

**2001 DRAFTING REQUEST**

**Bill**

Received: 01/11/2001

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Statz**

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:**

DOA:.....Statz -

**Topic:**

Telemarketing requirements

**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>
/1	kunkemd 01/27/2001	jdyer 01/29/2001	rschluet 01/29/2001	_____	lrb_docadmin 01/29/2001		
	kunkemd 01/31/2001	jdyer 02/01/2001		_____			
/2	kunkemd 02/01/2001	jdyer 02/01/2001	martykr 02/01/2001	_____	lrb_docadmin 02/01/2001		State
			martykr 02/01/2001	_____	lrb_docadmin 02/01/2001		
/3			pgreensl 02/01/2001	_____	lrb_docadmin 02/01/2001		State

Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

FE Sent For:

<END>

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/2		13 2/1 jld	martykr 02/01/2001	<u>Self</u>	lrb_docadmin 02/01/2001		State
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2/1  
p8

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/1	kunkemd 01/27/2001	jdye 01/29/2001	rschluet 01/29/2001	_____	lrb_docadmin 01/29/2001		

FE Sent For:

*1/23 jld*     *1/21 dm*     *1/25 dm*  
 \_\_\_\_\_  
 \_\_\_\_\_

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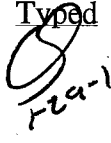
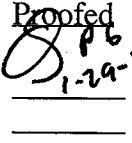
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Telemarketing requirements

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/?	kunkemd	1 1/29 jld	 1-29-01	 1-29-01			

FE Sent For:

<END>

**Miller, Steve**

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**From:** Caucutt, Dan  
**Sent:** Wednesday, January 10, 2001 4:41 PM  
**To:** Miller, Steve  
**Cc:** Dombrowski, Cynthia; Wornson, Bryon  
**Subject:** Privacy Recommendation

There is interest in a small additional item for the budget which changes the telemarketing law as follows:

Require any person making a telephone solicitation to disclose:

- solicitor's individual name
- name of business, firm or organization represented (and solicitor's employer, if different), if person soliciting is a professional telemarketer or employed by one
- purpose of the call

Also,

- prohibit any person making a phone solicitation from blocking the customer's caller ID system
- require any person making a phone solicitation to honor any notice received from the individual or on the individual's behalf that the customer does not want to receive telephone solicitations.

Thank you.

## Kunkel, Mark

---

**From:** Caucutt, Dan  
**Sent:** Tuesday, January 16, 2001 10:50 AM  
**To:** Kunkel, Mark  
**Cc:** Wornson, Bryon  
**Subject:** RE: Telemarketing budget request

Mark: I'm checking out with Gov' policy staff whether infractions of the proposed law should be civil or criminal offenses. That would make a difference where enforcement goes.

-----Original Message-----

**From:** Kunkel, Mark  
**Sent:** Tuesday, January 16, 2001 10:03 AM  
**To:** Caucutt, Dan  
**Subject:** FW: Telemarketing budget request

Dan:

I don't mean to bug you, but do you have answers to my questions below yet?

---

Mark Kunkel  
Legislative Attorney  
Legislative Reference Bureau  
(608) 266-0131 mark.kunkel@legis.state.wi.us

-----Original Message-----

**From:** Kunkel, Mark  
**Sent:** Thursday, January 11, 2001 2:46 PM  
**To:** Currier, Dawn  
**Subject:** Telemarketing budget request

Dawn:

I received the budget request regarding telemarketing. Who do you want to enforce these requirements? Under current law, there is a prohibition against a telemarketer's use of prerecorded solicitations. This prohibition is enforced by local district attorneys, not DATCP. Do you want local district attorneys or DATCP to enforce the requirements in your request? And if you want DATCP to be the enforcer, do you also want to change the prohibition under current law so that DATCP enforces it as well?

Thanks,

---

Mark Kunkel  
Legislative Attorney  
Legislative Reference Bureau  
(608) 266-0131 mark.kunkel@legis.state.wi.us

## Kunkel, Mark

---

**From:** Caucutt, Dan  
**Sent:** Tuesday, January 16, 2001 12:01 PM  
**To:** Johnston, James  
**Cc:** Walker, William  
**Subject:** RE: Telemarketing budget request

Jim: It looks like DATCP is interested in taking over full enforcement of this. Would this be a problem, taking it away from DA's? Do we want to do this in the budget? If you concur, please advise and Bill can get back with DATCP regarding coordination of the statute change with their rules.

-----Original Message-----

**From:** Walker, William  
**Sent:** Tuesday, January 16, 2001 10:55 AM  
**To:** Caucutt, Dan  
**Cc:** Currier, Dawn  
**Subject:** FW: Telemarketing budget request

Apparently DATCP would like to have some enforcement authority over telemarketing (yet keeping a role for DAs as well).

Here is a message from Bill Oemichen of DATCP explaining what they would like. I have no objections.

Note that some of the authority is already present in the statutes.

-----Original Message-----

**From:** Oemichen, William L DATCP  
**Sent:** Tuesday, January 10, 2001 10:49 AM  
**To:** Walker, William  
**Cc:** Knapp, Barb H DATCP; Tryon, Fran DATCP; Ghilardi, David J DATCP  
**Subject:** RE: Telemarketing budget request

Bill:

The Department is currently attempting to enforce Wis. Stat. Section 134.72 (Prohibiting Pre-Recorded Solicitations). As noted, this statute is assigned solely to district attorneys for enforcement. Because we have received consumer complaints about pre-recorded solicitations, we have issued several Special Orders and Warning Letters for violations based on Wis. Stat. Section ~~100.20~~ 100.20

We would support a provision in the Budget Bill directly assigning enforcement of the statute to our agency. This would remove having to base our enforcement activity on Wis. Stat. Section 100.20. Furthermore, we would support keeping district attorneys in the law as well.

As for the telemarketing provisions that were listed, the first three and the fifth bullet point are already in ATCP 127. The fourth point was in legislation we supported last year.

Hope this helps.

Bill

-----Original Message-----

**From:** Kunkel, Mark  
**Sent:** Thursday, January 11, 2001 2:46 PM  
**To:** Currier, Dawn  
**Subject:** Telemarketing budget request

Dawn:

I received the budget request regarding telemarketing. Who do you want to enforce these requirements? Under current law, there is a prohibition against a telemarketer's use of prerecorded solicitations. This prohibition is enforced by local district attorneys, not DATCP. Do you want local district attorneys or DATCP to enforce the requirements in your request? And if you want DATCP to be the enforcer, do you also want to change the prohibition under current law so that DATCP enforces it as well?



. Thanks,

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Mark Kunkel  
Legislative Attorney  
Legislative Reference Bureau  
(608) 266-0131 mark.kunkel@legis.state.wi.us

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Drafting request:

There is interest in a small additional item for the budget which changes the telemarketing law as follows:

Require any person making a telephone solicitation to disclose:

- solicitor's individual name
- name of business, firm or organization represented (and solicitor's employer, if different), if person soliciting is a professional telemarketer or employed by one
- purpose of the call

Also,

- prohibit any person making a phone solicitation from blocking the customer's caller ID system
- require any person making a phone solicitation to honor any notice received from the individual or on the individual's behalf that the customer does not want to receive telephone solicitations.

## Kunkel, Mark

---

**From:** Kunkel, Mark  
**Sent:** Tuesday, January 16, 2001 4:04 PM  
**To:** Johnston, James  
**Cc:** Nelson, Robert P.  
**Subject:** Federal telemarketing requirements and enforcement

Jim:

The first part of the request is similar to a federal regulation (16 CFR s. 310.4 (d) of the Federal Trade Commission, which states:

"Required oral disclosures. It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call [which is defined as a telephone call initiated by a telemarketer to induce the purchase of goods or services] to fail to disclose promptly and in a clear and conspicuous manner to the person receiving the call, the following information:

- (1) The identity of the seller;
- (2) That the purpose of the call is to sell goods or services;
- (3) The nature of the goods or services; and
- (4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase o-payment entry method for the prize promotion."

As you can see, the federal regulation doesn't require disclosure of the solicitor's individual name. Also, it requires disclosure of the identity of a seller, as opposed to disclosure of the name of business, firm or organization represented and the solicitor's employer.

As for the 2nd part of the request, which prohibits blocking a customer's caller ID system, the federal regulations do not include such a prohibition.

As for the 3rd part of the request, which requires any person making a phone solicitation to honor any notice received from the individual or on the individual's behalf that the customer does not want to receive telephone solicitations, there is a comparable requirement (16 CFR s. 310.4 (b) (ii)) in the federal regulations, which provides that it is an abusive telemarketing act or practice and a violation of the federal rule to engage in:

"Initiating an outbound telephone call to a person when that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered."

The federal regulation include many other requirements, including one that I mentioned to you on the phone: calling before 8 am or after 9 pm (see 16 CFR s. 310.4 (c)) without prior consent.

There a number of exemptions to the federal regulations. They do not apply to: 1) sale of pay-per-call services subject to a different FTC rule; 2) sales of franchises subject to a different FTC rule; 3) telephone calls in which the sale will not be completed until after a face-to-face sales presentation by the seller; 4) certain telephone calls initiated by a customer; and 5) telephone calls between telemarketers and businesses (except calls involving the sale of nondurable office or cleaning supplies).

Who enforces the federal regulations? The FTC. However, unless the FTC has already instituted a civil action for a violation, federal law also allows a state to enforce the regulations. Specifically, the federal law (15 USC s. 6103 (a)) states:

"Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice of telemarketing which violates any rule of the Commission under section 3 [ <=> 15 USCS @ 6102], the State, as

parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such telemarketing, to enforce compliance with such rule of the Commission, to obtain damages, restitution, or other compensation on behalf of residents of such State, or to obtain such further and other relief as the court may deem appropriate."

Also, the federal law (15 USC s. 6103 (f) (2)) states that, in addition to an action by a state attorney general, an action may be brought by officers of the state who are authorized by the state to bring actions on behalf of its residents. Finally, there is a private cause of action. See 15 USC s. 6104.

Hope the above information helps.

---

Mark Kunkel  
Legislative Attorney  
Legislative Reference Bureau  
(608) 266-0131 mark.kunkel@legis.state.wi.us



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-1997/1

MDK:.....

D-NOTE

Jld

DOA:.....Statz - Telemarketing requirements

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

SOON

Don't get

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

STATE GOVERNMENT

DISTRICT ATTORNEYS

Under current law, a person may not use an electronically prerecorded message in a telephone solicitation without the consent of the person<sup>who is</sup> called. A "telephone solicitation" is defined as an unsolicited telephone call encouraging a person to purchase property, goods, or services. The prohibition applies to any interstate telephone solicitation that is received by a person in this state and to any intrastate telephone solicitation. A person who violates the prohibition is subject to a forfeiture of ~~no~~<sup>not</sup> more than \$500. Under certain circumstances, a person may be subject to a supplemental forfeiture of ~~no~~<sup>not</sup> more than \$10,000 if the telephone solicitation was directed against an elderly person or a disabled person. Local district attorneys enforce the prohibition. <sup>three</sup>

This bill creates ~~2~~<sup>three</sup> additional prohibitions regarding telephone solicitations that are also enforced by district attorneys. First, the bill prohibits a person who makes a telephone solicitation from using a blocking service that withholds the person's name or telephone number from the person who receives the solicitation.

Second, the bill prohibits a person from making a telephone solicitation to a person who has provided notice to that person that the person does not want to receive telephone solicitations. This second prohibition also applies if a person provides such notice to a professional telemarketer that employs or contracts with a person who makes telephone solicitations.

Third, the bill prohibits a person from making a telephone solicitation unless, when initiating the telephone conversation, the person discloses each the following: 1) the person's name; 2) if the person is employed by or under contract with a professional telemarketer, the name of the business on whose behalf the call is made; and 3) the purpose of the call.

The bill's prohibitions apply to the same interstate and intrastate telephone solicitations that are subject to the prohibition under current law regarding electronically prerecorded messages. In addition, the same forfeiture and supplemental forfeiture apply.

---

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

1           SECTION 1. 134.72 (1) (a) of the statutes is renumbered 134.72 (1) (at).

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

3           134.72 (1) (ad) "Blocking service" means a service that allows a person who  
4 makes a telephone call to withhold his or her telephone number or name from a  
5 person who receives the telephone call and who uses a caller identification service.

6           SECTION 3. 134.72 (1) (ah) of the statutes is created to read:

7           134.72 (1) (ah) "Business entity" means any organization or enterprise that is  
8 operated for profit or that is nonprofit and nongovernmental, including a sole  
9 proprietorship, association, business trust, corporation, joint venture, limited  
10 liability company, limited liability partnership, partnership, or syndicate.

11          SECTION 4. 134.72 (1) (ap) of the statutes is created to read:

12          134.72 (1) (ap) "Caller identification service" means a service that allows a  
13 person who receives a telephone call to identify the telephone number or name of the  
14 person making the telephone call.

15          SECTION 5. 134.72 (1) (bm) of the statutes is created to read:

16          134.72 (1) (bm) "Professional telemarketer" means a person who employs or  
17 contracts with another person for that other person to make telephone solicitations.

1 SECTION 6. 134.72 (2) (c) <sup>✓</sup> of the statutes is created to read:

2 134.72 (2) (c) *Telephone solicitation disclosures.* <sup>✓</sup> A person may not make a  
3 telephone solicitation unless, when initiating the telephone conversation, the person  
4 discloses to the recipient of the telephone call each of the following:

5 1. The person's name.

6 2. If the person is employed by or under contract with a <sup>✓</sup> professional  
7 telemarketer, the name of the business entity on whose behalf the call is being made.

8 3. The purpose of the call.

9 SECTION 7. 134.72 (2) (d) <sup>✓</sup> of the statutes is created to read:

10 134.72 (2) (d) *Telephone solicitation notices.* <sup>✓</sup> A person may not make a  
11 telephone solicitation to a person who has provided notice to that person or, if that  
12 person is employed by or under contract with a professional telemarketer, has  
13 provided notice to the professional telemarketer, that the person does not want to  
14 receive telephone solicitations.

15 SECTION 8. 134.72 (2) (e) <sup>✓</sup> of the statutes is created to read:

16 134.72 (2) (e) *Blocking services.* <sup>✓</sup> No person may use a blocking service when  
17 making a telephone solicitation.

18 SECTION 9. 134.72 (4) <sup>✓</sup> of the statutes is amended to read:

19 134.72 (4) PENALTY. A person who violates this section may be required to  
20 forfeit up to <sup>not</sup> ~~no~~ more than \$500.

History: 1977 c. 301; 1989 a. 336; 1995 a. 351; 1997 a. 27. <sup>✓</sup>

21 SECTION 10. 767.265 (2r) <sup>✓</sup> of the statutes is amended to read:

22 767.265 (2r) Upon entry of each order for child support, maintenance, family  
23 support, support by a spouse or the annual receiving and disbursing fee, and upon  
24 approval of each stipulation for child support, unless the court finds that income

1 withholding is likely to cause the payer irreparable harm or unless s. 767.267  
 2 applies, the court, family court commissioner or county child support agency under  
 3 s. 59.53 (5) shall provide notice of the assignment by regular mail or by facsimile  
 4 machine, as defined in s. 134.72 (1) (a) (at), or other electronic means to the  
 5 last-known address of the person from whom the payer receives or will receive  
 6 money. The notice shall provide that the amount withheld may not exceed the  
 7 maximum amount that is subject to garnishment under 15 USC 1673 (b) (2). If the  
 8 department or its designee, whichever is appropriate, does not receive the money  
 9 from the person notified, the court, family court commissioner or county child  
 10 support agency under s. 59.53 (5) shall provide notice of the assignment to any other  
 11 person from whom the payer receives or will receive money. Notice under this  
 12 subsection may be a notice of the court, a copy of the executed assignment or a copy  
 13 of that part of the court order directing payment.

History: 1971 c. 110; 1975 c. 94 s. 91 (3); 1975 c. 199; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196, 221; Stats. 1979 s. 767.265; 1981 c. 20, 186; 1983 a. 27, 384; 1985 a. 29; 1987 a. 38 s. 136; 1987 a. 332 s. 64; 1987 a. 398, 403; 1989 a. 31, 56, 212, 336; 1991 a. 287; 1993 a. 16, 326, 389, 481; 1995 a. 27 s. 9130 (4); 1995 a. 279, 404; 1997 a. 27, 191; 1999 a. 9.

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

15 968.01 (1) "Facsimile machine" has the meaning given in s. 134.72 (1) (a) (at).

History: 1989 a. 336; 1995 a. 351.

16 **SECTION 9413. Effective dates; district attorneys.**

17 (1) TELEPHONE SOLICITATIONS. The treatment of sections 134.72 (1) (a), (ad),  
 18 (ah), (ap), and (bm), (2) (c), (d), and (e), and (4), 767.265 (2r), and 968.01 (1) of the  
 19 statutes takes effect on the first day of the 3rd month beginning after publication.

20 (END)

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

LRB-1997/1dn

MDK:.....

JLD

Andrew Statz:

Please note the following about this bill:

1. The instructions refer to a "professional telemarketer" I'm not sure who the term is intended to cover, so please review my definition at proposed s. 134.72 (1) (bm).
2. Note that proposed s. 134.72 (c) 2. is intended to accomplish the requirement in the instructions that a person must disclose the "name of [the] business, firm, or organization represented (and solicitor's employer, if different), if [the] person soliciting is a professional telemarketer or employed by one" I realize this is a policy issue, but why should this requirement apply only to calls from professional telemarketers?
3. I included a delayed effective date so that professional telemarketers will have some time to let their employeess and contractors know whether any notices have been received that are subject to proposed s. 134.72 (2) (d). Is this okay?
4. I took the opportunity to amend s. 134.72 (4) so that it conforms to our current drafting style.
5. The bill's requirements apply to telephone solicitations from out-of-state that are received by persons in this state. Therefore, the bill may be subject to an attack that it violates the interstate commerce clause of the federal constitution. In general, a court will resolve this issue by asking the following three questions: 1) Does the bill pursue a legitimate state end? 2) Is the bill rationally related to that legitimate state end? and 3) Is the burden imposed on interstate commerce outweighed by the state's interest in enforcing the bill? If the court answers "yes" to all three questions, it will uphold the bill. Although I have not researched this issue, 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.
6. Although I haven't researched the issue, you should be aware that any effort by the state to regulate telemarketing might be subject to a challenge that it is preempted under federal law. The Federal Trade Commission (FTC) has promulgated regulations under the federal Telemarketing and Consumer Fraud and Abuse Prevention Act that are similar, but not identical, to the requirements of the bill. See 16 CFR Part 310.



The main differences between this bill and the FTC's regulations are the following: 1) the FTC's regulations have exemptions that the bill does not have; and 2) the FTC's regulations do not include the prohibition on blocking services. If you'd like me to take a closer look at the issue of preemption, please give me a call.

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

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

LRB-1997/1dn  
MDK;jld:rs

January 29, 2001

Andrew Statz:

Please note the following about this bill:

1. The instructions refer to a "professional telemarketer." I'm not sure who the term is intended to cover, so please review my definition at proposed s. 134.72 (1) (bm).
2. Note that proposed s. 134.72 (2) (c) 2. is intended to accomplish the requirement in the instructions that a person must disclose the "name of [the] business, firm, or organization represented (and solicitor's employer, if different), if [the] person soliciting is a professional telemarketer or employed by one." I realize this is a policy issue, but why should this requirement apply only to calls from professional telemarketers?
3. I included a delayed effective date so that professional telemarketers will have some time to let their employees and contractors know whether any notices have been received that are subject to proposed s. 134.72 (2) (d). Is this okay?
4. I took the opportunity to amend s. 134.72 (4) so that it conforms to our current drafting style.
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Mark D. Kunkel  
Legislative Attorney  
Phone: (608) 266-0131  
E-mail: [mark.kunkel@legis.state.wi.us](mailto:mark.kunkel@legis.state.wi.us)

## Kunkel, Mark

---

**From:** Statz, Andrew  
**Sent:** Tuesday, January 30, 2001 5:17 PM  
**To:** Kunkel, Mark  
**Cc:** Johnston, James; Walker, William  
**Subject:** FW: LRB Draft: 01-1997/1 Telemarketing requirements

Refinements to # 1997/1:

- As we briefly discussed... Yes, these provisions should apply to only "professional telemarketers" (definition pending).
- DATCP should be the primary enforcement agency for these new provisions. The DAs may pursue these cases after consulting with DATCP.
- Also, please amend this draft to apply this enforcement strategy to the current prohibition of pre-recorded telephone solicitations under s. 134.72.

We'll discuss our definition of "professional telemarketers" further. Thanks.

*Andrew J. Statz  
State Budget Office  
608-267-0370*

-----Original Message-----

**From:** Schlueter, Ron  
**Sent:** Monday, January 29, 2001 12:42 PM  
**To:** Statz, Andrew  
**Cc:** Johnston, James; Currier, Dawn; Hanaman, Cathlene; Haugen, Caroline  
**Subject:** LRB Draft: 01-1997/1 Telemarketing requirements

Following is the PDF version of draft 01-1997/1.



01-1997/1



01-1997/1dn

## Kunkel, Mark

---

**From:** Statz, Andrew  
**Sent:** Wednesday, January 31, 2001 12:53 PM  
**To:** Kunkel, Mark  
**Subject:** RE: Professional telemarketer definition

I'll take it. Thanks.

-----Original Message-----

**From:** Kunkel, Mark  
**Sent:** Wednesday, January 31, 2001 10:20 AM  
**To:** Statz, Andrew  
**Subject:** RE: Professional telemarketer definition

Andrew,

Here is another possible definition:

"Professional telemarketer" means a business entity with employees whose primary duty is to make telephone solicitations.

"Business entity" means any organization or enterprise that is operated for profit or that is nonprofit and nongovernmental, including an association, sole proprietorship, business trust, corporation, joint venture, limited liability company, limited liability partnership, partnership, or syndicate.

I think this definitions covers: 1) a company that is in the business of making telephone solicitations, because such a business would have employees whose primary duty is to make telephone solicitations; and 2) a company with a division or subunit that has employees whose primary duty is to make telephone solicitations. On the other hand, if I'm a seller, and I contract with another company to make telephone solicitations to sell my goods, I wouldn't be covered, as long as I don't have any employees whose primary duty is to make telephone solicitations.

There may be ambiguity over what constitutes an employee's "primary duty". You could require rule-making to fill in the details.

As for the definition in my message below, I think it also works, except that there may be some confusion over the meaning of the word "employs". If I'm a seller and I contract with another company to make telephone solicitations to sell my goods, have I "employed" that company? You could define "employs" so that it is restricted to an employer-employee relationship, and so that it doesn't simply mean "use". Or you could use the definition above.

What do you think?

---

Mark Kunkel  
Legislative Attorney  
Legislative Reference Bureau  
(608) 266-0131 mark.kunkel@legis.state.wi.us

-----Original Message-----

**From:** Statz, Andrew  
**Sent:** Tuesday, January 30, 2001 5:00 PM  
**To:** Kunkel, Mark  
**Subject:** RE: Professional telemarketer definition

The party that is most knowledgeable of telemarketing regulations should be the party held liable for violations. So my greatest concern is: what would this definition do to a company or individual that hires a telemarketing firm to do solicitations?

Specifically, if I hire a telemarketing firm that does not follow the requirements outlined in this bill, would I be held liable for the forfeiture? It seems to me that we should limit the definition to a firm that employs an individual whose principal occupation is making telephone solicitations.

-----Original Message-----

**From:** Kunkel, Mark  
**Sent:** Tuesday, January 30, 2001 4:42 PM  
**To:** Statz, Andrew  
**Subject:** Professional telemarketer definition

Andrew,

Perhaps the following will work?

"Professional telemarketer" means a person that employs an individual whose principal occupation is making telephone solicitations.

This definition would cover a company that only does telemarketing, as well as the telemarketing division of a company that does other things, because they both would employ somebody to make telephone solicitations. Admittedly, "principal occupation" is not very clear, but, if an agency such as DATCP is given enforcement authority, that agency could be required to promulgate rules that define what constitutes a "principal occupation".

Tell me what you think. In the meantime I will think about alternatives to the above.

---

Mark Kunkel  
Legislative Attorney  
Legislative Reference Bureau  
(608) 266-0131 mark.kunkel@legis.state.wi.us

D-NOTE

2

DOA:.....Statz - Telemarketing requirements

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

RM NOT RUN

SOON

INSERT 1A

Do not gen

1

AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

STATE GOVERNMENT

~~DISTRICT ATTORNEYS~~

~~Under current law, a person may not use an electronically prerecorded message in a telephone solicitation without the consent of the person who is called. A "telephone solicitation" is defined as an unsolicited telephone call encouraging a person to purchase property, goods, or services. The prohibition applies to any interstate telephone solicitation that is received by a person in this state and to any intrastate telephone solicitation. A person who violates the prohibition is subject to a forfeiture of not more than \$500. Under certain circumstances, a person may be subject to a supplemental forfeiture of not more than \$10,000 if the telephone solicitation was directed against an elderly person or a disabled person. Local district attorneys enforce the prohibition.~~

This bill creates three additional prohibitions regarding telephone solicitations that are also enforced by district attorneys. First, the bill prohibits a person who makes a telephone solicitation from using a blocking service that withholds the person's name or telephone number from the person who receives the solicitation.

Second, the bill prohibits a person from making a telephone solicitation to a person who has provided notice to that person that the person does not want to receive telephone solicitations. This second prohibition also applies if a person provides such notice to a professional telemarketer that employs or contracts with a person who makes telephone solicitations.

INSERT 2-1

Third, the bill prohibits a person from making a telephone solicitation unless, when initiating the telephone conversation, the person discloses each the following: 1) the person's name; 2) if the person is employed by or under contract with a professional telemarketer, the name of the business on whose behalf the call is made; and 3) the purpose of the call.

The bill's prohibitions apply to the same interstate and intrastate telephone solicitations that are subject to the prohibition under current law regarding electronically prerecorded messages. In addition, the same forfeiture and supplemental forfeiture apply.

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

SECTION 1. ~~134.72~~ (1) (a) of the statutes is renumbered 134.72 (1) (ab)

SECTION 2. ~~134.72~~ (1) (ad) of the statutes is created to read:

<sup>100.52</sup> ~~134.72~~ (1) (ad) "Blocking service" means a service that allows a person who makes a telephone call to withhold ~~his or her~~ <sup>the</sup> telephone number or name from a person who receives the telephone call and who uses a caller identification service.

associated with the telephone line used to make the call

SECTION 3. ~~134.72~~ (1) (ah) of the statutes is created to read:

<sup>100.52</sup> ~~134.72~~ (1) (ah) "Business entity" means any organization or enterprise that is operated for profit or that is nonprofit and nongovernmental, including a sole proprietorship, association, business trust, corporation, joint venture, limited liability company, limited liability partnership, partnership, or syndicate.

SECTION 4. ~~134.72~~ (1) (ap) of the statutes is created to read:

<sup>100.52</sup> ~~134.72~~ (1) (ap) "Caller identification service" means a service that allows a person who receives a telephone call to identify the telephone number or name of the person making the telephone call.

associated with the telephone line used to make the call

SECTION 5. ~~134.72~~ (1) (am) of the statutes is created to read:

<sup>100.52</sup> ~~134.72~~ (1) (am) "Professional telemarketer" means a ~~person who employs or~~ <sup>business entity</sup> contracts with another person for that other person to make telephone solicitations.

with employees whose primary duty is

business entity



CSS  
no ital

100.52(3)

SECTION 6. ~~134.72(2)(c)~~ of the statutes is created to read:

~~134.72(2)(c)~~ Telephone solicitation disclosures.

An employee of a professional telemarketer

A person may not make a telephone solicitation unless, when initiating the telephone conversation, the person discloses to the recipient of the telephone call each of the following:

(a) The ~~person's~~ <sup>employee</sup> name.

INSERT 3-6 ✓

~~If the person is employed by or under contract with a professional telemarketer, the name of the business entity on whose behalf the call is being made.~~

(c) The purpose of the call.

CSS  
no ital.

100.52(4)

SECTION 7. ~~134.72(2)(d)~~ of the statutes is created to read:

~~134.72(2)(d)~~ Telephone solicitation notices.

A person may not make a telephone solicitation to a person who has provided notice to ~~the person or if that person is employed by or under contract with a professional telemarketer, has provided notice to the professional telemarketer,~~ that the person does not want to receive telephone solicitations.

CSS  
no ital

100.52(5)

SECTION 8. ~~134.72(2)(e)~~ of the statutes is created to read:

~~134.72(2)(e)~~ Blocking services.

A person may use a blocking service when making a telephone solicitation. <sup>not</sup>

SECTION 9. 134.72 (4) of the statutes is amended to read:

134.72 (4) PENALTY. A person who violates this section may be required to forfeit ~~up to~~ not more than \$500.

SECTION 10. 767.265 (2r) of the statutes is amended to read:

767.265 (2r) Upon entry of each order for child support, maintenance, family support, support by a spouse or the annual receiving and disbursing fee, and upon approval of each stipulation for child support, unless the court finds that income withholding is likely to cause the payer irreparable harm or unless s. 767.267

INSERT 3-17 ✓

9

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

13 SECTION 11. 968.01 (1) of the statutes is amended to read:  
 14 968.01 (1) "Facsimile machine" has the meaning given in s. 134.72 (1) (a) (at).

15 SECTION 9413. Effective dates; district attorneys.

16 (1) TELEPHONE SOLICITATIONS. The treatment of sections 134.72 (1) (a), (ad), (ah)  
 17 (ap), and (am), (2) (c), (d), and (e), and (4), 167.265 (2r), and 968.01 (1) of the statutes  
 18 takes effect on the first day of the 3rd month beginning after publication.

19 (END)

INSERT 4-17 ✓

the renumbering of section 134.72 (2)(b)1. (intro.),  
 a., and b. of the statutes, and the renumbering and amendment  
 of section 134.72 (2)(b)2. of the statutes

1

INSERT 1A:

*three* OTHER STATE GOVERNMENT

This bill creates ~~3~~ *three* prohibitions regarding telephone solicitations, which are defined as unsolicited telephone calls encouraging a person to purchase property, goods, or services. First, the bill prohibits an employee of a professional telemarketer from using a blocking service that withholds from the recipient of the call the name or telephone number associated with the telephone line used to make the call. The bill defines "professional telemarketer" as any business with employees whose primary duty is to make telephone solicitations.

Second, the bill prohibits an employee of a professional telemarketer from making a telephone solicitation to a person who has provided notice to the professional telemarketer that the person does not want to receive telephone solicitations.

Third, the bill prohibits an employee of a professional telemarketer from making a telephone solicitation unless, when initiating the telephone conversation, the employee discloses each the following: 1) the employee's name; 2) the identity of the person selling the property, goods, or services for whom the telephone solicitation is being made; and 3) the purpose of the call.

The bill's prohibitions apply to any interstate telephone solicitation that is received by a person in this state and to any intrastate telephone solicitation. Also, if an employee of a professional telemarketer violates a prohibition, the professional telemarketer is subject to a forfeiture of not more than \$500. Under certain circumstances, a professional telemarketer may be subject to a supplemental forfeiture of not more than \$10,000 if the telephone solicitation was directed against an elderly person or a disabled person. The bill's prohibitions are enforced by DATCP, except that a district attorney, upon informing DATCP, may enforce a prohibition.

*three* In addition, the bill makes changes to a prohibition under current law against any person using a prerecorded message in a telephone solicitation without the consent of the person called. Under this bill, the prohibition applies to any employee of a professional telemarketer, instead of any person. Also, under the bill, if an employee of a professional telemarketer violates the prohibition, the professional telemarketer is subject to the forfeiture and supplemental forfeiture described above. In addition, like the ~~3~~ prohibitions created by the bill, the prohibition applies to any interstate telephone solicitation that is received by a person in this state and to any intrastate telephone solicitation. Finally, the bill requires DATCP to enforce the prohibition, except that a district attorney, upon informing DATCP, may enforce the prohibition. Under current law, district attorneys, not DATCP, are required to enforce the prohibition.

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

**INSERT 2-1:**

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

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

History: 1995 a. 382

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

**100.52 (title) Telephone solicitations.**

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

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

**INSERT 3-6:**

(b) The identity of the person selling the property, goods, or services for whom the telephone solicitation is being made.

**INSERT 3-17:**

**SECTION 4.** 100.52 (6) of the statutes is created to read:

100.52 (6) TERRITORIAL APPLICATION. This section applies to any interstate telephone solicitation received by a person in this state and to any intrastate telephone solicitation.

**SECTION 5.** 100.52 (7) of the statutes is created to read:

1           100.52 (7) ENFORCEMENT. The department, or any district attorney upon  
2 informing the department, may investigate violations of this section and bring an  
3 action for temporary or permanent injunctive or other relief for any violation of this  
4 section.

5           SECTION 6. 100.52 (8) of the statutes is created to read:

6           100.52 (8) PENALTIES. If an employee of a professional telemarketer violates  
7 this section, the professional telemarketer may be required to forfeit not more than  
8 \$500 for each violation.

9           SECTION 7. 134.72 (title) of the statutes is amended to read:

10           **134.72 (title) Prohibition of certain unsolicited messages by telephone**  
11 **or facsimile machine.**

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

12           SECTION 8. 134.72 (1) (c) of the statutes is renumbered 100.52 (1) (e).

13           SECTION 9. 134.72 (2) (title) of the statutes is repealed and recreated to read:

14           134.72 (2) (title) PROHIBITION.

15           SECTION 10. 134.72 (2) (a) of the statutes is renumbered 100.52 (2) and  
16 amended to read:

17           100.52 (2) PRERECORDED TELEPHONE SOLICITATION. ~~No person~~ An employee of a  
18 professional telemarketer may not use an electronically prerecorded message in  
19 telephone solicitation without the consent of the person called.

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

20           SECTION 11. 134.72 (2) (b) (title) of the statutes is repealed.

21           SECTION 12. 134.72 (2) (b) 1. (intro.), a. and b. and 2. of the statutes are  
22 renumbered 134.72 (2) (a) (intro.), 1., and 2. and (b), and 134.72 (2) (b), as  
23 renumbered, is amended to read:

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

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

5           **SECTION 13.** 134.72 (3) (a) of the statutes is amended to read:

6           134.72 (3) (a) *Intrastate*. This section applies to any ~~intrastate telephone~~<sup>✓</sup>  
7 ~~solicitation or intrastate facsimile solicitation.~~

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

8           **SECTION 14.** 134.72 (3) (b) of the statutes is amended to read:

9           134.72 (3) (b) *Interstate*.<sup>✓</sup> This section applies to any ~~interstate telephone~~  
10 ~~solicitation, or interstate facsimile solicitation,~~ received by a person in this state.

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

**INSERT 4-17:**

11  
12 ~~NO~~ 100.264 (2) (intro.)<sup>✓</sup>, 100.52 (title)<sup>✓</sup>, (1) (title)<sup>✓</sup>, (a)<sup>✓</sup>, (b)<sup>✓</sup>, (c)<sup>✓</sup>, and (d)<sup>✓</sup>, (3)<sup>✓</sup>, (4)<sup>✓</sup>, (5)<sup>✓</sup>, (6)<sup>✓</sup>, (7)<sup>✓</sup>,  
13 and (8)<sup>✓</sup>, 134.72 (title)<sup>✓</sup>, (1) (c)<sup>✓</sup>, (2) (title)<sup>✓</sup>, (a)<sup>✓</sup>, and (b) (title)<sup>✓</sup>, ~~(intro.)<sup>✓</sup>, a<sup>✓</sup>, and b<sup>✓</sup>, and~~  
14 ~~VA~~ (3) (a)<sup>✓</sup> and (b)<sup>✓</sup>, and (4) ~~NO~~

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

LRB-1997/2dn

MDK.....

Jld

Andrew Statz:

This version is identical to the previous version, except for the following:

1. Please review the new definition of "professional telemarketer".
2. As a consequence of the new definition of "professional telemarketer", the bill's prohibitions apply to an employee of a professional telemarketer. However, a professional telemarketer, not an employee, is liable for forfeitures. Also, I thought it was necessary to change the description of what must be disclosed under proposed s. 100.52 (3) (b).
3. The current law prohibition on prerecorded telephone solicitations is moved to proposed s. 100.52 (2) and is change to apply to employees of professional telemarketers.
4. DATCP enforces the prohibitions, except that districts attorneys, upon informing DATCP, may also enforce the prohibitions.
5. I changed the definitions of "blocking service" and "caller identification service" so that they refer to the telephone number or name associated with the telephone line used to make a call, rather than to the telephone number or name of the person making the call. This may be a minor issue, but I think it is more accurate to refer to the telephone line, rather than to the actual person who makes a call.

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-1997/2dn  
MDK:jld:km

February 1, 2001

Andrew Statz:

This version is identical to the previous version, except for the following:

1. Please review the new definition of "professional telemarketer."
2. As a consequence of the new definition of "professional telemarketer", the bill's prohibitions apply to an employee of a professional telemarketer. However, a professional telemarketer, not an employee, is liable for forfeitures. Also, I thought it was necessary to change the description of what must be disclosed under proposed s. 100.52 (3) (b).
3. The current law prohibition on prerecorded telephone solicitations is moved to proposed s. 100.52 (2) and is change to apply to employees of professional telemarketers.
4. DATCP enforces the prohibitions, except that districts attorneys, upon informing DATCP, may also enforce the prohibitions.
5. I changed the definitions of "blocking service" and "caller identification service" so that they refer to the telephone number or name associated with the telephone line used to make a call, rather than to the telephone number or name of the person making the call. This may be a minor issue, but I think it is more accurate to refer to the telephone line, rather than to the actual person who makes a call.

Mark D. Kunkel  
Legislative Attorney  
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State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-1997/2

MDK:jld:rs

D-NOTE

SOON

3  
RM  
NOT  
RUN

DOA:.....Statz - Telemarketing requirements

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

Don't  
gen

1 AN ACT ~~to repeal~~ 134.72 (2) (b) (title); ~~to renumber~~ 134.72 (1) (c); ~~to renumber~~  
2 ~~and amend~~ 134.72 (2) (a) and 134.72 (2) (b) 1. (intro.), a. and b. and 2.; ~~to~~  
3 ~~amend~~ 100.264 (2) (intro.), 134.72 (title), 134.72 (3) (a), 134.72 (3) (b) and  
4 134.72 (4); ~~to repeal and recreate~~ 134.72 (2) (title); and ~~to create~~ 100.52  
5 (title), 100.52 (1) (title), 100.52 (1) (a), 100.52 (1) (b), 100.52 (1) (c), 100.52 (1)  
6 (d), 100.52 (3), 100.52 (4), 100.52 (5), 100.52 (6), 100.52 (7) and 100.52 (8) of the  
7 statutes; ~~relating to:~~ the budget.

*Analysis by the Legislative Reference Bureau*

STATE GOVERNMENT

OTHER STATE GOVERNMENT

This bill creates three prohibitions regarding "telephone solicitations," which are defined as unsolicited telephone calls encouraging a person to purchase property, goods, or services. First, the bill prohibits an employee of a professional telemarketer from using a blocking service that withholds from the recipient of the call the name or telephone number associated with the telephone line used to make the call. The bill defines "professional telemarketer" as any business with employees whose primary duty is to make telephone solicitations.

Second, the bill prohibits an employee of a professional telemarketer from making a telephone solicitation to a person who has provided notice to the professional telemarketer that the person does not want to receive telephone solicitations.

Third, the bill prohibits an employee of a professional telemarketer from making a telephone solicitation unless, when initiating the telephone conversation, the employee discloses each the following: 1) the employee's name; 2) the identity of the person selling the property, goods, or services for whom the telephone solicitation is being made; and 3) the purpose of the call.

The bill's prohibitions apply to any interstate telephone solicitation that is received by a person in this state and to any intrastate telephone solicitation. Also, if an employee of a professional telemarketer violates a prohibition, the professional telemarketer is subject to a forfeiture of not more than \$500. Under certain circumstances, a professional telemarketer may be subject to a supplemental forfeiture of not more than \$10,000 if the telephone solicitation was directed against an elderly person or a disabled person. The bill's prohibitions are enforced by DATCP, except that a district attorney, upon informing DATCP, may enforce a prohibition.

In addition, the bill makes changes to a prohibition under current law against any person using a prerecorded message in a telephone solicitation without the consent of the person called. Under this bill, the prohibition applies to any employee of a professional telemarketer, instead of any person. Also, under the bill, if an employee of a professional telemarketer violates the prohibition, the professional telemarketer is subject to the forfeiture and supplemental forfeiture described above. In addition, like the three prohibitions created by the bill, the prohibition applies to any interstate telephone solicitation that is received by a person in this state and to any intrastate telephone solicitation. Finally, the bill requires DATCP to enforce the prohibition, except that a district attorney, upon informing DATCP, may enforce the prohibition. Under current law, district attorneys, not DATCP, are required to enforce the prohibition.

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

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 2.** 100.52 (title) of the statutes is created to read:

6 **100.52 (title) Telephone solicitations.**

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

8 **100.52 (1) (title) DEFINITIONS.**

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

10 100.52 (1) (a) "Blocking service" means a service that allows a person who  
11 makes a telephone call to withhold the telephone number or name associated with  
12 the telephone line used to make the call from a person who receives the call and who  
13 uses a caller identification service.

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

15 100.52 (1) (b) "Business entity" means any organization or enterprise that is  
16 operated for profit or that is nonprofit and nongovernmental, including a sole  
17 proprietorship, association, business trust, corporation, joint venture, limited  
18 liability company, limited liability partnership, partnership, or syndicate.

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

20 100.52 (1) (c) "Caller identification service" means a service that allows a  
21 person who receives a telephone call to identify the telephone number or name  
22 associated with the telephone line used to make the call.

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

24 100.52 (1) (d) "Professional telemarketer" means a business entity with  
25 employees whose primary duty is to make telephone solicitations.

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

2 100.52 (3) TELEPHONE SOLICITATION DISCLOSURES. An employee of a professional  
3 telemarketer may not make a telephone solicitation unless, when initiating the  
4 telephone conversation, the employee discloses to the recipient of the telephone call  
5 each of the following:

6 SECTION 9. 100.52 (4) of the statutes is created to read:

7 100.52 (4) TELEPHONE SOLICITATION NOTICES. An employee of a professional  
8 telemarketer may not make a telephone solicitation to a person who has provided  
9 notice to the professional telemarketer that the person does not want to receive  
10 telephone solicitations.

11 (a) The employee's name.

12 (b) The identity of the person selling the property, goods, or services for whom  
13 the telephone solicitation is being made.

14 (c) The purpose of the call.

15 SECTION 10. 100.52 (5) of the statutes is created to read:

16 100.52 (5) BLOCKING SERVICES. An employee of a professional telemarketer may  
17 not use a blocking service when making a telephone solicitation.

18 SECTION 11. 100.52 (6) of the statutes is created to read:

19 100.52 (6) 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 12. 100.52 (7) of the statutes is created to read:

23 100.52 (7) ENFORCEMENT. The department, or any district attorney upon  
24 informing the department, may investigate violations of this section and bring an

1 action for temporary or permanent injunctive or other relief for any violation of this  
2 section.

3 **SECTION 13.** 100.52 (8) of the statutes is created to read:

4 100.52 (8) PENALTIES. If an employee of a professional telemarketer violates  
5 this section, the professional telemarketer may be required to forfeit not more than  
6 \$500 for each violation.

7 **SECTION 14.** 134.72 (title) of the statutes is amended to read:

8 **134.72 (title) Prohibition of certain unsolicited messages by telephone**  
9 **or facsimile machine.**

10 **SECTION 15.** 134.72 (1) (c) of the statutes is renumbered 100.52 (1) (e).

11 **SECTION 16.** 134.72 (2) (title) of the statutes is repealed and recreated to read:  
12 134.72 (2) (title) PROHIBITION.

13 **SECTION 17.** 134.72 (2) (a) of the statutes is renumbered 100.52 (2) and  
14 amended to read:

15 100.52 (2) PRERECORDED TELEPHONE SOLICITATION. ~~No person~~ An employee of a  
16 professional telemarketer may not use an electronically prerecorded message in  
17 telephone solicitation without the consent of the person called.

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

19 **SECTION 19.** 134.72 (2) (b) 1. (intro.), a. and b. and 2. of the statutes are  
20 renumbered 134.72 (2) (a) (intro.), 1., and 2., and (b), and 134.72 (2) (b), as  
21 renumbered, is amended to read:

22 134.72 (2) (b) Notwithstanding subd. 1. par. (a), a person may not make a  
23 facsimile solicitation to a person who has notified the facsimile solicitor in writing  
24 or by facsimile transmission that the person does not want to receive facsimile  
25 solicitation.



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

LRB-1997/3dn

MDK:.....

Jkd

Andrew Statz:

This version is identical to the previous version, except that it corrects the error regarding the placement of proposed s. 100.52 (3) (a), (b), and (c).✓

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

LRB-1997/3dn  
MDK:jld:pg

February 1, 2001

Andrew Statz:

This version is identical to the previous version, except that it corrects the error regarding the placement of proposed s. 100.52 (3) (a), (b), and (c).

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DOA:.....Statz - Telemarketing requirements

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

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*Analysis by the Legislative Reference Bureau*

**STATE GOVERNMENT**

**OTHER STATE GOVERNMENT**

This bill creates three prohibitions regarding “telephone solicitations,” which are defined as unsolicited telephone calls encouraging a person to purchase property, goods, or services. First, the bill prohibits an employee of a professional telemarketer from using a blocking service that withholds from the recipient of the call the name or telephone number associated with the telephone line used to make the call. The bill defines “professional telemarketer” as any business with employees whose primary duty is to make telephone solicitations.

Second, the bill prohibits an employee of a professional telemarketer from making a telephone solicitation to a person who has provided notice to the professional telemarketer that the person does not want to receive telephone solicitations.

Third, the bill prohibits an employee of a professional telemarketer from making a telephone solicitation unless, when initiating the telephone conversation, the employee discloses each the following: 1) the employee’s name; 2) the identity of the person selling the property, goods, or services for whom the telephone solicitation is being made; and 3) the purpose of the call.

The bill’s prohibitions apply to any interstate telephone solicitation that is received by a person in this state and to any intrastate telephone solicitation. Also,

if an employee of a professional telemarketer violates a prohibition, the professional telemarketer is subject to a forfeiture of not more than \$500. Under certain circumstances, a professional telemarketer may be subject to a supplemental forfeiture of not more than \$10,000 if the telephone solicitation was directed against an elderly person or a disabled person. The bill's prohibitions are enforced by DATCP, except that a district attorney, upon informing DATCP, may enforce a prohibition.

In addition, the bill makes changes to a prohibition under current law against any person using a prerecorded message in a telephone solicitation without the consent of the person called. Under this bill, the prohibition applies to any employee of a professional telemarketer, instead of any person. Also, under the bill, if an employee of a professional telemarketer violates the prohibition, the professional telemarketer is subject to the forfeiture and supplemental forfeiture described above. In addition, like the three prohibitions created by the bill, the prohibition applies to any interstate telephone solicitation that is received by a person in this state and to any intrastate telephone solicitation. Finally, the bill requires DATCP to enforce the prohibition, except that a district attorney, upon informing DATCP, may enforce the prohibition. Under current law, district attorneys, not DATCP, are required to enforce the prohibition.

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

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*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 (title) of the statutes is created to read:

11           **100.52 (title) Telephone solicitations.**

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

2           100.52 (1) (title) DEFINITIONS.

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

4           100.52 (1) (a) “Blocking service” means a service that allows a person who  
5 makes a telephone call to withhold the telephone number or name associated with  
6 the telephone line used to make the call from a person who receives the call and who  
7 uses a caller identification service.

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

9           100.52 (1) (b) “Business entity” means any organization or enterprise that is  
10 operated for profit or that is nonprofit and nongovernmental, including a sole  
11 proprietorship, association, business trust, corporation, joint venture, limited  
12 liability company, limited liability partnership, partnership, or syndicate.

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

14           100.52 (1) (c) “Caller identification service” means a service that allows a  
15 person who receives a telephone call to identify the telephone number or name  
16 associated with the telephone line used to make the call.

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

18           100.52 (1) (d) “Professional telemarketer” means a business entity with  
19 employees whose primary duty is to make telephone solicitations.

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

21           100.52 (3) TELEPHONE SOLICITATION DISCLOSURES. An employee of a professional  
22 telemarketer may not make a telephone solicitation unless, when initiating the  
23 telephone conversation, the employee discloses to the recipient of the telephone call  
24 each of the following:

25           (a) The employee’s name.

1 (b) The identity of the person selling the property, goods, or services for whom  
2 the telephone solicitation is being made.

3 (c) The purpose of the call.

4 **SECTION 9.** 100.52 (4) of the statutes is created to read:

5 100.52 (4) TELEPHONE SOLICITATION NOTICES. An employee of a professional  
6 telemarketer may not make a telephone solicitation to a person who has provided  
7 notice to the professional telemarketer that the person does not want to receive  
8 telephone solicitations.

9 **SECTION 10.** 100.52 (5) of the statutes is created to read:

10 100.52 (5) BLOCKING SERVICES. An employee of a professional telemarketer may  
11 not use a blocking service when making a telephone solicitation.

12 **SECTION 11.** 100.52 (6) of the statutes is created to read:

13 100.52 (6) TERRITORIAL APPLICATION. This section applies to any interstate  
14 telephone solicitation received by a person in this state and to any intrastate  
15 telephone solicitation.

16 **SECTION 12.** 100.52 (7) of the statutes is created to read:

17 100.52 (7) ENFORCEMENT. The department, or any district attorney upon  
18 informing the department, may investigate violations of this section and bring an  
19 action for temporary or permanent injunctive or other relief for any violation of this  
20 section.

21 **SECTION 13.** 100.52 (8) of the statutes is created to read:

22 100.52 (8) PENALTIES. If an employee of a professional telemarketer violates  
23 this section, the professional telemarketer may be required to forfeit not more than  
24 \$500 for each violation.

25 **SECTION 14.** 134.72 (title) of the statutes is amended to read:

1           **134.72 (title) Prohibition of certain unsolicited messages by telephone**  
2 **or facsimile machine.**

3           **SECTION 15.** 134.72 (1) (c) of the statutes is renumbered 100.52 (1) (e).

4           **SECTION 16.** 134.72 (2) (title) of the statutes is repealed and recreated to read:  
5           **134.72 (2) (title) PROHIBITION.**

6           **SECTION 17.** 134.72 (2) (a) of the statutes is renumbered 100.52 (2) and  
7 amended to read:

8           **100.52 (2) PRERECORDED TELEPHONE SOLICITATION.** ~~No person~~ An employee of a  
9 professional telemarketer may not use an electronically prerecorded message in  
10 telephone solicitation without the consent of the person called.

11           **SECTION 18.** 134.72 (2) (b) (title) of the statutes is repealed.

12           **SECTION 19.** 134.72 (2) (b) 1. (intro.), a. and b. and 2. of the statutes are  
13 renumbered 134.72 (2) (a) (intro.), 1., and 2., and (b), and 134.72 (2) (b), as  
14 renumbered, is amended to read:

15           **134.72 (2) (b)** Notwithstanding ~~subd. 1. par. (a)~~, a person may not make a  
16 facsimile solicitation to a person who has notified the facsimile solicitor in writing  
17 or by facsimile transmission that the person does not want to receive facsimile  
18 solicitation.

19           **SECTION 20.** 134.72 (3) (a) of the statutes is amended to read:

20           **134.72 (3) (a) Intrastate.** This section applies to any ~~intrastate telephone~~  
21 ~~solicitation or~~ intrastate facsimile solicitation.

22           **SECTION 21.** 134.72 (3) (b) of the statutes is amended to read:

23           **134.72 (3) (b) Interstate.** This section applies to any ~~interstate telephone~~  
24 ~~solicitation, or~~ interstate facsimile solicitation, received by a person in this state.

25           **SECTION 22.** 134.72 (4) of the statutes is amended to read:

