

2001 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-SB55)

Received: 06/27/2001

Received By: kunkemd

Wanted: As time permits

Identical to LRB:

For: Spencer Black (608) 266-7521

By/Representing: McMurray

This file may be shown to any legislator: NO

Drafter: kunkemd

May Contact:

Addl. Drafters: rmarchan

Subject: Trade Regulation - other
Public Util. - telco

Extra Copies:

Submit via email: YES

Requester's email: Rep.Black@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Telephone solicitor regulation (#153)

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>
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/1			pgreensl 06/28/2001	_____	lrb_docadmin 06/28/2001	lrb_docadmin 06/28/2001	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

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1?	kunkemd 06/27/2001 rmarchan	1 EJS 6/27 01	6 28 pg	6 28 Sub			

FE Sent For:

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Assembly Democrat Budget Amendment Requests

Request number: 153

Agency:

Description: telephone solicitation regulation

Attachments: yes.

Contact: Susan McMurray, Rep. Black's office 266-7521 or at home at 249-1167

please draft an amend to
ASAT 7 to SB 55 to
incorporate the Senate's
telephone solicitation regulation
language see LFB Summary
of Senate, Nat Res/Commerce
Section p. 4 item 4

2. EXCLUDE MOTOR VEHICLE FUEL FROM UNFAIR SALES ACT PROVISIONS

Specifically exclude motor vehicle fuel sales from the unfair sales act (minimum mark-up and loss leader) provisions of the statutes. Further, allow motor vehicle fuel to be exempt from determining sales below cost or subject to minimum markup requirements when sold in combination with or on condition of the purchase of any other items. Allow the sale of motor vehicle fuel at less than cost for any reason (including to induce the purchase of other merchandise or to divert trade from a competitor).

Under current law, the unfair sales act requires wholesalers and retailers of motor vehicle fuel to sell fuel for a certain percentage above their cost to obtain the fuel. The law also prohibits the sale of most items at less than cost in order to induce the purchase of other merchandise or to divert trade unfairly from a competitor.

3. TOBACCO PRODUCT MINIMUM MARK-UP VIOLATIONS

Allow a person who is injured or threatened with injury as a result of a sale or purchase of cigarettes or other tobacco products in violation of the minimum mark-up law to bring an action against the violator for either (a) temporary or permanent injunctive relief; or (b) three times the amount of any monetary loss sustained or an amount equal to \$2,000, whichever is greater, multiplied by each day of continued violation, together with costs, including accounting fees and reasonable attorney fees. Further, allow an association of cigarette wholesalers to bring such an action on behalf of the person who is injured or threatened with injury as a result of a sale or purchase of cigarettes or other tobacco products in violation of the minimum mark-up law.

4. TELEPHONE SOLICITATION REGULATION

Provide \$230,900 annually and 5.5 positions in a new, continuing appropriation to create and maintain a telephone nonsolicitation directory. Fees would be paid through a telephone solicitor registration system.

	Chg. to JFC Funding Positions	
PR-REV	\$230,900	
PR	\$461,800	5.50

Require DATCP to promulgate rules for establishing, maintaining and semiannually updating a directory that includes listings of residential customers who do not wish to receive telephone solicitations from a telephone solicitor (a person, other than an employee or contractor of a nonprofit organization, that employs or contracts with an individual to make a telephone solicitation). Define a nonprofit organization as a tax-exempt corporation, association or organization under 501 c (3), (4), (5) or (19) of the Internal Revenue Code. Define a telephone solicitation as the unsolicited initiation of a telephone conversation for the purpose of encouraging the recipient of the telephone call 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. Require DATCP by rule to establish requirements and procedures for

ADC

PMNR

SDC:.....Keckhaver - CN2502, Telemarketing

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

CAUCUS SENATE AMENDMENT

TO SENATE SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

AA-ASA1-SB55

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 112, line 15: after that line insert:

3 "(jm) Telephone solicitation regulation PR C -0- -0-".

4 2. Page 296, line 15: after that line insert:

5 "SECTION 434m. 20.115 (8) (jm) of the statutes is created to read:

6 20.115 (8) (jm) *Telephone solicitation regulation*. All moneys received from
7 telephone solicitor registration and registration renewal fees paid under the rules
8 promulgated under s. 100.52 (3) (a) for establishing and maintaining the
9 nonsolicitation directory under s. 100.52 (2)".

10 3. Page 890, line 16: after that line insert:

1 **“SECTION 2429d.** 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 (10)
5 (b) or a rule promulgated under one of those sections, the person shall be subject to
6 a supplemental forfeiture not to exceed \$10,000 for that violation if the conduct by
7 the defendant, for which the violation was imposed, was perpetrated against an
8 elderly person or disabled person and if the court finds that any of the following
9 factors is present.”.

10 **4.** Page 890, line 25: after that line insert:

11 **“SECTION 2435.** 100.52 (title) of the statutes is created to read:

12 **100.52 (title) Telephone solicitations.**

13 **SECTION 2436.** 100.52 (1) (title) of the statutes is created to read:

14 **100.52 (1) (title) DEFINITIONS.**

15 **SECTION 2437b.** 100.52 (1) (a) of the statutes is created to read:

16 100.52 (1) (a) “Affiliate,” when used in relation to any person, means another
17 person who owns or controls, is owned or controlled by, or is under common
18 ownership or control with such person.

19 **SECTION 2438b.** 100.52 (1) (b) of the statutes is created to read:

20 100.52 (1) (b) “Basic local exchange service” has the meaning in s. 196.01 (1g).

21 **SECTION 2439b.** 100.52 (1) (c) of the statutes is created to read:

22 100.52 (1) (c) “Nonprofit organization” means a corporation, association, or
23 organization described in section 501 (c) (3), (4), (5), or (19) of the Internal Revenue

1 Code that is exempt from taxation under section 501 (a) of the Internal Revenue
2 Code.

3 **SECTION 2440b.** 100.52 (1) (d) of the statutes is created to read:

4 100.52 (1) (d) “Nonresidential customer” means a person, other than a
5 residential customer, who is furnished with telecommunications service by a
6 telecommunications utility.

7 **SECTION 2440d.** 100.52 (1) (e) of the statutes is created to read:

8 100.52 (1) (e) “Nonsolicitation directory” means the directory established in
9 rules promulgated by the department under sub. (2) (b).

10 **SECTION 2440f.** 100.52 (1) (f) of the statutes is created to read:

11 100.52 (1) (f) “Residential customer” means an individual who is furnished
12 with basic local exchange service by a telecommunications utility, but does not
13 include an individual who operates a business at his or her residence.

14 **SECTION 2440h.** 100.52 (1) (g) of the statutes is created to read:

15 100.52 (1) (g) “Telecommunications service” has the meaning given in s. 196.01
16 (9m).

17 **SECTION 2440j.** 100.52 (1) (h) of the statutes is created to read:

18 100.52 (1) (h) “Telecommunications utility” has the meaning given in s. 196.01
19 (10).

20 **SECTION 2440L.** 100.52 (1) (j) of the statutes is created to read:

21 100.52 (1) (j) “Telephone solicitor” means a person, other than a nonprofit
22 organization or an employee or contractor of a nonprofit organization, that employs
23 or contracts with an individual to make a telephone solicitation.

24 **SECTION 2440n.** 100.52 (2) of the statutes is created to read:

1 100.52 (2) NONSOLICITATION DIRECTORY LISTING. (a) Upon a request by a
2 residential customer, the department shall include in the nonsolicitation directory
3 a listing indicating that the residential customer does not want to receive any
4 telephone solicitation made on behalf of a telephone solicitor.

5 (b) The department shall promulgate rules for establishing, maintaining, and
6 semiannually updating a directory that includes listings of residential customers
7 who do not wish to receive telephone solicitations made on behalf of telephone
8 solicitors. The rules promulgated under this paragraph shall establish requirements
9 and procedures for a residential customer to request a listing in the directory. The
10 rules shall also require a residential customer who requests a listing in the directory
11 to notify the department on a biennial basis if the residential customer wishes to
12 continue to be included in the directory. The department shall eliminate a
13 residential customer from the directory if the customer does not make the biennial
14 notification.

15 (c) Except for copies of the nonsolicitation directory that are provided to
16 registered telephone solicitors under par. (d), the nonsolicitation directory is not
17 subject to inspection, copying, or receipt under s. 19.35 (1) and may not be released
18 by the department.

19 (d) The department shall, on a semiannual basis, make the nonsolicitation
20 directory available by electronic transmission only to telephone solicitors who are
21 registered under sub. (3). Upon the request of a telephone solicitor registered under
22 sub. (3), the department shall also provide a printed copy of the nonsolicitation
23 directory to the telephone solicitor. A telephone solicitor who receives a copy of the
24 directory, or to whom the directory is made available by electronic transmission,
25 under this paragraph may not solicit or accept from any person, directly or indirectly,

1 anything of value in exchange for providing the person with any information
2 included in the copy.

3 **SECTION 2441b.** 100.52 (3) of the statutes is created to read:

4 100.52 (3) REGISTRATION OF TELEPHONE SOLICITORS. (a) The department shall
5 promulgate rules that require any telephone solicitor who requires an employee or
6 contractor to make a telephone solicitation to a residential customer in this state to
7 register with the department, obtain a registration number from the department,
8 and pay a registration fee to the department. The amount of the registration fee shall
9 be based on the cost of establishing the nonsolicitation directory, and the amount that
10 an individual telephone solicitor is required to pay shall be based on the number of
11 telephone lines used by the telephone solicitor to make telephone solicitations. The
12 rules shall also require a telephone solicitor that registers with the department to
13 pay an annual registration renewal fee to the department. The amount of the
14 registration renewal fee shall be based on the cost of maintaining the nonsolicitation
15 directory.

16 (b) The department shall promulgate rules that require an individual who
17 makes a telephone solicitation on behalf of a telephone solicitor to identify at the
18 beginning of the telephone conversation each of the following:

19 1. The telephone solicitor.

20 2. If different than the telephone solicitor, the person selling the property,
21 goods, or services, or receiving the contribution, donation, grant, or pledge of money,
22 credit, property, or other thing of any kind, that is the reason for the telephone
23 solicitation.

24 **SECTION 2442b.** 100.52 (4) (title) of the statutes is created to read:

25 100.52 (4) (title) TELEPHONE SOLICITOR REQUIREMENTS.

1 **SECTION 2442d.** 100.52 (4) (a) 2. and 3. of the statutes are created to read:

2 100.52 (4) (a) 2. Make a telephone solicitation to a residential customer if the
3 nonsolicitation directory that is provided or made available to the telephone solicitor
4 under sub. (2) (d) includes a listing for the residential customer.

5 3. Make a telephone solicitation to a nonresidential customer if the
6 nonresidential customer has provided notice by mail to the telephone solicitor that
7 the nonresidential customer does not wish to receive telephone solicitations.

8 **SECTION 2442f.** 100.52 (4) (b) of the statutes is created to read:

9 100.52 (4) (b) A telephone solicitor may not do any of the following:

10 1. Require an employee or contractor to make a telephone solicitation to a
11 person in this state unless the telephone solicitor is registered with the department
12 under the rules promulgated under sub. (3) (a).

13 2. Require an employee or contractor to make a telephone solicitation that
14 violates par. (a).

15 **SECTION 2442h.** 100.52 (4) (c) of the statutes is created to read:

16 100.52 (4) (c) A telephone solicitor or employecc or contractor of a telephone
17 solicitor that makes a telephone solicitation to a nonresidential customer shall, upon
18 the request of the nonresidential customer, provide the mailing address for notifying
19 the telephone solicitor that the nonresidential customer does not wish to receive
20 telephone solicitations.

21 **SECTION 2443b.** 100.52 (5) of the statutes is created to read:

22 100.52 (5) NONPROFIT ORGANIZATION REQUIREMENTS. A nonprofit organization or
23 an employee or contractor of a nonprofit organization may not make a telephone
24 solicitation to a residential customer if the residential customer has provided notice
25 by telephone, mail, or facsimile transmission to the nonprofit organization that the

1 residential customer does not wish to receive telephone solicitations. A nonprofit
2 organization may not require an employee or contractor to make a telephone
3 solicitation that violates this subsection.

4 **SECTION 2444b.** 100.52 (6) of the statutes is created to read:

5 100.52 (6) EXCEPTIONS. Subsections (4) (a) 2. and 3. and (5) do not apply to a
6 telephone solicitation that satisfies any of the following:

7 (a) The telephone solicitation is made to a recipient in response to the
8 recipient's express written request for the telephone solicitation.

9 (b) The telephone solicitation is made to a recipient who is a current client of
10 the person selling the property, goods, or services, or receiving the contribution,
11 donation, grant, or pledge of money, credit, property, or other thing of any kind, that
12 is the reason for the telephone solicitation. This paragraph does not apply if the
13 recipient is a current client of an affiliate of such a person, but is not a current client
14 of such a person.

15 **SECTION 2445b.** 100.52 (7) of the statutes is created to read:

16 100.52 (7) TERRITORIAL APPLICATION. This section applies to any interstate
17 telephone solicitation received by a person in this state and to any intrastate
18 telephone solicitation.

19 **SECTION 2446b.** 100.52 (8) of the statutes is created to read:

20 100.52 (8) PRIVATE CAUSE OF ACTION. Any person who suffers damages as the
21 result of another person violating this section may bring an action against the person
22 who violated this section to recover the amount of those damages.

23 **SECTION 2446d.** 100.52 (9) of the statutes is created to read:

1 100.52 (9) 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.

4 **SECTION 2446f.** 100.52 (10) of the statutes is created to read:

5 100.52 (10) PENALTIES. (a) Except as provided in par. (b), a person who violates
6 this section may be required to forfeit not less than \$100 nor more than \$500 for each
7 violation.

8 (b) A telephone solicitor that violates sub. (4) or a nonprofit organization that
9 violates sub. (5) may be required to forfeit not less than \$1,000 nor more than \$10,000
10 for each violation.”.

11 **5.** Page 940, line 4: after that line insert:

12 “**SECTION 2818.** 134.72 (title) of the statutes is amended to read:

13 **134.72 (title) Prohibition of certain unsolicited messages by telephone**
14 **or facsimile machine.**

15 **SECTION 2819b.** 134.72 (1) (c) of the statutes is renumbered 100.52 (1) (i) and
16 amended to read:

17 100.52 (1) (i) “Telephone solicitation” means the unsolicited initiation of a
18 telephone conversation for the purpose of encouraging ~~a person~~ the recipient of the
19 telephone call to purchase property, goods or services or to make a contribution,
20 donation, grant, or pledge of money, credit, property, or other thing of any kind or
21 value.

22 **SECTION 2820d.** 134.72 (2) (a) (title) of the statutes is repealed.

23 **SECTION 2821b.** 134.72 (2) (a) of the statutes is renumbered 100.52 (4) (a)
24 (intro.) and amended to read:

1 100.52 (4) (a) (intro.) ~~No person may use~~ A telephone solicitor or an employee
2 or contractor of a telephone solicitor may not do any of the following:

3 1. Use an electronically prerecorded message in telephone solicitation without
4 the consent of the person called recipient of the telephone call.

5 **SECTION 2822.** 134.72 (2) (b) (title) of the statutes is repealed.

6 **SECTION 2822m.** 134.72 (2) (b) of the statutes is renumbered 134.72 (2), and
7 134.72 (2) (b), as renumbered, is amended to read:

8 134.72 (2) (b) Notwithstanding ~~subd. 1, par. (a)~~, a person may not make a
9 facsimile solicitation to a person who has notified the facsimile solicitor in writing
10 or by facsimile transmission that the person does not want to receive facsimile
11 solicitation.

12 **SECTION 2824.** 134.72 (3) (a) of the statutes is amended to read:

13 134.72 (3) (a) *Intrastate.* This section applies to any ~~intrastate telephone~~
14 ~~solicitation or intrastate facsimile solicitation.~~

15 **SECTION 2825.** 134.72 (3) (b) of the statutes is amended to read:

16 134.72 (3) (b) *Interstate.* This section applies to any ~~interstate telephone~~
17 ~~solicitation, or interstate facsimile solicitation,~~ received by a person in this state.

18 **SECTION 2826.** 134.72 (4) 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~~ not more than \$500."

21 **6.** Page 1300, line 12: after that line insert:

22 “(4) TELEPHONE SOLICITATION REGULATION. The authorized FTE positions for
23 the department of agriculture, trade and consumer protection are increased by 5.5
24 PR positions, to be funded from the appropriation under section 20.115 (8) (jm) of the

4r

1 statutes, as created by this act, for the purpose of regulating telephone solicitations
2 under section 100.52 of the statutes, as created by this act.”.

3 (END)