

2001 DRAFTING REQUEST

Bill

Received: **11/16/2000**

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: **Trade Regulation - other**

Extra Copies: **MGG, RTK**

Pre Topic:

No specific pre topic given

Topic:

Regulation of telephone solicitors

Instructions:

Redraft 99s0261/2 (with correction)

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 11/20/2000	jdye 11/24/2000		_____			State
/1			pgreensl 11/28/2000	_____	lrb_docadmin 11/28/2000	lrb_docadmin 12/11/2000	

FE Sent For:

<END>

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/?	kunkemd	11/24 jld	11/29 PB.	11/28 PGRS			

FE Sent For:

<END>

D-NOTE

**SENATE SUBSTITUTE AMENDMENT 1,
TO 1999 SENATE BILL 267**

-1079/11

RM
NOT
OWN

ANALYSIS INSERT ✓

January 25, 2000 - Offered by PRIVACY, ELECTRONIC COMMERCE AND FINANCIAL INSTITUTIONS.

Regen

1 AN ACT *to repeal* 134.72 (2) (a) (title) and 134.72 (2) (b) (title); *to renumber*
2 134.72 (2) (a); *to renumber and amend* 134.72 (1) (c) and 134.72 (2) (b); *to*
3 *amend* 100.264 (2) (intro.), 134.72 (title), 134.72 (3) (a) and 134.72 (3) (b); and
4 *to create* 20.115 (8) (jm), 100.52 (title), 100.52 (1) (title), 100.52 (1) (a), 100.52
5 (1) (b), 100.52 (1) (c), 100.52 (1) (d), 100.52 (1) (e), 100.52 (1) (g), 100.52 (2),
6 100.52 (3), 100.52 (4) (title), 100.52 (4) (b), 100.52 (4) (c), 100.52 (4) (d), 100.52
7 (5), 100.52 (6) and 100.52 (7) of the statutes; **relating to:** prohibiting certain
8 telephone solicitations, requiring the registration of telephone solicitors,
9 requiring the exercise of rule-making authority, making an appropriation and
10 providing penalties.

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

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

1 20.115 (8) (jm) *Telephone solicitation regulation.* ✓ All moneys received from
2 telephone solicitor registration and registration renewal fees paid under the rules
3 promulgated under s. 100.52 (3) (a) ✓ for establishing and maintaining the
4 nonsolicitation directory under s. 100.52 (2). ✓

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

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

14 **SECTION 3.** 100.52 (title) ✓ of the statutes is created to read:

15 **100.52 (title) Telephone solicitations.** ✓

16 **SECTION 4.** 100.52 (1) (title) of the statutes is created to read:

17 100.52 (1) (title) **DEFINITIONS.** ✓

18 **SECTION 5.** 100.52 (1) (a) of the statutes is created to read:

19 100.52 (1) (a) "Basic local exchange service" has the meaning in s. 196.01 (1g). ✓

20 **SECTION 6.** 100.52 (1) (b) of the statutes is created to read:

21 100.52 (1) (b) "Nonprofit organization" means a corporation, association, or
22 organization exempt from taxation under section 501 (c) (3) of the Internal Revenue
23 Code.

24 **SECTION 7.** 100.52 (1) (c) of the statutes is created to read:

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1 100.52 (1) (c) “Nonsolicitation directory” means the directory established in
2 rules promulgated by the department under sub. (2) (b).

3 **SECTION 8.** 100.52 (1) (d) of the statutes is created to read:

4 100.52 (1) (d) “Residential customer” means an individual who is furnished
5 with basic local exchange service by a telecommunications utility.

6 **SECTION 9.** 100.52 (1) (e) of the statutes is created to read:

7 100.52 (1) (e) “Telecommunications utility” has the meaning given in s. 196.01
8 (10).

9 **SECTION 10.** 100.52 (1) (g) of the statutes is created to read:

10 100.52 (1) (g) “Telephone solicitor” means a person, other than a nonprofit
11 organization, that employs or contracts with an individual to make a telephone
12 solicitation.

13 **SECTION 11.** 100.52 (2) of the statutes is created to read:

14 100.52 (2) NONSOLICITATION DIRECTORY LISTING. (a) Upon a request by a
15 residential customer, the department shall include in the nonsolicitation directory
16 a listing indicating that the residential customer does not want to receive any
17 telephone solicitation made on behalf of a telephone solicitor.

18 (b) The department shall promulgate rules for establishing and maintaining
19 a directory that includes listings of residential customers who do not wish to receive
20 telephone solicitations made on behalf of telephone solicitors. The rules
21 promulgated under this paragraph shall establish requirements and procedures for
22 a residential customer to request a listing in the directory. The rules shall also
23 require a residential customer who requests a listing in the directory to notify the
24 department on a biennial basis if the residential customer wishes to continue to be

1 included in the directory. The department shall eliminate a residential customer
2 from the directory if the customer does not make the biennial notification.

3 (c) Except for copies of the nonsolicitation directory that are provided to
4 registered telephone solicitors under par. (d),[✓] the nonsolicitation directory is not
5 subject to inspection, copying[✓] or receipt under s. 19.35 (1)[✓] and may not be released
6 by the department.

7 (d) The department may provide copies of the nonsolicitation directory only to
8 telephone solicitors who are registered under sub. (3).[✓] A telephone solicitor who
9 receives a copy of the directory under this paragraph may not solicit or accept from
10 any person, directly or indirectly, anything of value in exchange for providing the
11 person with any information included in the copy.

12 **SECTION 12.** 100.52 (3) of the statutes is created to read:

13 100.52 (3) REGISTRATION OF TELEPHONE SOLICITORS. (a) The department shall
14 promulgate rules that require any telephone solicitor who requires an employee^{e.g.} to
15 make a telephone solicitation to a person in this state to register with the
16 department, obtain a registration number from the department[✓] and pay a
17 registration fee to the department. The amount of the registration fee shall be based
18 on the cost of establishing the nonsolicitation directory, and the amount that an
19 individual telephone solicitor is required to pay shall be based on the number of
20 telephone lines used by the telephone solicitor to make telephone solicitations. The
21 rules shall also require a telephone solicitor that registers with the department to
22 pay an annual registration renewal fee to the department. The amount of the
23 registration renewal fee shall be based on the cost of maintaining the nonsolicitation
24 directory.

or contractor

1 (b) The department shall promulgate rules that require an individual who
2 makes a telephone solicitation on behalf of a telephone solicitor to identify the
3 telephone solicitor and the telephone solicitor's registration number at the beginning
4 of the telephone conversation.

5 SECTION 13. 100.52 (4) (title) [✓] of the statutes is created to read:

6 100.52 (4) (title) PROHIBITIONS.

7 SECTION 14. 100.52 (4) (b) of the statutes is created to read:

8 100.52 (4) (b) A telephone solicitor may not require an employe^e to make a
9 telephone solicitation to a person in this state unless the telephone solicitor is
10 registered with the department under the rules promulgated under sub. (3) (a). [✓]

11 SECTION 15. 100.52 (4) (c) of the statutes is created to read:

12 100.52 (4) (c) A ^{telephone solicitor} person may not make a telephone solicitation to a residential
13 customer if the nonsolicitation directory that is ^{provided to the telephone solicitor} available to the public at the time of
14 the telephone solicitation includes a listing for the residential customer. ^{under sub. (2) (d)} [✓]

15 SECTION 16. 100.52 (4) (d) of the statutes is created to read:

16 100.52 (4) (d) A telephone solicitor may not require an employe^e to make a
17 telephone solicitation that violates par. (a) or (c). [✓]

18 SECTION 17. 100.52 (5) of the statutes is created to read:

19 100.52 (5) TERRITORIAL APPLICATION. [✓] This section applies to any interstate
20 telephone solicitation received by a person in this state and to any intrastate
21 telephone solicitation.

22 SECTION 18. 100.52 (6) of the statutes is created to read:

23 100.52 (6) PRIVATE CAUSE OF ACTION. Any person who suffers damages as the
24 result of another person violating this section [✓] may bring an action against the person
25 who violated this section to recover the amount of those damages.

INSERT 6-1 ✓

SECTION 19. 100.52 (7) of the statutes is created to read:

100.52 (7) PENALTIES. (a) Except as provided in par. (b), a person who violates this section may forfeit not less than \$100 nor more than \$500 for each violation.

(b) A telephone solicitor that violates sub. (4) (d) may forfeit not less than \$1,000 nor more than \$10,000 for each violation.

SECTION 20. 134.72 (title) of the statutes is amended to read:

134.72 (title) Prohibition of certain unsolicited messages by telephone or facsimile machine.

SECTION 21. 134.72 (1) (c) of the statutes is renumbered 100.52 (1) (f) and amended to read:

100.52 (1) (f) "Telephone solicitation" means the unsolicited initiation of a telephone conversation for the purpose of encouraging a person to purchase property, goods or services or to make a contribution, donation, grant or pledge of money, credit, property or other thing of any kind or value.

SECTION 22. 134.72 (2) (a) (title) of the statutes is repealed.

SECTION 23. 134.72 (2) (a) of the statutes is renumbered 100.52 (4) (a).

SECTION 24. 134.72 (2) (b) (title) of the statutes is repealed.

SECTION 25. 134.72 (2) (b) of the statutes is renumbered 134.72 (2), and 134.72 (2) (b), as renumbered, is amended to read:

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

SECTION 26. 134.72 (3) (a) of the statutes is amended to read:

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PwF
PwF

struck

PWF

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134.72 (3) (a) *Intrastate*. This section applies to any ~~intrastate~~ telephone solicitation ~~or~~ intrastate facsimile solicitation.

SECTION 27. 134.72 (3) (b) of the statutes is amended to read:

134.72 (3) (b) *Interstate*. This section applies to any [✓]~~interstate~~ telephone solicitation, ~~or~~ interstate facsimile solicitation, received by a person in this state.

(END)

1

ANALYSIS INSERT:

This bill requires the department of agriculture, trade and consumer protection (DATCP) to promulgate rules for the registration of telephone solicitors. The bill defines "telephone solicitor" as any person, other than a nonprofit organization, that employs or contracts with an individual to make a telephone solicitation. The bill prohibits a telephone solicitor that is not registered from requiring an employee or contractor to make a telephone solicitation to a person in this state. Telephone solicitors are required to obtain a registration number from DATCP and pay a registration fee and annual registration renewal fees. The amount of the fees is based on the cost of establishing a nonsolicitation directory, which is discussed below. In addition, the amount that an individual telephone solicitor is required to pay must be based on the number of telephone lines used by the telephone solicitor to make telephone solicitations. DATCP must also promulgate rules that require an individual who makes a telephone solicitation on behalf of a telephone solicitor to identify the telephone solicitor and the telephone solicitor's registration number at the beginning of the telephone conversation.

This bill also requires DATCP to establish a nonsolicitation directory that includes listings for residential telephone customers who do not wish to receive telephone solicitations from telephone solicitors. The bill requires DATCP to promulgate rules establishing requirements and procedures for a residential customer to request a listing in the directory. A residential customer must notify DATCP on a biennial basis if the residential customer wishes to continue to be listed in the directory. DATCP must provide copies of the directory to telephone solicitors who are registered under the bill, but may not otherwise release copies to the public. In addition, a telephone solicitor who receives a copy of the directory may not solicit or accept from any person anything of value in exchange for providing the person with any information included in the copy. The bill prohibits a telephone solicitor from making a telephone solicitation to a residential customer if the copy of the directory that is provided to the telephone solicitor includes a listing for the customer.

A telephone solicitor who violates the prohibition against making a telephone solicitation to a residential customer included in the nonsolicitation directory is subject to a forfeiture of between \$1,000 and \$10,000. A person who violates the bill's other requirements is subject to a forfeiture of between \$100 and \$500. In addition, a person may be subject to a supplemental forfeiture of up to \$10,000 for a violation perpetrated against an elderly or disabled person.

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

2

INSERT 6-1:

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SECTION 1. 100.52 (7) of the statutes is created to read:

1 100.52 (7) ENFORCEMENT. ✓ The department shall investigate violations of this
2 section ✓ and may bring an action for temporary or permanent injunctive or other relief
3 for any violation of this section.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1079/1dn

MDK: :...
^
jld

Senator Erpenbach:

Please review this bill, which is based on Senate Substitute Amendment 1 to 1999 Senate Bill 267, very carefully to make sure that it achieves your intent. Please note the following differences between this bill and the substitute amendment:

1. This bill includes proposed s. 100.52 (7), which is necessary to clarify that DATCP has enforcement authority for violations of the bill.
2. A mistake in proposed s. 100.52 (4) (c) has been corrected.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1079/1dn
MDK:jld:pg

November 28, 2000

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



State of Wisconsin

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

November 28, 2000

MEMORANDUM

To: Senator Erpenbach

From: Mark D. Kunkel, Legislative Attorney

Re: LRB-1079 Regulation of telephone solicitors

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 4 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.