for purposes of this section, "invites a response by telephone" does not mean the mere listing or including of a telephone number in a notification or advertisement.

(2) "Commercial telephone seller" means any person who engages in commercial telephone solicitation on his or her own behalf or through salespersons, except that a commercial telephone seller does not include any of the persons or entities exempted from this part by s. 501.604. A commercial telephone seller does not include a salesperson as defined in subsection (10). A commercial telephone seller includes, but is not limited to, owners, operators, officers, directors, partners, or other individuals engaged in the management activities of a business entity pursuant to this part.

(3) "Consumer goods or services" means any real property or any tangible or intangible personal property which is normally used for personal, family, or household purposes or any property of any nature which is solicited for the purpose of providing a profit or investment opportunity, including, without limitation, any such property intended to be attached to or installed in any real property, without regard to whether it is so attached or installed, as well as timeshare estates and licenses, and any services related to such property.

(4) "Department" means the Department of Agriculture and Consumer Services.

(5) "Enforcing authority" means the Department of Agriculture and Consumer Services or the office of the state attorney if a violation of this part occurs in or affects the judicial circuit under the jurisdiction of the office of the state attorney.

(6) "Gift, award, or prize" means a gratuity which the purchaser believes to be of value.

(7) "Individual" means a single human being and does not mean a firm, association of individuals, corporation, partnership, joint venture, sole proprietorship, or any other entity.

(8) "Person" includes any individual, group of individuals, firm, association, corporation, partnership, joint venture, sole proprietorship, or any other business entity.

(9) "Purchaser" means a person who is solicited to become or does become obligated to a commercial telephone seller.

(10) "Salesperson" means any individual employed, appointed, or authorized by a commercial telephone seller, regardless of whether the commercial telephone seller refers to the individual as an agent, representative, or independent contractor, who attempts to solicit or solicits a sale on behalf of the commercial telephone seller. A salesperson, however, does not include individuals exempted from this part by s. 501.604 or employees or agents of persons exempted from this part by s. 501.604, or companies and individuals under contract with persons exempted from this part by s. 501.604 when liability is assumed by the exempt entity.

(11) "Solicit" means to initiate contact with a purchaser for the purpose of attempting to sell consumer goods or services, where such purchaser has expressed no previous interest in purchasing, investing in, or obtaining information regarding the property, goods, or services attempted to be sold.

**History.**--ss. 1, 2, ch. 91-237; s. 4, ch. 91-429; s. 2, ch. 92-186; s. 1, ch. 96-252; s. 1159, ch. 97-103.

**501.604 Exemptions.**--The provisions of this part, except s. 501.608, do not apply to:

(1) A person engaging in commercial telephone solicitation where the solicitation is an isolated transaction and not done in the course of a pattern of repeated transactions of like nature.

(2) A person soliciting for religious, charitable, political, or educational purposes. A person soliciting for other noncommercial purposes is exempt only if that person is soliciting for a nonprofit corporation and if that corporation is properly registered as such with the Secretary of State and is included within the exemption of s. 501(c)(3) or (6) of the Internal Revenue Code.

(3) A person who does not make the major sales presentation during the telephone solicitation and who does not intend to, and does not actually, complete or obtain provisional acceptance of a sale during the telephone solicitation, but who makes the major sales presentation and completes the sale at a later face-to-face meeting between the seller and the prospective purchaser in accordance with the home solicitation provisions in this chapter. However, if a seller, directly following a telephone solicitation, causes an individual whose primary purpose it is to go to the prospective purchaser to collect the payment or deliver any item purchased, this exemption does not apply.

(4) Any licensed securities, commodities, or investment broker, dealer, or investment adviser, when soliciting within the scope of his or her license, or any licensed associated person of a securities, commodities, or investment broker, dealer, or investment adviser, when soliciting within the scope of his or her license. As used in this section, "licensed securities, commodities, or investment broker, dealer, or investment adviser" means a person subject to license or registration as such by the Securities and Exchange Commission, by the National Association of Securities Dealers or other self-regulatory organization as defined by the Securities Exchange Act of 1934, 15 U.S.C. s. 78l, or by an official or agency of this state or of any state of the United States. As used in this section, "licensed associated person of a securities, commodities, or investment broker, dealer, or investment adviser" means any associated person registered or licensed by the National Association of Securities Dealers or other self-regulatory organization as defined by the Securities Exchange Act of 1934, 15 U.S.C. s. 78l, or by an official or agency of this state or of any state of the United States.

(5) A person primarily soliciting the sale of a newspaper of general circulation.

(6) A book, video, or record club or contractual plan or arrangement:

(a) Under which the seller provides the consumer with a form which the consumer may use to instruct the seller not to ship the offered merchandise.

(b) Which is regulated by the Federal Trade Commission trade regulation concerning "use of negative option plans by sellers in commerce."

(c) Which provides for the sale of books, records, or videos which are not covered under paragraph (a) or paragraph (b), including continuity plans, subscription arrangements, standing order arrangements, supplements, and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive such merchandise on a periodic basis.

(7) Any supervised financial institution or parent, subsidiary, or affiliate thereof. As used in this section, "supervised financial institution" means any commercial bank, trust company, savings and loan association, mutual savings bank, credit union, industrial loan company, consumer finance lender, commercial finance lender, or insurer, provided that the institution is

subject to supervision by an official or agency of this state, of any state, or of the United States. For the purposes of this exemption, "affiliate" means a person who directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a supervised financial institution.

(8) Any licensed insurance broker, agent, customer representative, or solicitor when soliciting within the scope of his or her license. As used in this section, "licensed insurance broker, agent, customer representative, or solicitor" means any insurance broker, agent, customer representative, or solicitor licensed by an official or agency of this state or of any state of the United States.

(9) A person soliciting the sale of services provided by a cable television system operating under authority of a franchise or permit.

(10) A business-to-business sale where:

(a) The commercial telephone seller has been operating continuously for at least 3 years under the same business name and has at least 50 percent of its dollar volume consisting of repeat sales to existing businesses;

(b) The purchaser business intends to resell or offer for purposes of advertisement or as a promotional item the property or goods purchased; or

(c) The purchaser business intends to use the property or goods purchased in a recycling, reuse, remanufacturing, or manufacturing process.

(11) A person who solicits sales by periodically publishing and delivering a catalog of the seller's merchandise to prospective purchasers, if the catalog:

(a) Contains a written description or illustration of each item offered for sale.

(b) Includes the business address or home office address of the seller.

(c) Includes at least 20 pages of written material and illustrations and is distributed in more than one state.

(d) Has an annual circulation by mailing of not less than 150,000.

(12) A person who solicits contracts for the maintenance or repair of goods previously purchased from the person making the solicitation or on whose behalf the solicitation is made.

(13) A commercial telephone seller licensed pursuant to chapter 516 or part II of chapter 520. For purposes of this exemption, the seller must solicit to sell a consumer good or service within the scope of his or her license and the completed transaction must be subject to the provisions of chapter 516 or part II of chapter 520.

(14) A telephone company subject to the provisions of chapter 364, or affiliate thereof or its agents, or a business which is regulated by the Florida Public Service Commission, or a Federal Communications Commission licensed cellular telephone company or other bona fide radio telecommunication services provider. For the purposes of this exemption, "affiliate" means a person who directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a telephone company subject to the provisions of chapter 364.

(15) A person who is licensed pursuant to chapter 470 or chapter 497 and who is soliciting within the scope of the license.

(16) An issuer or a subsidiary of an issuer that has a class of securities which is subject to s. 12 of the Securities Exchange Act of 1934, 15 U.S.C. s. 781, and which is either registered or exempt from registration under paragraph (A), paragraph (B), paragraph (C), paragraph (E), paragraph (F), paragraph (G), or paragraph (H) of subsection (g)(2) of that section.

(17) A business soliciting exclusively the sale of telephone answering services provided that the telephone answering services will be supplied by the solicitor.

(18) A person soliciting a transaction regulated by the Commodity Futures Trading Commission if the person is registered or temporarily licensed for this activity with the Commodity Futures Trading Commission under the Commodity Exchange Act, 7 U.S.C. ss. 1 et seq., and the registration or license has not expired or been suspended or revoked.

(19) A person soliciting the sale of food or produce as defined in chapter 500 or chapter 504 if the solicitation neither intends to result in, or actually results in, a sale which costs the purchaser in excess of \$500.

(20) A person who is registered pursuant to part XI of chapter 559 and who is soliciting within the scope of the registration.

(21) A person soliciting business from prospective consumers who have an existing business relationship with or who have previously purchased from the business enterprise for which the solicitor is calling, if the solicitor is operating under the same exact business name.

(22) A person who has been operating, for at least 1 year, a retail business establishment under the same name as that used in connection with telemarketing, and both of the following occur on a continuing basis:

(a) Either products are displayed and offered for sale or services are offered for sale and provided at the business establishment.

(b) A majority of the seller's business involves the buyer obtaining such products or services at the seller's location.

(23) A person who is a registered developer or exchange company pursuant to chapter 721 and who is soliciting within the scope of the chapter.

(24) Any person which has been providing telemarketing sales services continuously for at least 5 years under the same ownership and control and which derives 75 percent of its gross telemarketing sales revenues from contracts with persons exempted in this section.

(25) A person who is a licensed real estate salesperson or broker pursuant to chapter 475 and who is soliciting within the scope of the chapter.

(26) A publisher, or an agent of a publisher by written agreement, who solicits the sale of his or her periodical or magazine of general, paid circulation. The term "paid circulation" shall not include magazines that are only circulated as part of a membership package or that are given as a free gift or prize from the publisher or agent of the publisher by written agreement.

(27) A person who is a licensed operator or an identification cardholder as defined in

chapter 482, and who is soliciting within the scope of the chapter.

(28) A licensee, or an affiliate of a licensee, regulated under chapter 560, the Money Transmitters' Code, for foreign currency exchange services.

**History.**---ss. 1, 2, ch. 91-237; s. 4, ch. 91-429; s. 3, ch. 92-186; s. 60, ch. 92-291; s. 1, ch. 93-235; s. 8, ch. 95-314; s. 2, ch. 96-252; s. 1160, ch. 97-103.



**501.605 Licensure of commercial telephone sellers.--**

(1) Prior to doing business in this state, a commercial telephone seller shall obtain a license from the department. Doing business in this state includes either telephone solicitation from a location in Florida or solicitation from other states or nations of purchasers located in Florida.

(2) An applicant for a license as a commercial telephone seller must submit to the department, in such form as it prescribes, a written application for the license. The application must set forth the following information:

(a) The true name, date of birth, driver's license number, social security number, and home address of the applicant, including each name under which he or she intends to do business.

(b) Each business or occupation engaged in by the applicant during the 3 years immediately preceding the date of the application, and the location thereof.

(c) The previous experience of the applicant as a commercial telephone seller or salesperson.

(d) Whether the applicant has previously been arrested for, convicted of, or is under indictment or information for, a felony and, if so, the nature of the felony. Conviction includes a finding of guilt where adjudication has been withheld.

(e) Whether the applicant has previously been convicted of, or is under indictment or information for, racketeering or any offense involving fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property. Conviction includes a finding of guilt where adjudication has been withheld.

(f) Whether there has ever been a judicial or administrative finding that the applicant has previously been convicted of acting as a salesperson without a license, or whether such a license has previously been refused, revoked, or suspended in any jurisdiction.

(g) Whether the applicant has worked for, or been affiliated with, a company that has had entered against it an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property or the use of any untrue, deceptive, or misleading representation or the use of any unfair, unlawful, or deceptive trade practice.

(h) Whether the applicant has had entered against him or her an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property or the use of any untrue, deceptive, or misleading representation or the use of any unfair, unlawful, or deceptive trade practice; and whether or not there is any litigation pending against the applicant.

(i) The name of any parent or affiliated entity that:

1. Will engage in a business transaction with the purchaser relating to any sale solicited by the applicant; or

2. Accepts responsibility or is otherwise held out by the applicant as being responsible for any statement or act of the applicant relating to any sale solicited by the applicant.

(j) The complete street address of each location, designating the principal location, from which the applicant will be doing business. If any location is a mail drop, this shall be disclosed as such.

(k) A list of all telephone numbers to be used by the applicant, with the address where each telephone using these numbers will be located.

(l) The true name, current home address, date of birth, social security number, and all other names by which known, or previously known, of each:

1. Principal officer, director, trustee, shareholder, owner, or partner of the applicant, and of each other person responsible for the management of the business of the applicant.

2. Office manager or other person principally responsible for a location from which the applicant will do business.

3. Salesperson or other person to be employed by the applicant.

The application shall be accompanied by a copy of any: Script, outline, or presentation the applicant will require or suggest a salesperson to use when soliciting, or, if no such document is used, a statement to that effect; sales information or literature to be provided by the applicant to a salesperson; and sales information or literature to be provided by the applicant to a purchaser in connection with any solicitation.

(3) When an application sets forth information regarding an applicant as described in paragraphs (2)(d)-(h), the applicant must:

(a) Identify the court or administrative agency rendering the conviction, judgment, or order against the person or pending litigation.

(b) Provide the docket number of the matter; the date of the conviction, judgment, or order; and the name of the governmental agency, if any, that brought the action resulting in the conviction, judgment, or order. The applicant must also include litigation.

(4) If the applicant is other than a natural person, or if any parent or affiliated entity is identified pursuant to paragraph (2)(i), the applicant must, for itself and any such entity, identify its place of organization and:

(a) In the case of a partnership, provide a copy of any written partnership agreement; or

(b) In the case of a corporation, provide a copy of its articles of incorporation and bylaws.

(5) An application filed pursuant to this part must be verified and accompanied by:

(a) A bond, letter of credit, or certificate of deposit satisfying the requirements of s. 501.611.

(b) A fee for licensing in the amount of \$1,500. The fee shall be deposited into the General Inspection Trust Fund.

- (6) The department shall issue a license number to all commercial telephone sellers.
- (7) It is a violation of this part for a commercial telephone seller to:
  - (a) Fail to maintain a valid license.
  - (b) Advertise that one is licensed as a commercial seller or represent that such licensing constitutes approval or endorsement by any government or governmental office or agency.
  - (c) Provide inaccurate or incomplete information to the department when making a license application.
  - (d) Misrepresent that a person is registered or that such a person has a valid license number.

**History.**--ss. 1, 2, ch. 91-237; s. 4, ch. 91-429; s. 4, ch. 92-186; s. 3, ch. 96-252; s. 1161, ch. 97-103; s. 14, ch. 97-250.

**501.606 Disclosures required of commercial telephone sellers.--**

(1) With respect to any person identified pursuant to s. 501.605, an applicant for a license as a commercial telephone seller must state in his or her application the identity of any affiliated commercial seller or salesperson who:

(a) Has been convicted of, or is under indictment or information for, racketeering or any offense involving fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property. Conviction includes a finding of guilt where adjudication has been withheld;

(b) Is involved in pending litigation or has had entered against him or her an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property or the use of any untrue, deceptive, or misleading representation or the use of any unfair, unlawful, or deceptive trade practice;

(c) Is, or ever has been, subject to any litigation, injunction, temporary restraining order, or final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document or any restrictive court order relating to a business activity as the result of any action brought by a governmental agency, including any action affecting any license to do business or practice an occupation or trade;

(d) Has at any time during the previous 7 years filed for bankruptcy, been adjudged bankrupt, or been reorganized because of insolvency; or

(e) Has been a principal, director, officer, or trustee of, or a general or limited partner in, or had responsibilities as a manager in, any corporation, partnership, joint venture, or other entity that filed for bankruptcy, was adjudged bankrupt, or was reorganized because of insolvency within 1 year after the person held that position. The disclosures required in paragraph (d) shall be applicable insofar as they relate to the applicant commercial telephone seller, as well as any affiliated commercial seller or salesperson.

(2)(a) For any person described in subsection (1), the applicant must:

1. Identify the court or administrative agency rendering the conviction, judgment, or order against the person or pending litigation.

2. Provide the docket number of the matter, the date of the conviction, judgment, or order, and the name of the governmental agency, if any, that brought the action resulting in the conviction, judgment, or order.

(b) For any person described in paragraph (1)(e), the applicant must provide the name and address of the person filing for bankruptcy, adjudged bankrupt, or reorganized because of insolvency, the date of the action, the court which exercised jurisdiction, and the docket number of the matter.

(3) Each commercial telephone seller shall disclose to the department the name, address, and account number of each institution where banking or similar monetary transactions are done by the commercial telephone seller.

**History.**--ss. 1, 2, ch. 91-237; s. 4, ch. 91-429; s. 634, ch. 97-103.

**501.607 Licensure of salespersons.--**

(1) An applicant for a license as a salesperson must submit to the department, in such form as it prescribes, a written application for a license. The application must set forth the following information:

(a) The true name, date of birth, driver's license number, social security number, and home address of the applicant.

(b) Each business or occupation engaged in by the applicant during the 3 years immediately preceding the date of the application, and the location thereof.

(c) The previous experience of the applicant as a commercial telephone seller or salesperson.

(d) Whether the applicant, regardless of adjudication, has previously been arrested for, convicted or found guilty of, has entered a plea of guilty or a plea of nolo contendere to, or is under indictment or information for, a felony and, if so, the nature of the felony.

(e) Whether the applicant, regardless of adjudication, has previously been convicted or found guilty of, has entered a plea of guilty or a plea of nolo contendere to, or is under indictment or information for, racketeering or any offense involving fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property.

(f) Whether there has ever been a judicial or administrative finding that the applicant has previously been convicted of acting as a salesperson without a license, or whether such a license has previously been refused, revoked, or suspended in any jurisdiction.

(g) Whether the applicant has worked for, or been affiliated with, a company that is involved in pending litigation or has had entered against it an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property or the use of any untrue, deceptive, or misleading representation or the use of any unfair, unlawful, or deceptive trade practice.

(h) Whether the applicant is involved in pending litigation or has had entered against her or him an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property or the use of any untrue, deceptive, or misleading representation or the use of any unfair, unlawful, or deceptive trade practice.

(2) An application filed pursuant to this section must be verified and be accompanied by:

(a) A verified statement of the commercial telephone seller with whom the salesperson will be associated, expressing the intention of the commercial telephone seller to associate the salesperson with her or him and to be responsible for the activities of the salesperson.

(b) A fee for licensing in the amount of \$50 per salesperson. The fee shall be deposited into the General Inspection Trust Fund. The fee for licensing may be paid after the application is filed, but must be paid within 14 days after the applicant begins work as a salesperson.

(3) The department shall issue a license number to all salespersons. The department shall adopt rules which allow certain salesperson applicants to operate on an interim basis until such time as a license is granted or denied.

(4) It is a violation of this part for a salesperson to:

(a) Fail to maintain a valid license.

(b) Advertise that one is licensed as a salesperson or to represent that such licensing constitutes approval or endorsement by any government or governmental office or agency.

(c) Provide inaccurate or incomplete information to the department when making a license application.

(d) Misrepresent that a person is registered or that such a person has a valid license number.

**History.**--ss. 1, 2, ch. 91-237; s. 4, ch. 91-429; s. 5, ch. 92-186; s. 635, ch. 97-103; s. 15, ch. 97-250; s. 8, ch. 98-299.

**501.608 License or affidavit of exemption; occupational license.--**

(1)(a) The department shall issue to each approved applicant a license in such form and size as is prescribed by the department and, in the case of a commercial telephone seller who is not exempt under the provisions of s. 501.604, shall issue a license for each location at which the commercial telephone seller proposes to do business.

(b) Any commercial telephone seller claiming to be exempt from the act under s. 501.604 (2), (3), (5), (6), (9), (10), (11), (12), (17), (21), (22), (24), or (26) must file with the department a notarized affidavit of exemption. The affidavit of exemption must be on forms prescribed by the department and must require the name of the commercial telephone seller, the name of the business, and the business address. Any commercial telephone seller maintaining more than one business may file a single notarized affidavit of exemption that clearly indicates the location of each place of business. If a change of ownership occurs, the commercial telephone seller must notify the department.

(c) The affidavit of exemption may be used for the purpose of obtaining an occupational license.

(d) Each license issued under this part must show the name and address of the person to whom it is issued, as well as the license number, if any, and date of issuance.

(2) Each licensee or person claiming an exemption shall prominently display his or her license or a copy of his or her affidavit of exemption at each location where he or she does business. Each licensee or person claiming an exemption shall make the license or the copy of the affidavit of exemption available for inspection by any governmental agency upon request.

(3) Failure to display a license or a copy of the affidavit of exemption is sufficient grounds for the department to issue an immediate cease and desist order, which shall act as an immediate final order under s. 120.569(2)(1). The order may<sup>1</sup> shall remain in effect until the commercial telephone seller or a person claiming to be exempt shows the authorities that he or she is licensed or exempt. The department may order the business to cease operations and shall order the phones to be shut off. Failure of a salesperson to display a license may result in the salesperson being summarily ordered by the department to leave the office until he or she can produce a license for the department.

(4) Any person applying for or renewing a local occupational license to engage in business as a commercial telephone seller must exhibit an active license or a copy of the affidavit of exemption before the local occupational license may be issued or reissued.

(5) An affidavit of exemption has no bearing on a person's burden of proof in any civil or criminal proceeding as provided in s. 501.624.

**History.**--ss. 1, 2, ch. 91-237; s. 4, ch. 91-429; s. 6, ch. 92-186; s. 2, ch. 93-235; s. 4, ch. 96-252; s. 241, ch. 96-410; s. 1162, ch. 97-103.

<sup>1</sup>**Note.**--The word "may" was inserted preceding the word "shall" by s. 2, ch. 93-235.

**501.609 License renewal.--**

(1) Each person licensed under the provisions of this part must renew his or her license annually by paying the fee for licensing and submitting to the department the application required by this part.

(2) Except as otherwise provided in subsection (3), if any material change in the information submitted for licensing occurs before the date for renewal, a licensee shall submit that information to the department in the manner prescribed by the department, along with a fee in the amount of \$10.

(3) If any change is made to any script, outline, presentation, sales information, or literature used by a licensee in connection with any solicitation, the new or revised material must be submitted by the licensee to the department within 10 days of the change.

(4) If any licensee has a change of address or status as set forth in ss. 501.605-501.607, notification must be made to the department in writing within 10 days of the change.

**History.--**ss. 1, 2, ch. 91-237; s. 4, ch. 91-429; s. 636, ch. 97-103.



**501.611 Security.--**

- (1) An application filed pursuant to s. 501.605 must be accompanied by:
  - (a) A bond executed by a corporate surety approved by the department and licensed to do business in this state;
  - (b) An irrevocable letter of credit issued for the benefit of the applicant by a bank whose deposits are insured by an agency of the Federal Government; or
  - (c) A certificate of deposit in a financial institution insured by an agency of the Federal Government, which may be withdrawn only on the order of the department, except that the interest may accrue to the applicant.
- (2) The amount of the bond, letter of credit, or certificate of deposit must be a minimum of \$50,000, and the bond, letter of credit, or certificate of deposit must be conditioned upon compliance by the applicant with the provisions of this part. The department may, at its discretion, establish a bond of a greater amount to ensure the general welfare of the public and the interests of the telemarketing industry.
- (3) The bond shall be posted with the department.
- (4) The department or any governmental agency, on behalf of any injured purchaser or any purchaser herself or himself who is injured by the bankruptcy of the applicant or her or his breach of any agreement entered into in her or his capacity as a licensee, may bring and maintain an action to recover against the bond, letter of credit, or certificate of deposit.

**History.--**ss. 1, 2, ch. 91-237; s. 4, ch. 91-429; s. 637, ch. 97-103.

**501.612 Grounds for denial of licensure.--**

(1) The department may enter an order directing that one or more of the actions set forth in subsection (2) be taken if the department finds that a commercial telephone seller or salesperson or any person applying for licensure as a commercial telephone seller or salesperson, including, but not limited to, owners, operators, officers, directors, partners, or other individuals engaged in the management activities of a business entity:

(a) Has, regardless of adjudication, been convicted or found guilty of, or has entered a plea of guilty or a plea of nolo contendere to, racketeering or any offense involving fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property, or any other crime involving moral turpitude;

(b) Has, regardless of adjudication, been convicted or found guilty of, or has entered a plea of guilty or a plea of nolo contendere to, any felony;

(c) Has had entered against him or her or any business for which he or she has worked or been affiliated, an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property or the use of any untrue or misleading representation in an attempt to sell or dispose of real or personal property or the use of any unfair, unlawful, or deceptive trade practice;

(d) Is subject to or has worked or been affiliated with any company which is, or ever has been, subject to any injunction, temporary restraining order, or final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, or any restrictive court order relating to a business activity as the result of any action brought by a governmental agency, including any action affecting any license to do business or practice an occupation or trade;

(e) Has at any time during the previous 7 years filed for bankruptcy, been adjudged bankrupt, or been reorganized because of insolvency;

(f) Has been a principal, director, officer, or trustee of, or a general or limited partner in, or had responsibilities as a manager in, any corporation, partnership, joint venture, or other entity that filed the bankruptcy, was adjudged bankrupt, or was reorganized because of insolvency within 1 year after the person held that position;

(g) Has been previously convicted of or found to have been acting as a salesperson or commercial telephone seller without a license or whose licensure has previously been refused, revoked, or suspended in any jurisdiction;

(h) Falsifies or willfully omits any material information asked for in any application, document, or record required to be submitted or retained under this part;

(i) Makes a material false statement in response to any request or investigation by the department or the state attorney;

(j) Refuses or fails, after notice, to produce any document or record or disclose any information required to be produced or disclosed under this part or the rules of the department;

(k) Is not of good moral character; or

(1) Otherwise violates or is operating in violation of any of the provisions of this part or of the rules adopted or orders issued thereunder.

(2) Upon a finding as set forth in subsection (1), the department may enter an order:

(a) Issuing a notice of noncompliance pursuant to s. 120.695.

(b) Imposing an administrative fine not to exceed \$10,000 for each act or omission which constitutes a violation under this part.

(c) Directing that the person cease and desist specified activities.

(d) Refusing to issue or renew or revoking or suspending a license.

(e) Placing the licensee on probation for a period of time, subject to such conditions as the department may specify.

(3) The administrative proceedings which could result in entry of an order under subsection (2) shall be conducted in accordance with the provisions of chapter 120.

**History.**--ss. 1, 2, ch. 91-237; s. 4, ch. 91-429; s. 5, ch. 96-252; s. 1163, ch. 97-103; s. 16, ch. 97-250.

**501.613 General disclosures.--**

(1) Within the first 30 seconds of a telephone call, a commercial telephone seller or salesperson shall identify herself or himself by stating her or his true name, the company on whose behalf the solicitation is being made, and the consumer goods or services being sold.

(2) If a sale or an agreement to purchase is completed, the commercial telephone seller must inform the purchaser of her or his cancellation rights as provided in this part, state the license number issued by the department for both the commercial telephone seller and the salesperson, and give the street address of the commercial telephone seller.

(3) All oral disclosures required by this section shall be made in a clear and intelligible manner.

**History.--**ss. 1, 2, ch. 91-237; s. 4, ch. 91-429; s. 638, ch. 97-103.

**501.614 Disclosures of gifts and premiums.**--If a commercial telephone seller expressly or impliedly represents to any prospective purchaser, directly or through a salesperson, that the purchaser is or may be eligible to receive any gift, premium, bonus, or prize, however denominated, the commercial telephone seller shall submit to the department a statement setting forth, for each item mentioned:

- (1) A description of the item.
- (2) The value or worth of the item and the basis for the valuation.
- (3) All terms and conditions a purchaser must satisfy in order to receive the item. The statement must be accompanied by a copy of the written statement of terms and conditions provided to purchasers pursuant to this part.
- (4) If they are ascertainable, the odds, for a given purchaser, of receiving the item.
- (5) If a purchaser is to receive fewer than all the items described by the seller:
  - (a) The manner in which the commercial telephone seller decides which item a given purchaser is to receive.
  - (b) If they are ascertainable, the odds, for a given purchaser, of receiving each item described.
  - (c) The name and address of each person who has, during the preceding 12 months or any portion thereof in which the commercial telephone seller has done business, received each gift, premium, bonus, or prize. The provisions of this section shall not apply if the item is unconditionally offered to a purchaser as part of a sale and the buyer has 7 days to return the goods or cancel the services and the right to receive a full refund in 30 days and the right to keep the item in that case without cost.

**History.**--ss. 1, 2, ch. 91-237; s. 4, ch. 91-429.

**501.615 Written contract; cancellation; refund.--**

(1) A purchase of consumer goods or services ordered as a result of a commercial telephone solicitation as defined in this part, if not followed by a signed written contract, is not final. If a contract is not made in compliance with this section, it is not valid and enforceable against the purchaser. The contract made pursuant to a commercial telephone solicitation shall:

- (a) Be reduced to writing and be signed by the purchaser.
- (b) Match the description of the goods or services as that principally used in the telephone solicitation.
- (c) Contain the name, address, telephone number, and registration number of the commercial telephone seller and the salesperson, the total price of the contract, and a detailed description of the goods or services being sold.
- (d) Contain the value or worth of any item, good, or service specified in s. 501.614, and the basis for the valuation.
- (e) Contain all terms and conditions a purchaser must satisfy in order to receive any item, good, or service specified in s. 501.614.
- (f) Contain, if they are ascertainable, the odds, for a given purchaser, of receiving any item specified in s. 501.614.
- (g) Contain, if a purchaser is to receive fewer than all the items specified in s. 501.614 described by the seller:
  1. The manner in which the commercial telephone seller decides which item a given purchaser is to receive.
  2. If they are ascertainable, the odds, for a given purchaser, of receiving each item described.
- (h) Contain, in at least 12-point type, immediately preceding the signature, the following statement: "You are not obligated to pay any money unless you sign this contract and return it to the commercial telephone seller."
- (i) Not exclude from its terms any oral or written representations made by the commercial telephone seller or salesperson to the purchaser in connection with the transaction.
  - (2) A commercial telephone seller who engages a salesperson to make, or cause to be made, a telephone sales call shall not make or submit any charge to the purchaser's credit card account or make or cause to be made any electronic transfer of funds until after the commercial telephone seller receives from the purchaser a copy of the contract, signed by the purchaser, which complies with this section. The commercial telephone seller shall then send the purchaser a written confirmation of the sale.
  - (3) The written contract must contain an explanation of the purchaser's rights under this section and a statement indicating when notice of cancellation should be sent. The purchaser may give notice of cancellation to the commercial telephone seller in writing within 3 business days after receipt of the confirmation. If the commercial telephone seller has not provided an address for receipt of such notice, cancellation is effective by mailing the notice to the

department.

(4) Notice of cancellation by the commercial telephone seller shall be given by certified mail, return receipt requested, and shall be effective when mailed. Notice of cancellation given by the purchaser need not take a particular form and is sufficient if it indicates, by any form of written expression, the name and address of the purchaser and the purchaser's stated intention not to be bound by the sale.

(5) If a commercial telephone seller violates the provisions of this part in making a sale, or fails to deliver an item within 30 calendar days, the contract is voidable by giving notice to the commercial telephone seller, and the purchaser is entitled to a return from the seller, within 14 days, of all consideration paid. Notice of cancellation given by the purchaser need not take a particular form and is sufficient given orally or in writing. Upon receipt by the purchaser of the consideration paid to the commercial telephone seller, the purchaser shall return to the commercial telephone seller the items received by the purchaser. Any cost of returning the items received by the purchaser shall be borne by the commercial telephone seller, by providing or guaranteeing payment for return shipping. If such payment is not provided or guaranteed, the purchaser may keep, without further obligation, the items received.

(6) A person who purchases goods or services pursuant to a solicitation governed by this part must be given a refund, credit, or replacement, at his or her option, if:

(a) The goods or services are defective, are not as represented, or if any item described pursuant to this part is not received as promised.

(b) He or she returns the goods or makes a written request for the refund, credit, or replacement within 7 days after he or she receives the goods, services, prize, or premium, whichever is received later. A return or request is timely if shipment is made or the request is postmarked, properly addressed and postage prepaid, within the time provided by this section.

(7) If a purchaser of goods returns only a portion of the goods, the refund, credit, or replacement required by this section may be prorated accordingly.

(8) The refund, credit, or replacement required by this section must be guaranteed by the commercial telephone seller who made the sale, regardless of whether payment for the goods or services is made to that person.

(9) Any contract, agreement to purchase, or written confirmation executed by a seller which purports to waive the purchaser's rights under this part is against public policy and shall be unenforceable, provided that an agreement between a purchaser and commercial telephone seller to extend the delivery time of an item to more than 30 days shall be enforceable if the commercial telephone seller has a reasonable basis to expect that he or she will be unable to ship the item within 30 days and if the agreement is included in the terms of the written confirmation.

(10) Where a contract or agreement to purchase confers on a purchaser greater rights to cancellation, refund, or return than those enumerated in this part, such contract shall be enforceable and not in violation of this part, provided that all rights under such a contract or agreement to purchase must be specifically stated in a written confirmation sent pursuant to this section.

(11) The provisions of this section shall not reduce, restrict, or eliminate any existing rights or remedies available to purchasers.

(12) Exempt from the requirements of subsections (1)-(5) is any sale in which the consumer is given a full refund for the return of undamaged and unused goods or a cancellation of services notice is given to the seller, within 7 days after receipt of the goods or services by the consumer, and the seller shall process the refund within 30 days after receipt of the returned merchandise by the consumer.

**History.**--ss. 1, 2, ch. 91-237; s. 4, ch. 91-429; s. 5, ch. 94-298; s. 639, ch. 97-103.



**501.616 Unlawful acts and practices.--**

(1) It shall be unlawful for any commercial telephone seller or salesperson to require that payment be by credit card authorization or otherwise to announce a preference for that method of payment.

(2) It shall be unlawful for any commercial telephone seller to employ, or be affiliated with, any unlicensed salesperson.

(3) It shall be unlawful for any salesperson to be employed by, or affiliated with, an unlicensed commercial telephone seller.

(4) It shall be unlawful for any commercial telephone seller or salesperson to be unlicensed.

(5) It shall be unlawful for any salesperson or commercial telephone seller to otherwise violate the provisions of this part.

**History.--**ss. 1, 2, ch. 91-237; s. 4, ch. 91-429.

**501.617 Investigative powers of enforcing authority.--**

(1) If, by her or his own inquiries or as a result of complaints, the enforcing authority has reason to believe that a person has engaged in, or is engaging in, an act or practice that violates the provisions of this part, she or he may administer oaths and affirmations, subpoena witnesses or matter, and collect evidence. Within 10 days after the service of a subpoena or at any time before the return date specified therein, whichever is longer, the party served may file in the circuit court in the county in which she or he resides or in which she or he transacts business and serve upon the enforcing authority a petition for an order modifying or setting aside the subpoena. The petitioner may raise any objection or privilege which would be available under this part or upon service of such subpoena in a civil action. The subpoena shall inform the party served of her or his rights under this subsection.

(2) If matter that the enforcing authority seeks to obtain by subpoena is located outside the state, the person subpoenaed may make it available to the enforcing authority or her or his representative to examine the matter at the place where it is located. The enforcing authority may designate representatives, including officials of the state in which the matter is located, to inspect the matter on her or his behalf, and she or he may respond to similar requests from officials of other states.

(3) Upon failure of a person without lawful excuse to obey a subpoena and upon reasonable notice to all persons affected, the enforcing authority may apply to the circuit court for an order compelling compliance.

**History.**--ss. 1, 2, ch. 91-237; s. 4, ch. 91-429; s. 640, ch. 97-103.

**501.617 Investigative powers of enforcing authority.--**

(1) If, by her or his own inquiries or as a result of complaints, the enforcing authority has reason to believe that a person has engaged in, or is engaging in, an act or practice that violates the provisions of this part, she or he may administer oaths and affirmations, subpoena witnesses or matter, and collect evidence. Within 10 days after the service of a subpoena or at any time before the return date specified therein, whichever is longer, the party served may file in the circuit court in the county in which she or he resides or in which she or he transacts business and serve upon the enforcing authority a petition for an order modifying or setting aside the subpoena. The petitioner may raise any objection or privilege which would be available under this part or upon service of such subpoena in a civil action. The subpoena shall inform the party served of her or his rights under this subsection.

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(3) Upon failure of a person without lawful excuse to obey a subpoena and upon reasonable notice to all persons affected, the enforcing authority may apply to the circuit court for an order compelling compliance.

**History.--**ss. 1, 2, ch. 91-237; s. 4, ch. 91-429; s. 640, ch. 97-103.

**501.618 General civil remedies.**--The department may bring:

- (1) An action to obtain a declaratory judgment that an act or practice violates the provisions of this part.
- (2) An action to enjoin a person who has violated, is violating, or is otherwise likely to violate the provisions of this part.
- (3) An action on behalf of one or more purchasers for the actual damages caused by an act or practice performed in violation of the provisions of this part. Such an action may include, but is not limited to, an action to recover against a bond, letter of credit, or certificate of deposit as otherwise provided in this part.

Upon motion of the enforcing authority in any action brought under this section, the court may make appropriate orders, including appointment of a master or receiver or sequestration of assets, to reimburse consumers found to have been damaged, to carry out a consumer transaction in accordance with the consumer's reasonable expectations, or to grant other appropriate relief. The court may assess the expenses of a master or receiver against a commercial telephone seller. Any injunctive order, whether temporary or permanent, issued by the court shall be effective throughout the state unless otherwise provided in the order.

**History.**--ss. 1, 2, ch. 91-237; s. 4, ch. 91-429.

**501.619 Civil penalties.**--Any person who engages in any act or practice declared in this part to be unlawful is liable for a civil penalty of not more than \$10,000 for each such violation. This civil penalty may be recovered in any action brought under this part by the department, or the department may terminate any investigation or action upon agreement by the person to pay a stipulated civil penalty. The department or the court may waive any such civil penalty or other fines or costs if the person has previously made full restitution or reimbursement or has paid actual damages to the purchasers who have been injured by the unlawful act or practice.

**History.**---ss. 1, 2, ch. 91-237; s. 4, ch. 91-429.

**501.622 Criminal prosecuting authority.**--The department may refer such evidence as may be available concerning violations of the provisions of this part or of any rule or order hereunder to any criminal prosecuting agency, which may, in its discretion, with or without such a reference, in addition to any other action it might commence, bring an action against any person to enjoin, restrain, and prevent the doing of any act or practice herein prohibited or declared unlawful.

**History.**--ss. 1, 2, ch. 91-237; s. 4, ch. 91-429.

**501.623 Criminal penalties.--**

(1) No salesperson shall solicit purchasers on behalf of a commercial telephone seller who is not currently licensed with the department pursuant to the provisions of this part. Any person who violates the provisions of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) No commercial telephone seller shall employ or be affiliated with a salesperson who is soliciting purchasers and who is not currently licensed with the department pursuant to the provisions of this part. Any person who violates the provisions of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) No commercial telephone seller or salesperson shall solicit without a license. Any person who violates the provisions of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Any commercial telephone seller or salesperson who falsifies information on an application commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Except as provided in subsection (1), subsection (2), subsection (3), or subsection (4), any person who otherwise violates any provision of this part or who directly or indirectly employs any device, scheme, or artifice to deceive in connection with the offer or sale by any commercial telephone seller commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) Any person who is convicted of a second or subsequent violation of the provisions of this part commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A conviction shall include a finding of guilt where adjudication has been withheld.

**History.--**ss. 1, 2, ch. 91-237; s. 4, ch. 91-429; s. 46, ch. 95-144; s. 642, ch. 97-103.

**501.624 Exempt businesses; burden of proof.**--In any civil proceeding alleging a violation of the provisions of this part, the burden of proving an exemption specified in s. 501.604 or that such person or entity is not otherwise subject to the provisions of this part is upon the person or entity claiming the exemption. In any criminal proceeding alleging a violation of the provisions of this part, the burden of producing evidence to support a defense based upon an exemption specified in s. 501.604 or that such person or entity is not subject to the provisions of this part is upon the person or entity claiming the defense.

**History.**--ss. 1, 2, ch. 91-237; s. 4, ch. 91-429.



**501.625 Other individual remedies.**--In addition to any other penalties or remedies provided under law, a person who is injured by a violation of the provisions of this part may bring a civil action for recovery of actual damages and/or punitive damages, including costs, court costs, and attorney's fees. No provision in this part shall be construed to limit any right or remedy provided under law.

**History.**--ss. 1, 2, ch. 91-237; s. 4, ch. 91-429.

**501.626 Rulemaking power.**--The department has the authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this part.

**History.**--ss. 1, 2, ch. 91-237; s. 4, ch. 91-429; s. 17, ch. 97-250; s. 173, ch. 98-200.

SOON

1999 - 2000 LEGISLATURE

LRB-2878/1  
MDK:cmh:kjf

✓  
D-NOTE

1999 BILL

2432/1

RM NOT  
RUN

1 AN ACT *to repeal* 134.72 (2) (title); *to renumber* 134.72 (1) (a) and 134.72 (2) (a);  
 2 *to renumber and amend* 134.72 (2) (b) and 134.72 (4); *to amend* 767.265 (2r)  
 3 and 968.01 (1); *to repeal and recreate* 134.72 (title); and *to create* 134.72 (1)  
 4 (ae), 134.72 (1) (am), 134.72 (1) (bg), 134.72 (1) (bm), 134.72 (1) (bs), 134.72 (2s)  
 5 and 134.72 (4) (b) of the statutes; **relating to:** prohibiting certain telephone  
 6 solicitations, <sup>INSERT 1-6A</sup> requiring the exercise of rule-making authority <sup>INSERT 1-6B</sup> and providing a  
 7 penalty.

***Analysis by the Legislative Reference Bureau***

This bill requires the department of agriculture, trade and consumer protection (DATCP) to establish a nonsolicitation directory that includes listings for residential telephone customers who do not wish to receive telephone solicitations. The bill requires DATCP to promulgate rules establishing requirements and procedures for a residential customer to request a listing in the directory. ~~The bill allows DATCP to charge a residential customer a biennial fee for a listing in the directory.~~ DATCP must provide copies of the directory to the public free of charge and must also make the directory available to the public in a manner that facilitates public access to the directory.

1299

The bill prohibits a telephone solicitor from making a telephone solicitation to a residential customer if the directory that is available to the public at the time of

**BILL**

bill's

solicitation includes a listing for the customer. A telephone solicitor who violates this prohibition is subject to a forfeiture of up to \$10,000.

INSERT A

INSERT B

the

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:*

INSERT 2-1

1 SECTION 1. 134.72 (title) of the statutes is repealed and recreated to read:

2 134.72 (title) **Telephone and facsimile solicitations.**

3 SECTION 2. 134.72 (1) (a) of the statutes is renumbered 134.72 (1) (as).

4 SECTION 3. 134.72 (1) (ae) of the statutes is created to read:

5 134.72 (1) (ae) "Basic local exchange service" has the meaning in s. 196.01 (1g).

6 SECTION 4. 134.72 (1) (am) of the statutes is created to read:

7 134.72 (1) (am) "Department" means the department of agriculture, trade and  
8 consumer protection.

9 SECTION 5. 134.72 (1) (bg) of the statutes is created to read:

10 134.72 (1) (bg) "Nonsolicitation directory" means the directory established in  
11 rules promulgated by the department under sub. (b). 1g

12 SECTION 6. 134.72 (1) (bm) of the statutes is created to read:

13 134.72 (1) (bm) "Residential customer" means an individual who is furnished  
14 with basic local exchange service by a telecommunications utility.

15 SECTION 7. 134.72 (1) (bs) of the statutes is created to read:

16 134.72 (1) (bs) "Telecommunications utility" has the meaning given in s. 196.01  
17 (10).

18 SECTION 8. 134.72 (2) (title) of the statutes is repealed.

19 SECTION 9. 134.72 (2) (a) of the statutes is renumbered 134.72 (2e).

INSERT 2-17

**BILL**

1           **SECTION 10.** 134.72 (2) (b) of the statutes is renumbered 134.72 (2m), and  
2 134.72 (2m) (b), as renumbered, is amended to read:

3           134.72 (2m) (b) Notwithstanding subd. 1 par. (a), a person may not make a  
4 facsimile solicitation to a person who has notified the facsimile solicitor in writing  
5 or by facsimile transmission that the person does not want to receive facsimile  
6 solicitation.

7           **SECTION 11.** 134.72 (2) of the statutes is created to read:

8           134.72 (2) <sup>19</sup> ~~(2)~~ <sup>19 30</sup> ~~(2)~~ **NONSOLICITATION DIRECTORY LISTING.** (a) Upon a request by a  
9 residential customer, the department shall include in the nonsolicitation directory  
10 a listing indicating that the residential customer does not want to receive any  
11 telephone solicitation.

12           (b) The department shall promulgate rules establishing a directory that  
13 includes listings of residential customers who do not wish to receive telephone  
14 solicitations. The rules promulgated under this paragraph shall establish  
15 requirements and procedures for a residential customer to request a listing in the  
16 directory. ~~The department may charge a residential customer a biennial fee for~~  
17 ~~including a listing in the directory. The fee charged under this paragraph shall be~~  
18 ~~based on the cost to the department of establishing and maintaining the directory.~~

19           (c) The department shall provide copies of the nonsolicitation directory to the  
20 public free of charge and make the nonsolicitation directory available to the public  
21 in a manner that, as determined by the department, facilitates public access to the  
22 directory.

23           <sup>134.72 (2) (a) 3.</sup> ~~A~~ A person may not make a telephone solicitation to a residential customer  
24 if the nonsolicitation directory that is available to the public at the time of the  
25 telephone solicitation includes a listing for the residential customer.

INSERT 3-22

INSERT 3-25

**BILL**

INSERT  
4-6

1           **SECTION 12.** 134.72 (4) of the statutes is renumbered 134.74 (4) (a) and  
2 amended to read:

3           134.74 (4) (a) ~~A~~ Except as provided in par. (b), a person who violates this  
4 section may forfeit ~~up to~~ no more than \$500.

5           **SECTION 13.** 134.72 (4) (b) of the statutes is created to read:

6           134.72 (4) (b) ~~A person who violates sub. (2) (d)~~ may forfeit no more than  
7 \$10,000.

8           **SECTION 14.** 767.265 (2r) of the statutes, as affected by 1997 Wisconsin Act 191,  
9 section 414, is amended to read:

10           **767.265 (2r)** Upon entry of each order for child support, maintenance, family  
11 support or support by a spouse and upon approval of each stipulation for child  
12 support, unless the court finds that income withholding is likely to cause the payer  
13 irreparable harm or unless s. 767.267 applies, the court, family court commissioner  
14 or county child support agency under s. 59.53 (5) shall provide notice of the  
15 assignment by regular mail or by facsimile machine, as defined in s. 134.72 (1) ~~(a)~~  
16 (as), or other electronic means to the last-known address of the person from whom  
17 the payer receives or will receive money. The notice shall provide that the amount  
18 withheld may not exceed the maximum amount that is subject to garnishment under  
19 15 USC 1673 (b) (2). If the department or its designee, whichever is appropriate, does  
20 not receive the money from the person notified, the court, family court commissioner  
21 or county child support agency under s. 59.53 (5) shall provide notice of the  
22 assignment to any other person from whom the payer receives or will receive money.  
23 Notice under this subsection may be a notice of the court, a copy of the executed  
24 assignment or a copy of that part of the court order directing payment.


25           **SECTION 15.** 968.01 (1) of the statutes is amended to read:





1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2432/lins  
MDK:.....


1  **INSERT 1-6A:**  
2 requiring the registration of telephone solicitors,

3  **INSERT 1-6B:**  
4 , making an appropriation

5 **INSERT A:**

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

6 **INSERT B:**

 A telephone solicitor is also subject to this forfeiture amount if the telephone solicitor requires an employe to violate a provision under current law that prohibits a person from using an electronically prerecorded message in a telephone solicitation without the consent of the person called.

7 **INSERT 2-1:**


8 **SECTION 1.** 20.155 (1) (jr) of the statutes is created to read:  
9 20.155 (1) (jr) *Telephone solicitation regulation.* All moneys received from  
10 telephone solicitor registration fees paid under the rules promulgated under s.  
11 134.72 (1r) for establishing and maintaining the nonsolicitation directory under s.  
12 134.72 (1g).

13 **INSERT 2-17:**

14 **SECTION 2.** 134.72 (1) (~~br~~) of the statutes is created to read:  
15 134.72 (1) (~~br~~) "Telephone solicitor" means a person that employs an individual  
16 to make a telephone solicitation.

17 **INSERT 3-22:**

18 **SECTION 3.** 134.72 (1r) of the statutes is created to read:







DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2378/dm  
MDK:cmh:kjf

September 8, 1999

2438/1dn

Senator Erpenbach  
Representative Jensen

Please review this bill very carefully to make sure that it achieves your intent. I was not sure how closely you want to model this bill on the ~~Georgia~~ <sup>Florida</sup> legislation, so I drafted the bill to provide some flexibility to DATCP to determine by rule the amount of the fee for ~~listing~~ and the requirements and procedures for ~~requesting a~~ <sup>registration</sup> listing. I chose DATCP as the agency to administer the bill's requirements, rather than the PSC, because the bill's requirements apply to telephone solicitors, as opposed to telecommunications utilities.

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

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

INSERT  
D-1

telephone solicitors

residential customer

1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2432/lins  
MDK:.....

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18

**INSERT 1-6A:**

requiring the registration of telephone solicitors,

**INSERT 1-6B:**

, making an appropriation

**INSERT A:**

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

**INSERT B:**

A telephone solicitor is also subject to this forfeiture amount if the telephone solicitor requires an employe to violate a provision under current law that prohibits a person from using an electronically prerecorded message in a telephone solicitation without the consent of the person called.

**INSERT 2-1:**

**SECTION 1.** 20.155 (1) (jr) of the statutes is created to read:

20.155 (1) (jr) *Telephone solicitation regulation.* All moneys received from telephone solicitor registration fees paid under the rules promulgated under s. 134.72 (1r) for establishing and maintaining the nonsolicitation directory under s. 134.72 (1g).

**INSERT 2-17:**

**SECTION 2.** 134.72 (1) (bw) of the statutes is created to read:

134.72 (1) (bw) "Telephone solicitor" means a person that employs an individual to make a telephone solicitation.

**INSERT 3-22:**

**SECTION 3.** 134.72 (1r) of the statutes is created to read:

D-NOTE  
INSERT  
↓

1 134.72 (1r) REGISTRATION OF TELEPHONE SOLICITORS. The department shall  
 2 promulgate rules that require any telephone solicitor who requires an employe to  
 3 make a telephone solicitation to a person in this state to register with the department  
 4 on an annual basis and pay an annual registration fee to the department. The  
 5 amount of the registration fee shall be based on the cost of establishing and  
 6 maintaining the nonsolicitation directory.

7 SECTION 4. 134.72 (2) (a) (title) of the statutes is amended to read:

8 134.72 (2) (a) (title) ~~Prerecorded telephone~~ Telephone solicitation.

9 History: 1977 c. 301; 1989 a. 336; 1993 a. 351; 1997 a. 27.

9 SECTION 5. 134.72 (2) (a) of the statutes is renumbered 134.72 (2) (a) 1.

10 SECTION 6. 134.72 (2) (a) 2. of the statutes is created to read:

11 134.72 (2) (a) 2. A telephone solicitor may not require an employe to make a  
 12 telephone solicitation to a person in this state unless the telephone solicitor is  
 13 registered with the department under the rules promulgated under sub. (1r).

14 SECTION 7. 134.72 (2) (a) 3. of the statutes is created to read:

15 **INSERT 3-25:**

16 SECTION 8. 134.72 (2) (a) 4. of the statutes is created to read:

17 134.72 (2) (a) 4. A telephone solicitor may not require an employe to make a  
 18 telephone solicitation that violates subd. 1. or 3.

19 **INSERT 4-6:**

20 A telephone solicitor that violates sub. (2) (a) 4.

21 **INSERT D-1:**

22 q Also note that the bill's \$10,000 forfeiture applies to a person who employs another  
 23 person to make a telephone solicitation, rather than to the person who actually makes a  
 24 telephone solicitation. In addition, note that under this bill and s. 134.95 (2), stats., an  
 25 additional \$10,000 forfeiture may be assessed against a telephone solicitor who  
 26 perpetrates a violation against an elderly person. Is this okay?

## Williams, Landon

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**To:** Laundrie, Julie  
**Cc:** Kunkel, Mark  
**Subject:** 99-2432 per your request



99-2432/1

**Landon T. Williams**  
Legislative Program Assistant  
Legislative Reference Bureau  
100 N. Hamilton  
(608) 266-3561  
landon.williams@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:** 09/17/1999

**To:** Senator Erpenbach

**Relating to LRB drafting number:** LRB-2432

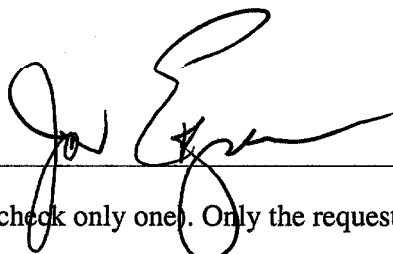
**Topic**

Regulation of telephone solicitations

**Subject(s)**

Public Util. - telco and cable

1. **JACKET** the draft for introduction \_\_\_\_\_  
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 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Mark D. Kunkel, Legislative Attorney  
Telephone: (608) 266-0131