

2001 DRAFTING REQUEST

Bill

Received: **09/22/2000**

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Steven Foti (608) 266-2401**

By/Representing: **Michael Heifetz**

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

Drafter: **kunkemd**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - electron com**

Extra Copies: **RNK, MGG**

Submit via email: **NO**

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

Regulation of electronic mail solicitations

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kunkemd 09/25/2000	csicilia 10/02/2000		_____			State
/1	kunkemd 10/09/2000	hhagen 10/10/2000	pgreensl 10/03/2000	_____	gretskl 10/03/2000		State
/2	kunkemd 04/04/2001	csicilia 04/04/2001	martykr 10/10/2000	_____	gretskl 10/10/2000		State

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

/3

martykr _____
04/04/2001 _____

lrb_docadmin
04/04/2001

lrb_docadmin
05/11/2001

FE Sent For:

<END>

→ At
Intro.

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			martykr _____		lrb_docadmin		
			04/04/2001 _____		04/04/2001		

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FE Sent For:

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01*

*km 4/4 cs 4/4
km 4/4
<END>*

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		12 hnh d ejs 10.01.00	Vm 10 10	Self 10 10			

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17	kunkemd	/1 cjs 10/2 oo	10/3 pg	10/3 pg/KP			

FE Sent For:

<END>

Memo

To: Peter Dykman, LRB
From: Michael Heifetz *MH*
CC: Steve Miller, LRB
Date: 09/22/00
Re: 2000 drafting requests

Peter:

Thanks for the email regarding drafting requests. Below is a list of proposals to be drafted for the upcoming session. All are from last session and are listed by their bill number. Where appropriate, I have indicated inclusion or exclusion of certain amendments. Last session's drafter is also noted in parenthesis.

AB 62: Name change of a minor (Malaise). Please include Senate amendments 2 and 3.

AB 155: Municipalities/drug paraphernalia (Olsen). Please draft as passed by the Assembly.

AB 171: Prisoner reimbursement to a municipality (Nelson). Please draft as passed by the Assembly.

AB 182: Prisoner data entry (Olsen/Champagne). Please draft as passed by the Assembly.

AB 334: Unsolicited email (Kunkel). Please draft using LRB 0354/2 from last session (ASA to AB 334, not introduced).

AJR 3: 4-year terms for DAs (Dykman/Kuesel). Please draft as passed by the Assembly. Some changes may be needed to reflect future election years rather than those listed in 1999 AJR 3.

AJR 84: Conference committee reform (Dykman).

AJR 85: Conference committee reform (Dykman).

LRB 2266/1: Real estate sex-offender notification (Kahler). This version is not yet ready for introduction, but we are interested in further developing this proposal.

LRB 3770/3: Local expo taxes (Kreye).

LRB 4140/1: driver's license suspensions (Nilsen).

Thanks again. Please call with any questions (6-2401).

2001 - D - NOTE

-0513/1

**ASSEMBLY SUBSTITUTE AMENDMENT,
TO 1999 ASSEMBLY BILL 334**

INSERT 1-3

Reger

1 AN ACT to amend 100.26 (4m) and 100.264 (2) (intro.); and to create 100.52 of
2 the statutes; relating to: prohibiting certain electronic mail solicitations and
3 providing a penalty.

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

4 SECTION 1. 100.26 (4m) of the statutes is amended to read:

5 100.26 (4m) Any person who violates s. 100.18 (10r) or 100.52 is subject to a
6 civil forfeiture of not less than \$100 nor more than \$10,000 for each violation.

7 SECTION 2. 100.264 (2) (intro.) of the statutes is amended to read:

8 100.264 (2) SUPPLEMENTAL FORFEITURE. (intro.) If a fine or a forfeiture is
9 imposed on a person for a violation under s. 100.16, 100.17, 100.18, 100.182, 100.183,
10 100.20, 100.205, 100.207, 100.21, 100.30 (3), 100.35, 100.44 or, 100.46 or 100.52 or
11 a rule promulgated under one of those sections, the person shall be subject to a

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1 supplemental forfeiture not to exceed \$10,000 for that violation if the conduct by the
2 defendant, for which the violation was imposed, was perpetrated against an elderly
3 person or disabled person and if the court finds that any of the following factors is
4 present:

5 SECTION 3. 100.52 of the statutes is created to read:

6 100.52 Electronic mail solicitations. (1) DEFINITIONS. In this section,
7 "electronic mail solicitation" means an electronic mail message that is sent without
8 the consent of the recipient for the purpose of selling or leasing or offering to sell or
9 lease property, goods, or services to the recipient.

10 (2) PROHIBITIONS. (a) No person may send an electronic mail solicitation unless
11 the person does all of the following:

12 1. Establishes and maintains a toll-free telephone number or return electronic
13 mail address that allows the recipient of the electronic mail solicitation to direct the
14 person not to send any other electronic mail solicitation to the recipient.

15 2. Includes a statement at the beginning of the electronic mail solicitation that
16 identifies the toll-free telephone number or return electronic mail address specified
17 in subd. 1. and that notifies the recipient that the recipient may use the toll-free
18 telephone number or return electronic mail address to direct the person not to send
19 any other electronic mail solicitation to the recipient. A statement required under
20 this subdivision shall be displayed in the same font size as the majority of the text
21 in the electronic mail solicitation.

22 3. If the person does not have a previous business relationship with the
23 recipient of the electronic mail solicitation, includes the letters "ADV" at the
24 beginning of the subject of the electronic mail message.

25 (b) Notwithstanding par. (a):

1 1. A person may not send an electronic mail solicitation to a recipient of a prior
2 electronic mail solicitation sent by the person if the recipient uses the toll-free
3 telephone number or return electronic mail address specified in par. (a) 1. to direct
4 the person not to send any other electronic mail solicitation to the recipient.

5 2. A person may not send an electronic mail solicitation to an electronic mail
6 address that an employer provides for an employee if the employer uses the toll-free
7 telephone number or return electronic mail address specified in par. (a) 1. to direct
8 the person not to send the electronic mail solicitation.

9 (c) No person that sends an electronic mail solicitation may misrepresent the
10 identity of the person sending the electronic mail solicitation or knowingly provide
11 a false or inaccurate toll-free telephone number or return electronic mail address
12 specified in par. (a) 1.

13 (b) (3) (A) TERRITORIAL APPLICATION. This section applies to any interstate electronic
14 mail solicitation sent or received by a person in this state and any intrastate
15 electronic mail solicitation. ✓

16

(END)

1

*LPS:
This is the analysis - please make sure that it is inserted with proper analysis components!*

INSERT 1-3:

This bill imposes certain requirements on a person who sends an electronic mail solicitation, which is defined as an electronic mail message sent without the consent of the recipient for the purpose of selling or leasing or offering to sell or lease property, goods, or services to the recipient. Under the bill, a person who sends an electronic mail solicitation must maintain a toll-free telephone number or return electronic mail address that the recipient may use to direct the person not to send any other electronic mail solicitation to the recipient. In addition, an electronic mail solicitation must include a statement that notifies the recipient about the toll-free number or return electronic mail address. The statement must be displayed in the same font size as the majority of the text of the electronic mail solicitation. Also, if the person sending an electronic mail solicitation does not have a previous business relationship with the recipient, the electronic mail solicitation must include the letters "ADV" at the beginning of the subject of the electronic mail solicitation.

The bill prohibits a person from sending an electronic mail solicitation to a recipient who uses the toll-free number or return electronic mail address to direct the person not to send additional electronic mail solicitations to the recipient. In addition, a person may not send an electronic mail solicitation to an address that an employer maintains for an employee if the employer uses the toll-free telephone number or return electronic mail address to direct the person not to send electronic mail solicitations to the address maintained by the employer. The bill also prohibits a person that sends an electronic mail solicitation from misrepresenting the person's identity or knowingly providing a false or inaccurate toll-free telephone number or return electronic mail address.

The bill's prohibitions are enforced by the department of agriculture, trade and consumer protection. Any person who violates the bill's prohibitions is subject to a civil forfeiture of not less than \$100 nor more than \$10,000 for each violation. In addition, for a violation perpetrated against an elderly or disabled person, a court may, under certain circumstances, impose a supplemental forfeiture of no more than \$10,000.

Finally, the bill provides that its prohibitions apply to any interstate electronic mail solicitation sent or received by a person in this state and to any intrastate electronic mail solicitation.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0513/1dn

MDK:.....

gs

Representative Foti:

Please review this bill, which is identical to 1999 LRBs0354/2, very carefully to make sure that it achieves your intent.

Note that the bill may be subject to an attack that it violates the interstate commerce clause of the federal constitution because it applies to interstate electronic mail solicitation that are sent or received by persons in this state. In general, a court will resolve this issue by asking the following 3 questions:

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

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

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0513/1dn
MDK:cjs:pg

October 3, 2000

Representative Foti:

Please review this draft, which is identical to 1999 LRBs0354/2, very carefully to make sure that it achieves your intent.

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SOON

D-NOTE

stays 2

2001 BILL

§ M66

Gen Cat

1 AN ACT to amend 100.26 (4m) and 100.264 (2) (intro.); and to create 100.52 of
2 the statutes; relating to: prohibiting certain electronic mail solicitations and
3 providing a penalty.

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BILL

number or return electronic mail address to direct the person not to send electronic mail solicitations to the address maintained by the employer. The bill also prohibits a person that sends an electronic mail solicitation from misrepresenting the person's identity or knowingly providing a false or inaccurate toll-free telephone number or return electronic mail address.

The bill's prohibitions are enforced by the department of agriculture, trade and consumer protection. Any person who violates the bill's prohibitions is subject to a civil forfeiture of not less than \$100 nor more than \$10,000 for each violation. In addition, for a violation perpetrated against an elderly or disabled person, a court may, under certain circumstances, impose a supplemental forfeiture of no more than \$10,000.

Finally, the bill provides that its prohibitions apply to any interstate electronic mail solicitation sent or received by a person in this state and to any intrastate electronic mail solicitation.

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

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1 **SECTION 1.** 100.26 (4m) of the statutes is amended to read:

2 100.26 (4m) Any person who violates s. 100.18 (10r) or 100.52 is subject to a
3 civil forfeiture of not less than \$100 nor more than \$10,000 for each violation.

4 **SECTION 2.** 100.264 (2) (intro.) of the statutes is amended to read:

5 100.264 (2) SUPPLEMENTAL FORFEITURE. (intro.) If a fine or a forfeiture is
6 imposed on a person for a violation under s. 100.16, 100.17, 100.18, 100.182, 100.183,
7 100.20, 100.205, 100.207, 100.21, 100.30 (3), 100.35, 100.44 or, 100.46, or 100.52 or
8 a rule promulgated under one of those sections, the person shall be subject to a
9 supplemental forfeiture not to exceed \$10,000 for that violation if the conduct by the
10 defendant, for which the violation was imposed, was perpetrated against an elderly
11 person or disabled person and if the court finds that any of the following factors is
12 present:

13 **SECTION 3.** 100.52 of the statutes is created to read:

BILL

1 **100.52 Electronic mail solicitations.** (1) DEFINITIONS. In this section,
2 “electronic mail solicitation” means an electronic mail message that is sent without
3 the consent of the recipient for the purpose of selling or leasing or offering to sell or
4 lease property, goods, or services to the recipient.

5 (2) PROHIBITIONS. (a) No person may send an electronic mail solicitation unless
6 the person does all of the following:

7 1. Establishes and maintains a toll-free telephone number or return electronic
8 mail address that allows the recipient of the electronic mail solicitation to direct the
9 person not to send any other electronic mail solicitation to the recipient.

10 2. Includes a statement at the beginning of the electronic mail solicitation that
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15 this subdivision shall be displayed in the same font size as the majority of the text
16 in the electronic mail solicitation.

17 3. If the person does not have a previous business relationship with the
18 recipient of the electronic mail solicitation, includes the letters “ADV” at the
19 beginning of the subject of the electronic mail message.

20 (b) Notwithstanding par. (a):

21 1. A person may not send an electronic mail solicitation to a recipient of a prior
22 electronic mail solicitation sent by the person if the recipient uses the toll-free
23 telephone number or return electronic mail address specified in par. (a) 1. to direct
24 the person not to send any other electronic mail solicitation to the recipient.

BILL

1 2. A person may not send an electronic mail solicitation to an electronic mail
 2 address that an employer provides for an employee if the employer uses the toll-free
 3 telephone number or return electronic mail address specified in par. (a) 1. to direct
 4 the person not to send the electronic mail solicitation.

5 (c) No person that sends an electronic mail solicitation may misrepresent the
 6 identity of the person sending the electronic mail solicitation or knowingly provide
 7 a false or inaccurate toll-free telephone number or return electronic mail address
 8 specified in par. (a) 1.

9 (3) ⁽⁴²⁰⁾ TERRITORIAL APPLICATION. This section applies to any interstate electronic
 10 mail solicitation sent or received by a person in this state and any intrastate
 11 electronic mail solicitation.

(END)

12

INSERT 4-8

1

INSERT 4-8:

2

(3) ENFORCEMENT. (a) The department shall investigate violations of this
3 section.

3

4

(b) The department or any district attorney may on behalf of the state do any
5 of the following:

5

6

1. Bring an action for temporary or permanent injunctive or other relief for any
7 violation of this section.

7

8

2. Bring an action for the recovery of a civil forfeiture against any person that
9 violates this section in an amount of not less than \$100 nor more than \$10,000 for
10 each violation.

9

10

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

LRB-0513/2dn

MDK:.....

hmk
+

Deadline

Representative Foti:

This version is identical to LRB-0513/1, except that it adds the subsection on enforcement to make it clear that DATCP is responsible for investigation and enforcement.

Also note that, like LRB-0513/1, this version does not authorize the state to seek restitution for violations and does not provide for a private cause of action for statutory damages. (For an example of restitution and a private cause of action, see s. 100.171 (8) (a) and (9), stats.) Please contact us if you want to include such provisions in this bill.

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215

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

DRAFTER'S NOTE
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LEGISLATIVE REFERENCE BUREAU

LRB-0513/2dn
MDK&MGG:hmh:km

October 10, 2000

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Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215

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

Kunkel, Mark

From: Heifetz, Michael
Sent: Tuesday, April 03, 2001 12:14 PM
To: Kunkel, Mark

Mark:

It's been a while, but Foti would like one more small change to LRB 0513/2. This is the anti-SPAM proposal. Foti would like to delete the requirement that the notice of toll free numbers/email addresses to remove oneself from a mailing list be at the beginning of the message.

Such notice must still be in the message, but not necessarily at the beginning.

Thanks. Please call or email with any questions.

Mike
Rep. Foti's Office

SOON

D-NOTE

↑
Stays
3

2001 BILL

1 **AN ACT to amend** 100.264 (2) (intro.); and **to create** 100.52 of the statutes;
 2 **relating to:** prohibiting certain electronic mail solicitations and providing a
 3 penalty.

Analysis by the Legislative Reference Bureau

This bill imposes certain requirements on a person who sends an electronic mail solicitation, which is defined as an electronic mail message sent without the consent of the recipient for the purpose of selling or leasing or offering to sell or lease property, goods, or services to the recipient. Under the bill, a person who sends an electronic mail solicitation must maintain a toll-free telephone number or return electronic mail address that the recipient may use to direct the person not to send any other electronic mail solicitation to the recipient. In addition, an electronic mail solicitation must include a statement that notifies the recipient about the toll-free number or return electronic mail address. The statement must be displayed in the same font size as the majority of the text of the electronic mail solicitation. Also, if the person sending an electronic mail solicitation does not have a previous business relationship with the recipient, the electronic mail solicitation must include the letters "ADV" at the beginning of the subject of the electronic mail solicitation.

The bill prohibits a person from sending an electronic mail solicitation to a recipient who uses the toll-free number or return electronic mail address to direct the person not to send additional electronic mail solicitations to the recipient. In addition, a person may not send an electronic mail solicitation to an address that an employer maintains for an employee if the employer uses the toll-free telephone

BILL

number or return electronic mail address to direct the person not to send electronic mail solicitations to the address maintained by the employer. The bill also prohibits a person that sends an electronic mail solicitation from misrepresenting the person's identity or knowingly providing a false or inaccurate toll-free telephone number or return electronic mail address.

The bill's prohibitions are enforced by the department of agriculture, trade and consumer protection. Any person who violates the bill's prohibitions is subject to a civil forfeiture of not less than \$100 nor more than \$10,000 for each violation. In addition, for a violation perpetrated against an elderly or disabled person, a court may, under certain circumstances, impose a supplemental forfeiture of no more than \$10,000.

Finally, the bill provides that its prohibitions apply to any interstate electronic mail solicitation sent or received by a person in this state and to any intrastate electronic mail solicitation.

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

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

1 **SECTION 1.** 100.264 (2) (intro.) of the statutes is amended to read:

2 100.264 (2) **SUPPLEMENTAL FORFEITURE.** (intro.) If a fine or a forfeiture is
3 imposed on a person for a violation under s. 100.16, 100.17, 100.18, 100.182, 100.183,
4 100.20, 100.205, 100.207, 100.21, 100.30 (3), 100.35, 100.44 ~~or~~, 100.46, or 100.52 or
5 a rule promulgated under one of those sections, the person shall be subject to a
6 supplemental forfeiture not to exceed \$10,000 for that violation if the conduct by the
7 defendant, for which the violation was imposed, was perpetrated against an elderly
8 person or disabled person and if the court finds that any of the following factors is
9 present:

10 **SECTION 2.** 100.52 of the statutes is created to read:

11 **100.52 Electronic mail solicitations.** (1) **DEFINITIONS.** In this section,
12 “electronic mail solicitation” means an electronic mail message that is sent without

BILL

1 the consent of the recipient for the purpose of selling or leasing or offering to sell or
2 lease property, goods, or services to the recipient.

3 (2) PROHIBITIONS. (a) No person may send an electronic mail solicitation unless
4 the person does all of the following:

5 1. Establishes and maintains a toll-free telephone number or return electronic
6 mail address that allows the recipient of the electronic mail solicitation to direct the
7 person not to send any other electronic mail solicitation to the recipient.

8 2. Includes a statement *at the beginning of* the electronic mail solicitation that
9 identifies the toll-free telephone number or return electronic mail address specified
10 in subd. 1. and that notifies the recipient that the recipient may use the toll-free
11 telephone number or return electronic mail address to direct the person not to send
12 any other electronic mail solicitation to the recipient. A statement required under
13 this subdivision shall be displayed in the same font size as the majority of the text
14 in the electronic mail solicitation.

15 3. If the person does not have a previous business relationship with the
16 recipient of the electronic mail solicitation, includes the letters "ADV" at the
17 beginning of the subject of the electronic mail message.

18 (b) Notwithstanding par. (a):

19 1. A person may not send an electronic mail solicitation to a recipient of a prior
20 electronic mail solicitation sent by the person if the recipient uses the toll-free
21 telephone number or return electronic mail address specified in par. (a) 1. to direct
22 the person not to send any other electronic mail solicitation to the recipient.

23 2. A person may not send an electronic mail solicitation to an electronic mail
24 address that an employer provides for an employee if the employer uses the toll-free

BILL

1 telephone number or return electronic mail address specified in par. (a) 1. to direct
2 the person not to send the electronic mail solicitation.

3 (c) No person that sends an electronic mail solicitation may misrepresent the
4 identity of the person sending the electronic mail solicitation or knowingly provide
5 a false or inaccurate toll-free telephone number or return electronic mail address
6 specified in par. (a) 1.

7 (3) ENFORCEMENT. (a) The department shall investigate violations of this
8 section.

9 (b) The department or any district attorney may, on behalf of the state, do any
10 of the following:

11 1. Bring an action for temporary or permanent injunctive or other relief for any
12 violation of this section.

13 2. Bring an action for the recovery of a civil forfeiture against any person that
14 violates this section in an amount of not less than \$100 nor more than \$10,000 for
15 each violation.

16 (4) TERRITORIAL APPLICATION. This section applies to any interstate electronic
17 mail solicitation sent or received by a person in this state and any intrastate
18 electronic mail solicitation.

19 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0513/3dn

MDK:/.....

gs

Representative Foti:

← by ph
This version is identical to the previous version, except that the statement about toll-free numbers or return email addresses does not have to be at the beginning of the solicitation.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0513/3dn
MDK:cjs:km

April 4, 2001

Representative Foti:

This version is identical to the previous version, except that the statement about toll-free numbers or return e-mail addresses does not have to be at the beginning of the solicitation.

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State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

April 4, 2001

MEMORANDUM

To: Representative Foti

From: Mark D. Kunkel, Legislative Attorney

Re: LRB-0513/3 Regulation of electronic mail solicitations

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-0131 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.