

**Committee Name:**

**Senate Committee – Privacy, Electronic Commerce and Financial Institutions  
(SC-PECFI)**

**Appointments**

01hr\_SC-PECFI\_Appoint\_pt00

**Clearinghouse Rules**

01hr\_SC-PECFI\_CRule\_01-

**Committee Hearings**

01hr\_SC-PECFI\_CH\_pt00

**Committee Reports**

01hr\_SC-PECFI\_CR\_pt00

**Executive Sessions**

01hr\_SC-PECFI\_ES\_pt00

**Hearing Records**

01hr\_ab0000

01hr\_sb0000

**Misc.**

01hr\_SC-PECFI\_\_Misc\_\_pt02

**Record of Committee Proceedings**

01hr\_SC-PECFI\_RCP\_pt00

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2-15-'01  
BILL NO. SB40  
OR "Do Not Call"  
SUBJECT \_\_\_\_\_

Doug Johnson  
(NAME)  
1 E. Main - #305  
(Street Address or Route Number)  
Madison 53702  
(City and Zip Code)  
WI Merchants Fed-  
(Representing) eration

Speaking in Favor:   
Speaking Against:   
Registering in Favor:   
but not speaking:  
Registering Against:   
but not speaking:  
Speaking for information only; Neither for nor against:

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State Capitol - B35 South  
P.O.Box 7882  
Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2/15/01  
BILL NO. SB40 - Do Not  
OR Call Legislation  
SUBJECT \_\_\_\_\_

Rachel Winder  
(NAME)  
37 W. Broad St. Ste. 750  
(Street Address or Route Number)  
Columbus, OH 43215  
(City and Zip Code)  
MCI - World Com  
(Representing)

Speaking in Favor:   
Speaking Against:   
Registering in Favor:   
but not speaking:  
Registering Against:   
but not speaking:  
Speaking for information only; Neither for nor against:

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**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: February 15, 2001  
BILL NO. SB40 - Do Not  
OR Call Legislation  
SUBJECT \_\_\_\_\_

Ton (Driessen)  
(NAME) Charles & Brady LLP  
411 E. Wisconsin Ave  
(Street Address or Route Number)  
Milwaukee, WI 53202-4497  
(City and Zip Code)  
MCI - WorldCom  
(Representing)

Speaking in Favor:   
Speaking Against:   
Registering in Favor:   
but not speaking:  
Registering Against:   
but not speaking:  
Speaking for information only; Neither for nor against:

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**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2/15/01

BILL NO. SB 40  
OR

SUBJECT \_\_\_\_\_

Tom Hanson

(NAME)

1 S. Pinckney st, sk 725  
(Street Address or Route Number)

MADISON WI  
(City and Zip Code)

WI Financial Services Association  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:  
but not speaking:

Registering Against:  
but not speaking:

Speaking for information  
only; Neither for nor against:

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**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2/15/01

BILL NO. SB 40  
OR

SUBJECT \_\_\_\_\_

Tom Moore

(NAME)

1 S. Pinckney st, sk 725  
(Street Address or Route Number)

MADISON WI  
(City and Zip Code)

WI Cable Communications Association  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:  
but not speaking:

Registering Against:  
but not speaking:

Speaking for information  
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**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2/15/01

BILL NO. SB 40  
OR

SUBJECT \_\_\_\_\_

Bill Reid

(NAME)

756 N. Milw. St.  
(Street Address or Route Number)

MILWAUKEE, WI 53202  
(City and Zip Code)

MMAC  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:  
but not speaking:

Registering Against:  
but not speaking:

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**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: Feb 15, 2001

BILL NO. SB 40

OR  
SUBJECT \_\_\_\_\_

JOAN HANSEN  
(NAME)

501 E Washington Ave  
(Street Address or Route Number)

MADISON, WI 53703  
(City and Zip Code)

WYU  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:  
but not speaking:

Registering Against:  
but not speaking:

Speaking for information  
only; Neither for nor against:

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**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 02/15/01

BILL NO. SB 40

OR  
SUBJECT PROBATION

HELPRESENT

PATRICK FESSE  
(NAME)

10 N. CARROLLIST  
(Street Address or Route Number)

MAD 53703  
(City and Zip Code)

AMERICAN GENERAL  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:  
but not speaking:

Registering Against:  
but not speaking:

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only; Neither for nor against:

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**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2-15-01

BILL NO. SB 40

OR  
SUBJECT \_\_\_\_\_

STEVE URSO  
(NAME)

340 COYIER LANE  
(Street Address or Route Number)

MADISON, WI 53717  
(City and Zip Code)

WIS. PROF. POLICE ASSOC.  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:  
but not speaking:

Registering Against:  
but not speaking:

Speaking for information  
only; Neither for nor against:

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Madison, WI 53707-7882

**SENATE HEARING SLIP**

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DATE: 2/15/01  
BILL NO. SB 40  
OR  
SUBJECT \_\_\_\_\_

Lynn Knauf  
(NAME)  
3025 Highland Phwy  
(Street Address or Route Number)  
Douglas Grove, IL 60515  
(City and Zip Code)  
Alliance of American Insurers  
(Representing)

Speaking in Favor:   
Speaking Against:   
Registering in Favor:   
but not speaking:  
Registering Against:   
but not speaking:  
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Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: \_\_\_\_\_  
BILL NO. SB 40  
OR  
SUBJECT \_\_\_\_\_

Chet Gerlach  
(NAME)  
44 E. Mifflin  
(Street Address or Route Number)  
Madison, WI 53703  
(City and Zip Code)  
Sprint  
(Representing)

Speaking in Favor:   
Speaking Against:   
Registering in Favor:   
but not speaking:  
Registering Against:   
but not speaking:  
Speaking for information only; Neither for nor against:

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Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: \_\_\_\_\_  
BILL NO. SB 40  
OR  
SUBJECT \_\_\_\_\_

Chet Gerlach  
(NAME)  
44 E. Mifflin  
(Street Address or Route Number)  
Madison, Wi. 53703  
(City and Zip Code)  
State Farm Insurance  
(Representing)

Speaking in Favor:   
Speaking Against:   
Registering in Favor:   
but not speaking:  
Registering Against:   
but not speaking:  
Speaking for information only; Neither for nor against:

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**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2/15/01

BILL NO. SB 40

OR

SUBJECT \_\_\_\_\_

Liz Wessel  
(NAME)

122 State St.  
(Street Address or Route Number)

Madison, WI 53711  
(City and Zip Code)

Wisconsin's Env. Decade  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:   
but not speaking:

Registering Against:   
but not speaking:

Speaking for information only; Neither for nor against:

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Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2-15-01

BILL NO. SB 40

OR

SUBJECT \_\_\_\_\_

John Dragisic  
(NAME)

14370 Hulsdoela  
(Street Address or Route Number)

Elm Grove 53122  
(City and Zip Code)

Wisconsin Citizen  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:   
but not speaking:

Registering Against:   
but not speaking:

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**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: Feb 15

BILL NO. SB 40

OR

SUBJECT \_\_\_\_\_

Carolyn Castore  
(NAME)

6706 N. 52nd  
(Street Address or Route Number)

Milwaukee  
(City and Zip Code)

Wisconsin Citizen  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:   
but not speaking:

Registering Against:   
but not speaking:

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**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2/15/01

BILL NO. \_\_\_\_\_  
OR

SUBJECT SB 40 - Telephone Solicitation

BRIAN E O'BRIEN  
(NAME)

1651 WOLF RUN DR  
(Street Address or Route Number)

Richfield, WI 53072  
(City and Zip Code)  
WI Assn. of Insurance Independent Ins + Financial Advisors Agents Professional Ins. Agents of WI  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:   
but not speaking:

Registering Against:   
but not speaking:

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**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2/15

BILL NO. SB 40  
OR

SUBJECT \_\_\_\_\_

Eric Englund  
(NAME)

44 E. Madison  
(Street Address or Route Number)

Madison  
(City and Zip Code)  
WV Ins. Alliance  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:   
but not speaking:

Registering Against:   
but not speaking:

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**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: Feb 15 2001

BILL NO. SB 40  
OR

SUBJECT \_\_\_\_\_

Pat Osborne  
(NAME)

10 E Doty Ste 300  
(Street Address or Route Number)

Madison WI 53703  
(City and Zip Code)  
WI Assoc Life + Health Insurers (WALHI)  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:   
but not speaking:

Registering Against:   
but not speaking:

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**SENATE HEARING SLIP**

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DATE: 2/15/01

BILL NO. SB40  
OR

SUBJECT \_\_\_\_\_

RICK GALE  
(NAME)

2831 S. 114<sup>TH</sup> STREET  
(Street Address or Route Number)

WEST ACRES, WI 53227  
(City and Zip Code)

FIRE FIGHTERS  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:  
but not speaking:

Registering Against:  
but not speaking:

Speaking for information  
only; Neither for nor against:

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DATE: 2/15/01

BILL NO. SB40  
OR

SUBJECT \_\_\_\_\_

Robert Baird  
(NAME)

960 S. Springdale Rd.  
(Street Address or Route Number)

Waukesha 53186  
(City and Zip Code)

Professional Fire Fighters of WI  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:  
but not speaking:

Registering Against:  
but not speaking:

Speaking for information  
only; Neither for nor against:

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**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2-15-01

BILL NO. SB 40  
OR

SUBJECT \_\_\_\_\_

MALCOLM BRETT  
(NAME)

5001 Wilmers Circle  
(Street Address or Route Number)

Oregon WI 53575  
(City and Zip Code)

WI Public Television  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:  
but not speaking:

Registering Against:  
but not speaking:

Speaking for information  
only; Neither for nor against:

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**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2/15/01

BILL NO. SB 40

OR  
SUBJECT \_\_\_\_\_

Rep. Steve Freese  
(NAME)

(Street Address or Route Number)

(City and Zip Code)

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:  
but not speaking:

Registering Against:  
but not speaking:

Speaking for information  
only; Neither for nor against:

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Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: \_\_\_\_\_

BILL NO. \_\_\_\_\_  
OR

SUBJECT \_\_\_\_\_

Rep. Staskunas  
(NAME)

(Street Address or Route Number)

(City and Zip Code)

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:  
but not speaking:

Registering Against:  
but not speaking:

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**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2/15/01

BILL NO. SB 40

OR  
SUBJECT Telecom rules

by DHTCP for telephone

Education  
(NAME)

WisData Privacy Project  
(Street Address or Route Number)

122 State St # 409

(City and Zip Code)

Madison 53103  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:  
but not speaking:

Registering Against:  
but not speaking:

Speaking for information  
only; Neither for nor against:

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**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2/15/01  
BILL NO. SB 40  
OF  
SUBJECT \_\_\_\_\_

JOHN METCALF  
(NAME)

(Street Address or Route Number)  
MADISON, WI  
(City and Zip Code)  
WMC  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:  
but not speaking:

Registering Against:  
but not speaking:

Speaking for information  
only; Neither for nor against:

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**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2/15  
BILL NO. SB 40  
OF  
SUBJECT \_\_\_\_\_

JIM LESNHART  
(NAME)

(Street Address or Route Number)  
  
(City and Zip Code)  
AT&T  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:  
but not speaking:

Registering Against:  
but not speaking:

Speaking for information  
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**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2/13/01  
BILL NO. SB 40 & 91  
OF  
SUBJECT \_\_\_\_\_

Bill Demichiel/Jim Rabbitt  
(NAME)

WATCA - 2811 Agriculture Drive  
(Street Address or Route Number)

Madison, WI  
(City and Zip Code)

WATCA  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:  
but not speaking:

Registering Against:  
but not speaking:

Speaking for information  
only; Neither for nor against:

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**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: \_\_\_\_\_  
BILL NO. \_\_\_\_\_  
OF  
SUBJECT SB 40 & 41

Senator Cuperbach  
(NAME)

\_\_\_\_\_  
(Street Address or Route Number)

\_\_\_\_\_  
(City and Zip Code)

\_\_\_\_\_  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:  
but not speaking:

Registering Against:  
but not speaking:

Speaking for information  
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## 2001 Telemarketing Responsibility Legislation

Julie

- Creates a "NO CALL" list that citizens can have their name placed on. The list is maintained by DATCP and ALL telemarketing companies calling from and into Wisconsin must abide by the "NO CALL" list.
- This bill will help those who truly do not want to be telemarketed.
- Everyday we hear stories of those who are victimized by telemarketers - telemarketers who often prey on the elderly. The bill includes a violating the "NO CALL" list has an enhanced penalty offence when the elderly and disabled are targeted.
- States like Florida, Georgia, and Tennessee, New Jersey and many others have successfully implemented laws like this to protect the privacy of those who take an active role in their own consumer protection.
- Calling a 1-800 number or filling out an online form will place an individual on the "NO CALL" list for a two year period – in order to maintain an accurate list folks will have to call in every two years.

### **COVERED by the BILL**

All telemarketing solicitors including political campaigns. Exempt from the bill are non-profit organizations 501c3 and individuals making calls(not getting paid specifically to telemarket).

### **OPEN RECORDS ISSUE**

The list is EXEMPT from public records law because there are many people who have unlisted numbers for a variety of reasons including abusive relationships. The list can be released only to licensed telemarketers and may not be re-released in any form.

### **ANNUAL LICENSE of Telemarketers**

It will probably cost telemarketing solicitors \$600 per year to be licensed to telemarket in Wisconsin. In addition, there will be a one time start up fee to cover departmental costs for starting the program – THEREFORE the program is completely PROGRAM REVENUE and doesn't cost tax payers or participants a dime.

### **FINES**

\$500 for the telemarketer and \$10,000 for the telemarketing solicitor (the business) with an enhanced \$10,000 for targeting the elderly and disabled.

## **PRIVATE CAUSE OF ACTION**

Anyone who is on the list that is called and feels they have been damaged by that call can bring action against the telemarketing firm for those damages (not including attny fees)

## **WHY STATE – FEDERAL AND DMA GOOD ENOUGH? NO**

Federal law requires consumers to be proactive with every call, this bill makes it a one stop shop, better especially for elderly and those with busy lives. This bill gives better state enforcement with stronger fines and penalties. Penalty enhancer for targeting the elderly. The Direct Marketing Association list is optional even for DMA members – those who sign up stay on the list only for one year and the DMA could top the list tomorrow and there would be no options for consumers.

## **Possible Changes to SB 40 – Telemarketing Responsibility Bill**

Remove provision requiring registration number given at the beginning of the phone conversation. Must still say who is paying for and what telephone solicitors company they work and who is paying for the call.

Require the no-call list to be provided, updated every six months to telemarketing firms.

Require that the list be available electronically to telemarketing solicitors

Allow for on-line registration for the “No Call” list as well as over the phone, this saves money in the program

A possible clarification in the definition of telephone solicitor so that is clear without a doubt that an individual making calls is not covered under the bill.

Possible further exemption for all non-profits when making calls to current members

I am leaving my door open for consideration of changes to make the bill clearer and easier to comply with – things that will not be considered are a laundry list of exemptions – I want this bill to be effective



State of Wisconsin  
Scott McCallum, Governor

Department of Agriculture, Trade and Consumer Protection  
Ben Brancel, Secretary

DATE: February 15, 2001

TO: Senator John Erpenbach, Chair  
Senate Committee on Privacy, Electronic Commerce and Financial Institutions

FROM: Bill Oemichen, Administrator  
Division of Trade & Consumer Protection *Bill Oemichen*

RE: DATCP Support for SB 40: Telemarketing

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The Department of Agriculture, Trade & Consumer Protection appreciates this opportunity to testify in support of SB 40.

Telemarketing is a significant, and increasing, consumer concern in Wisconsin. In 2000, the Department received 729 written consumer complaints regarding telemarketing practices and an additional 2,734 consumer contacts (by telephone or in person) on telemarketing issues. This is a significant increase from 1999, when we reported 625 complaints and 1,804 consumer contacts on telemarketing. Moreover, we believe, based on our considerable experience, that each complaint we receive represents only a small percentage of Wisconsin consumers who share the same grievance.

Telemarketing fraud is the fifth top-ranked consumer complaint in Wisconsin in 2000 after ranking seventh in 1999 and eighth in 1998. By comparison, telemarketing complaints were not in the top ten lists of consumer complaints in either 1996 or 1997. Additionally, halting telemarketing calls is the most frequent consumer issue raised when speakers from the Department make public presentations.

In response to this disturbing trend, the Board of Agriculture, Trade and Consumer Protection enacted a new Direct Marketing Rule, ATCP 127, that provides new protections for consumers from telemarketing practices. This rule became effective on August 1, 1998.

The new Direct Marketing Rule adopts the provisions of the Federal Telemarketing Law, a law that is well known to the direct marketing industry. Furthermore, ATCP 127 adopts additional protections for consumers and these protections are based on the complaint, investigations and prosecutions that occurred prior to August 1, 1999.

The rule requires telemarketers to identify themselves, their company, and that the purpose of the call is to solicit a sale. The rule also requires a telemarketer to place the consumer on their company's do not call list if requested by the consumer. The rule would be complimented by SB 40, which would allow consumers to be placed on a general do not call list that would be provided to all telemarketers who have registered with the Department.

Senator John Erpenbach, Chair  
Senate Committee on Privacy, Electronic Commerce and Financial Institutions  
February 15, 2001  
Page Two

The Department widely publicized this new rule on television, on the radio and in the state's newspapers. Furthermore, informational notices were sent to a number of industry trade groups and direct marketers. Unfortunately, the Department is already investigating a number of violations of our new rule.

The Department of Agriculture, Trade & Consumer Protection supports the goals of SB 40: to provide consumers with a meaningful way to get off of telemarketing lists and to provide the appropriate penalties for non-compliance. The top desire of Wisconsin consumers, as expressed to us through written complaints, telephone calls, and during presentations, is to obtain a greater ability to stop unwanted telemarketing calls. This bill would go a long way towards accomplishing this important consumer goal.

The Department wants however, to ensure full funding is provided because we are unable to absorb consumer protection duties of this magnitude. Our attached fiscal estimate calls for one year to write the rules before registration of business and consumers can begin. We also assume that due to the expected wide consumer interest in being placed on this list, significant temporary staff help will be necessary. Of course, we will attempt to reduce the need for temporary help by making consumer registration available on line through the new Wisconsin Consumer Portal.

Thank you again for the opportunity to appear before the committee. We would be happy to answer any questions you may have.

TO: Senate Committee on Privacy, Electronic Commerce and  
Financial Institutions

FROM: DeHart & Darr, on behalf of The Direct Marketing Association, Inc.

CONTACT: Bill McCoshen or Eric Petersen at Wimmer & Co. (256-5223)

RE: Senate Bill 40

DATE: Thursday, February 15, 2001

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## **I. Introduction**

We believe that Senate Bill 40 ("S.B. 40") offers an additional layer of governmental regulation which is:

1. unneeded given existing federal law;
2. ineffective against out-of-state telemarketers; and
3. bad for Wisconsin businesses.

Accordingly, S.B. 40 should not be adopted. An alternate approach which requires use of an existing "do-not-call" system for calls from large telemarketers is set forth in Section V herein for your consideration. Over 78,000 Wisconsin consumers are currently registered on that do-not-call list.

## **II. The Telemarketing Industry**

The telemarketing industry constitutes a significant segment of the United States economy. According to a study conducted by Wharton Economic Forecasting Associates for The Direct Marketing Association (The "DMA"), direct marketing sales in the United States exceeded \$1,730 billion in 2000, of which about \$612 billion was generated through telephone marketing. Over 5.4 million people are employed in the telemarketing industry on a national level.

The numbers are equally significant in Wisconsin. According to industry statistics, the telemarketing industry currently employs over 109,000 people in Wisconsin and accounts for over \$11 billion of sales.

Telemarketing jobs are financially rewarding and offer opportunities for advancement. As one might predict, the locations of Wisconsin's telemarketing

firms are scattered throughout Wisconsin because they are not dependent on being close to particular resources or facilities. The only real limit on mobility and location is the need for a work force that is sufficiently educated and articulate so that the telemarketing can be successful. There are 80 direct marketers headquartered in Wisconsin, and 127 direct marketers have operations in this state.

### **III. The Telemarketing Industry Is Already Fully Regulated Under Federal "Do Not Call" Legislation**

Recognizing the inherent interstate nature of telephone solicitation by national telemarketers, Congress passed the Telephone Consumer Protection Act ("TCPA") on December 20, 1991. As indicated in the Congressional Statement of Findings that accompanied the TCPA, the TCPA was specifically designed to be a uniform national response to consumer concerns about the growing volume of unsolicited telephone marketing calls in the United States.

The TCPA contains a number of specific statutory restrictions, including specific restrictions on the use of automatic telephone dialing systems, artificial or prerecorded voice messages, and the use of fax machines to send unsolicited advertisements.

In addition, Congress directed the FCC to adopt regulations to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object. The FCC adopted its rules and regulations implementing the TCPA on December 20, 1992.

The federal "do-not-call" rules are very straightforward. Under the federal rules, any person engaged in telephone solicitation to a consumer's home must maintain a record of such consumer's request not to receive future telephone solicitations from that caller. All the consumer has to do is clearly state that the consumer wants to be added to the caller's do-not-call list. The caller is required to keep a record of such request for 10 years from the time of the request, and may not make further telephone solicitations to that consumer's home during that 10 year period.

The result is a federal system of regulation which is simple for all parties to understand and implement, while being free to the consumer.

Under the current federal law, a consumer's do-not-call request only applies to the person or entity placing the call. This means, of course, that each time a consumer receives a call from a different person, that consumer must request the new caller to not call that consumer again. However, that system was dictated by the FCC. The TCPA expressly provides that the FCC can provide for the use of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations, but the FCC has determined that there is no need for such a database.

Since 1985, the telemarketing industry has offered consumers a way to reduce the number of telephone solicitation calls to their homes through the Telephone Preference Service ("TPS"), a service of The Direct Marketing Association. The TPS offers consumers the ability to have their names removed from national telephone solicitation lists. Because The DMA requires its members to clean their lists against the TPS, the TPS constitutes an existing national do-not-call list designed to ensure that consumers who wish to not be disturbed are not called by large telemarketers. There is no cost to the consumer for the TPS.

#### **IV. S.B. 40 Should Not Be Passed**

While the thrust of S.B. 40 is to regulate large, principally out-of-state, telemarketers, the definitions set forth in S.B. 40 take in a far wider cross-section of economic activity. Under S.B. 40, anyone who employs an individual who makes "telephone solicitations" is a "telephone solicitor" and thus is subject to the law (especially as S.B. 40 does not appear to have the exceptions for prior express invitations and established business relationships which are found in the TCPA).

As such, any small business which makes product solicitation or placement calls is subject to S.B. 40, whether it be a real estate agent discussing a condo or time share, an insurance agent discussing funding to protect the needs of children in the event of the untimely death of a parent, a financial planner explaining the benefits of an educational IRA, or a lawn service company simply trying to provide prompt and courteous service. Small businesses necessarily make frequent and extensive use of the telephone in securing new customers and servicing old ones, and would thus be subject to S.B. 40.

At the same time, however, small businesses tend to be much less knowledgeable about telemarketing regulations and often have less financial capability to maintain do-not-call lists and remain current with respect to ever-changing

regulations imposed by each state. Adoption of legislation such as S.B. 40 essentially gives a small set of opportunistic consumers, and their lawyers, a hunting license to trap small businesses that will inevitably violate the law. S.B. 40 is anti-small business legislation and would adversely impact a large number of small Wisconsin businesses.

We also believe that S.B. 40 offers no improvement over the federal law, while creating added burdens and spawning litigation. For example, S.B. 40 requires the residential customer to go out of his or her way to notify the Department every two years if the customer wishes to remain on the list. Under the TCPA, the customer receives 10 years of protection by simply uttering a few words in the course of a telephone call. Is this an improvement? Moreover, as discussed above, the federal law provides significant consumer relief, and there is an existing industry mechanism to give consumers relief from calls from large telemarketers. Other than creating a new bureaucracy and traps for the unwary small business person, what is really being accomplished by S.B. 40?

We also point out that the requirement to have the telemarketers give their registration number to consumers may actually mislead consumers, as the marketing firm might recast that requirement as being evidence that the telemarketer is extremely trustworthy and government-approved. This would be bad for consumers and the telemarketing industry as a whole.

The Wisconsin legislature must also consider the adverse impact on consumers. A black-out of sales calls will deprive consumers of information about products and services, alternative courses of action, and cost savings. The interactive nature of telephone calling is needed to promote consumer confidence and satisfaction.

Lastly, we are very concerned about the legal issues raised by S.B. 40.

First, while a state is relatively free to restrict activities within its boundaries, states are constitutionally prohibited under Article I, Section 9 of the United States Constitution from burdening interstate commerce. Indeed, it was the fact that individual state legislatures do not have the authority to enact laws curbing advertising originating from out-of-state that caused states to lobby Congress for federal legislation regulating communications across state lines (resulting in the adoption of the TCPA). The Congressional Statement of Findings for the TCPA expressly noted that only the federal government may regulate out-of-state telemarketers, stating that "Over half the States now have statutes restricting

various uses of the telephone for marketing, but telemarketers can evade their prohibitions through interstate operation; therefore, Federal law is needed to control residential telemarketing practices."

Indeed, given that Wisconsin may constitutionally regulate intrastate telemarketers but not out-of-state businesses, there is the possibility that a court would find the telemarketers located in Wisconsin have to follow S.B. 40 while out-of-state telemarketers do not. While states sometimes appear to favor resident businesses over out-of-state businesses, the opposite would then be true for telemarketing.

Second, it is an open question as to whether or not Wisconsin can obtain jurisdiction over out-of-state telemarketers. Whether a company's only contacts with Wisconsin are telephone solicitation (such as charitable fundraising by paid telemarketers) or telephone solicitation combined with order shipment (such as direct sales), the State's long-arm statute is unlikely to require that company to appear in a Wisconsin court. The company's contacts must be more substantial and less isolated than that.

Thus, S.B. 40 will have to be followed by companies headquartered or otherwise located in Wisconsin, while there is no practical remedy against out-of-state telemarketers.

Third, there is the issue of federal preemption, as the TCPA preempts S.B. 40. As noted in the TCPA at subsection (e), the enactment of the TCPA is not intended to preempt "any State law that imposes more restrictive intrastate requirements or regulations..." However, by its own terms S.B. 40 is not limited to intrastate regulation. It also attempts to regulate interstate conduct, which is a matter reserved to Congress.

As the FCC noted in its January 26, 1998 letter to the Maryland House of Delegates, the TCPA:

"...establishes Congress' intent to provide for regulation exclusively by the [FCC] of the use of the interstate telephone network for unsolicited advertisements by facsimile or by telephone.... Maryland can regulate and restrict intrastate commercial telemarketing calls. The [TCPA], however, precludes Maryland from regulating or restricting interstate commercial telemarketing calls. Therefore, Maryland can not apply its

statutes to calls that are received in Maryland and originate in another state or calls that originate in Maryland and are received in another state."

Finally, there is the issue of freedom of speech. The First Amendment to the United States Constitution guarantees freedom of speech, whether it be commercial speech, political speech, or other types of non-commercial speech.

When determining whether or not legislation governing commercial speech constitutes a violation of the First Amendment, a state has to show (among other requirements) that the restriction (1) serves a substantial government interest and (2) is not more extensive than necessary to advance such government interest (i.e., is narrowly tailored to achieve the desired objective). In this case, with respect to commercial speech, S.B. 40 may not meet such tests given that the federal law already imposes a complete set of regulations on the same course of conduct.

In addition, the definition of "telephone solicitation" in S.B. 40 clearly encompasses many types of fundraising (except when directly performed by a § 501(c)(3) organization). This goes beyond the terms of the TCPA and is untested as to whether or not such legislation is a violation of free speech.

## **V. Alternative Approach**

A simpler, alternate approach which has been adopted in Maine is attached as Exhibit A. This model addresses the key consumer protection issues using a real-world, workable model. The legal questions regarding preemption, burden on interstate commerce, jurisdiction and free speech also apply to this alternative language, but such legislation is more likely to be sustained because it is significantly less intrusive and burdensome than S.B. 40.

## EXHIBIT A

SECTION 1. 134.74 of the statutes is created to read:

### **134.74 Regulation of Telemarketers.**

(1) **Definitions.** In this section:

(a) "Telemarketer" means any person who, in connection with telemarketing, initiates telephone calls to a consumer.

(b) "Telemarketing" means a plan, program, or campaign which is conducted to induce the purchase of goods or services by one or more telephones and which involves more than one interstate telephone call.

(c) "Telephone solicitation" means the unsolicited initiation of a telephone conversation for the purpose of encouraging a person to purchase property, goods or services.

(2) **Pattern of Calls.** Violation of any provision of the Federal Trade Commission's Telemarketing Sales Rule, 16 Code of Federal Regulations, Section 310.4(b), as in effect on January 1, 2000, by a telemarketer is a violation of this section.

(3) **Do-not-call List.** Each telemarketer subject to this section:

(a) Shall semiannually obtain subscription listings of consumers in this State who have arranged to be included on the national do-not-call list maintained by the Telephone Preference Service of the Direct Marketing Association, Inc., Farmingdale, New York or its successor organization; and

(b) May not call any consumer in this State whose name is on the national do-not-call list unless the telemarketer has an established business relationship with the consumer at the time the call is made.

A person is not in violation of paragraph b. if the person obtained the listing of a consumer in accordance with paragraph a. but called that consumer as the result of a good faith error.

(4) **Territorial Application.**

(a) *Intrastate.* This section applies to any intrastate telephone solicitation by a telemarketer.

(b) *Interstate.* This section applies to any interstate telephone solicitation by a telemarketer which is received by a person in this state.

(5) **Penalty.** A person who violates this section may forfeit up to \$500.

# TESTIMONY

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*By*

**Alliance of American Insurers**

*Delivered to*

**Wisconsin Senate Committee**

**on**

**Privacy, Electronic Commerce and Financial Institutions**

*February 15, 2001*

## **Senate Bill 40**

The Alliance of American Insurers is a property/casualty insurance trade organization that represents more than 330 insurers, many writing business in the state of Wisconsin. We appreciate the opportunity to comment on Senate Bill 40 addressing telephone solicitations.

The Alliance opposes Senate Bill 40, as we believe it is overly broad in its intended application. The bill would impose a duplicate layer of regulation over the insurance industry, would restrict open access to the marketplace, and would implement duplicate provisions already provided for in federal law. In fact, we believe that the proposed bill language would prove harmful to thousands of legitimate businesses and would have some adverse consequences for the consumers that the bill is intended to protect.

There are many aspects to the business of insurance that might fall under the definition of telephone solicitation. Even where all insurance contracts are completed in face to face meetings, telephone conversations typically precede the final offer and acceptance of the insurance contract. In fact, in today's society, the telephone, along with other electronic means of communication, plays an increasingly important role in conducting any business – even “personal” business.

It is conceivable that all insurance producers would be subject to the registration requirements proposed by this bill since any producer, with as few as one “employee” or “contractor” will ultimately use phone contact to promote or further a sale of an insurance product.

Currently all insurance transactions are regulated by the Office of the Commissioner of Insurance. Wisconsin, like all states, has specific laws relevant to unfair trade practices, misrepresentation, fraud and deceptive practices of insurers and their representatives. The Commissioner of Insurance is empowered to investigate all complaints, order market conduct examinations, and conduct hearings. If deemed necessary, the Commissioner may levy fines and even revoke or deny licenses to insurers and insurance producers. The registration requirements and penalties proposed by this bill ultimately require insurers and insurance representatives to be accountable to two state agencies for the same business transactions.

Certainly non-solicitation directories have been proposed and even implemented in a number of other states. However, we have several concerns regarding this proposal. First, the registration fee is to be based on the cost of establishing this directory. This is problematic because there is no way to determine how high this registration fee might be. Many businesses, including the insurance industry, use the telephone and other methods of personal contact as a cost-effective way to

promote a product or service. The registration fee will add an additional layer of cost that may even be prohibitive to smaller businesses and could, ultimately, be passed along to the consumer.

Another problem with the non-solicitation directory is that the bill does not include any exceptions for contact of persons listed in the directory. This means that a business could not even contact an existing client or customer, or contact a person who has expressly requested such a contact. Imagine, for example, that an insurance producer becomes aware of a new product or insurance coverage that he knows may benefit many of his customers. Or perhaps an insurance producer may notice that a current client has purchased a new car or boat, but has failed to notify the insurer to secure coverage. In either of these cases, an insurance producer could not call to “solicit” his existing customers if they appear in the non-solicitation directory. Ironically, one could even argue that the producer had an obligation to contact those customers if he/she became aware that the insured’s risk had changed.

Businesses would also be prohibited from contacting persons who had *invited* such contact, if that person appeared in the non-solicitation directory. For example, imagine that a consumer received a post card notifying him of a particular product or service and returned the card requesting additional information; or perhaps the consumer provided information for later contact at a trade show. Again, although

the consumer invited the solicitation, a business would be prohibited from making that contact.

The above examples further illustrate how consumers might also be adversely impacted by the affects of this bill. In an open, competitive marketplace, consumers will always benefit by having a choice – a choice in the products they buy, who or where they buy them from, and the price they are willing to pay. Excessive restrictions on telephone solicitations limit consumers' choices.

We are all sensitive to the right and need to have privacy. I'm sure everyone here has received unwelcome phone solicitation calls at the most inconvenient times. Federal law and current federal regulation already address the right of a consumer to be placed on a business's "do not call" list. This allows the consumer to pick and choose which calls he is willing to receive without banning all calls – some of which may prove of interest or benefit to the consumer. Admittedly, the federal regulations do not include insurers within their scope. However, as stated earlier, insurers and their representatives are already subject to licensing and the regulatory oversight of the Commissioner of Insurance.

On behalf of the Alliance of American Insurers and our member companies, we respectfully request that the Committee vote to not pass Senate Bill 40. We believe

the bill will have unintended, adverse consequences to both business and consumers.

Thank you again for the opportunity to express our position.

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**Testimony of Malcolm Brett  
Director, Wisconsin Public Television  
UW-Extension  
Thursday, February 15, 2001**

Senator Jon Erpenbach  
& Members,  
Committee on Privacy, Electronic Commerce  
And Financial Institutions

Dear Senator Erpenbach & Members:

Thank you for the opportunity to appear before you. I am here to provide testimony, for information only, on Senate Bill 40. My name is Malcolm Brett and I am the Interim Director of Wisconsin Public Television (WPT) and I represent the interests of WPT, a service of UW-Extension and the Educational Communications Board.

Because we adhere to the highest fundraising ethics and because we are sensitive to the interests of our viewers and donors, we appreciate and support your efforts to improve fundraising practices in Wisconsin. We have reviewed SB 40 and its implications for our fundraising operations. We would like to provide recommendations on three areas in this bill that will impact our work with telemarketing firms we hire to help raise private dollars for our station.

The first relates to the format of the non-solicitation directory. It would greatly assist the firms we contract with, if the committee would stipulate in the bill that the directory be provided in electronic format. Because call records are kept in this format, the process that would remove callers from telemarketers' lists can best be facilitated electronically. The cost of manual record review would be exorbitant and would be passed on to clients, increasing the cost of fundraising significantly. Updates of the non-solicitation directory can best be made electronically.

Our second concern relates to the requirement of solicitors to provide their registration number to callers immediately upon engagement of the solicitation call. This would impede the rapport needed to engage the recipient. We respectfully suggest that the committee consider requiring the solicitor to provide the number upon request or to offer to provide it at the end of the call.

The third concern relates to criteria in which the registration fees will be based. SB 40 stipulates that one criterion will be the number of telephone lines used by the telephone solicitor. Basing the registration fee on the characteristics of the company, rather than the actual usage of lines or volume of calls, may place WPT and other non-profits at a competitive disadvantage. Solicitation firms will recoup their registration fees from the organizations that contract with them. WPT may want to engage the services of a large, professional firm. A fee that reflects the size of the company—not the volume of business they do in the state, will reduce our net proceeds from the contract. While a company may have 200 lines available, we may only require the use of 10 of those lines. Companies may decline to accept clients in Wisconsin if the cost of doing business becomes prohibitive. Fewer options for not-for-profit fundraisers will result in fewer choices for vendors and higher prices. Non-profit organizations that are the sole Wisconsin clients of larger telemarketing firms would have to reimburse vendors for a disproportionately large registration fee.

We would recommend that the committee give consideration to other criteria that take into consideration the volume of work versus the size of the company.

I thank you for this opportunity to appear before your committee today and welcome any questions you may have. Thank you.

Respectfully submitted,

Malcolm Brett

TO: Senate Committee on Privacy, Electronic Commerce and  
Financial Institutions

FROM: DeHart & Darr, on behalf of The Direct Marketing Association, Inc.

CONTACT: Bill McCoshen or Eric Petersen at Wimmer & Co. (256-5223)

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A person is not in violation of paragraph b. if the person obtained the listing of a consumer in accordance with paragraph a. but called that consumer as the result of a good faith error.

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(a) *Intrastate.* This section applies to any intrastate telephone solicitation by a telemarketer.

(b) *Interstate.* This section applies to any interstate telephone solicitation by a telemarketer which is received by a person in this state.

(5) **Penalty.** A person who violates this section may forfeit up to \$500.