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☞ Details: Complaint

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2003-04

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)

May 9, 2003

VIA HAND DELIVERY

Judith Coleman
Clerk of Courts
City-County Bldg.
210 Martin Luther King, Jr. Blvd.
Madison, WI 53709

Wisconsin REALTORS[®] Association, et al. v.
Department of Agriculture, Trade and Consumer Protection, et al.

Dear Ms. Coleman:

Enclosed for filing are the following:

- (1) Summons and Complaint for Declaratory Judgment and Judicial Review, with exhibits A-C; and
- (2) A check for the \$136 filing fee.

Please file-stamp the three (3) extra copies of each and return them to our waiting messenger.

By copy of this letter, the Department of Agriculture Trade and Consumer Protection and the Joint Committee for Review of Administrative Rules are being served with the Summons and Complaint.

Please let us know if you any questions.

LA FOLLETTE GODFREY & KAHN



Mike B. Wittenwyler

MBW:jgl
Encl.

cc: Department of Agriculture Trade and Consumer Protection (w/encl.; via hand delivery)
Joint Committee for Review of Administrative Rules (w/encl.; via hand delivery)
Attorney General, Peggy Lautenschlager (w/encl.; via hand delivery)

MN173708_1.DOC

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

WISCONSIN REALTORS® ASSOCIATION,
a nonprofit trade association,
WISCONSIN NEWSPAPER ASSOCIATION,
a nonstock trade association,
WISCONSIN ASSOCIATION OF
HEALTH UNDERWRITERS,
a nonprofit trade association,
BLISS COMMUNICATIONS, INC.,
a Wisconsin corporation,
MARY RIPP,
a homemaker and part-time salesperson,
EDWARD CHAMBERLAIN,
a licensed real estate broker,
PAUL BUNCZAK,
a licensed independent auctioneer,

Plaintiffs,

v.

DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
and SECRETARY ROD NILSESTUEN
in his official capacity only,

Defendants.

Case No. 08CV1409
Case Code:
30607-Administrative Agency Review
30701-Declaratory Judgment

FILED
01:08:11 9:11:10
CIRCUIT COURT

THIS IS AN AUTHENTICATED COPY OF THE
ORIGINAL DOCUMENT FILED WITH THE DANE
COUNTY CLERK OF CIRCUIT COURT.

JUDITH A. COLEMAN
CLERK OF CIRCUIT COURT

SUMMONS

THE STATE OF WISCONSIN, To each person named above as a defendant:

You are hereby notified that the plaintiffs named above have filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer

must be sent or delivered to the Clerk of Circuit Court, whose address is 210 Martin Luther King, Jr. Blvd., Madison, Wisconsin 53709-0001, and to plaintiffs' attorney, Brady C. Williamson, LaFollette Godfrey & Kahn, whose address is Suite 500, One East Main Street, P.O. Box 2719, Madison, Wisconsin 53701-2719. You may have an attorney help or represent you. If you require the assistance of auxiliary aids or services because of a disability, call the Personnel Department at 608-266-4311 and ask for the Court ADA Coordinator.

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 9th day of May, 2003.

LA FOLLETTE GODFREY & KAHN

By:



Brady C. Williamson
State Bar No. 1013896
Mike Wittenwyler
State Bar No. 1025895
Josh Johannigmeier
State Bar No. 1041135
Attorneys for Plaintiffs

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(608) 257-3911
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*LaFollette Godfrey & Kahn is the
Madison office of Godfrey & Kahn, S.C.*
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WISCONSIN REALTORS® ASSOCIATION,
 a nonprofit trade association,
 WISCONSIN NEWSPAPER ASSOCIATION,
 a nonstock trade association,
 WISCONSIN ASSOCIATION OF
 HEALTH UNDERWRITERS,
 a nonprofit trade association,
 BLISS COMMUNICATIONS, INC.,
 a Wisconsin corporation,
 MARY RIPP,
 a homemaker and part-time salesperson,
 EDWARD CHAMBERLAIN,
 a licensed real estate broker, and
 PAUL BUNCZAK,
 a licensed independent auctioneer,

Plaintiffs,

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DEPARTMENT OF AGRICULTURE,
 TRADE AND CONSUMER PROTECTION
 and SECRETARY ROD NILSESTUEN
 in his official capacity only,

Defendants.

Case No. _____
 Case Code:
 30607-Administrative Agency Review
 30701-Declaratory Judgment

02CV1409

OFFICE OF CLERK
 JAN 14 2003 9:10 AM
 DANE COUNTY, WI

THIS IS AN AUTHENTICATED COPY OF THE
 ORIGINAL DOCUMENT FILED WITH THE DANE
 COUNTY CLERK OF CIRCUIT COURT.

JUDITH A. COLEMAN
 CLERK OF CIRCUIT COURT

**COMPLAINT FOR DECLARATORY JUDGMENT
 AND JUDICIAL REVIEW**

The plaintiffs, by their attorneys, LaFollette Godfrey & Kahn, for their claims for declaratory and injunctive relief under sections 227.40 and 806.04, Stats., allege as follows:

SUMMARY

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) has administered a new state-wide “Do Not Call” program, since January 1, 2003, to permit consumers to avoid unwanted telemarketing calls at home by registering with the agency. More

than a million residential telephone customers have placed their names on the list and, with few apparent exceptions, businesses that call customers at home are complying with the law and trying to comply with the rules promulgated by DATCP.

This litigation does not challenge the law. Pursuant to Chapter 227 of the Wisconsin Statutes, however, it does challenge the Department's creation of administrative rules that significantly exceed the authority given it by the legislature, bringing the rules into collision with the statute and creating uncertainty and confusion for businesses and consumers alike.

PARTIES AND JURISDICTION

1. Wisconsin REALTORS[®] Association ("WRA" or "the REALTORS[®]") is a nonprofit trade association under chapter 181, Wis. Stats. An organization of individuals, partnerships and other entities, the WRA advances the interests of the real estate industry and the cause of home ownership in the state. The WRA itself and the WRA's members use telephone solicitations to sell products, goods or services, the proceeds of which are subject to Wisconsin sales tax. Its principal offices are at 4801 Forest Run Road, Suite 201, Madison, Wisconsin 53704-7337.

2. Wisconsin Newspaper Association ("WNA") is a nonstock trade association under chapter 181, Wis. Stats. WNA – the world's oldest press association – is comprised of 36 daily and 217 weekly periodical publications that provide the public with news and information through print and internet media outlets. The WNA itself and the WNA's members use telephone solicitations to sell products, goods or services. WNA's principal offices are at 3822 Mineral Point Road, Madison, Wisconsin 53705.

3. The Wisconsin Association of Health Underwriters ("WAHU") is a nonprofit trade association under chapter 181, Wis. Stats. Chartered by the National Association of Health

Underwriters, WAHU was established to promote and sustain a knowledgeable and professional membership of health insurance underwriters and foster greater financial security and independence for the consuming public. WAHU's members use telephone solicitations to sell products, goods or services to the public. WAHU's principal offices are at 4600 American Parkway, Suite 208, Madison, Wisconsin 53718.

4. Bliss Communications, Inc. ("Bliss") is a Wisconsin corporation that provides the public with news and information through print and broadcast media outlets including newspapers and journals in the Wisconsin communities of Janesville, Monroe, Racine, Delavan and Marinette, as well as Menominee and Ironwood, Michigan. Bliss operates radio stations in Janesville, Racine, West Bend and Wisconsin Rapids. It uses telephone solicitations to sell products, goods or services to the public. Its principal offices are at One South Parker Drive, Janesville, Wisconsin 53545.

5. Mary Ripp is a homemaker and part-time salesperson of Mary Kay Cosmetics who uses telephone solicitations to sell products, goods or services to the public. Mary Ripp sells and promotes the sale of goods that she buys from Mary Kay Cosmetics, which controls or limits Mary Ripp's sales methods. She resides at 7205 Gladstone Drive, Madison, Wisconsin 53719.

6. Edward N. Chamberlain is a licensed real estate broker in Wisconsin, a resident of Racine, who uses telephone solicitations to sell products, goods or services to and for other people. He resides at 230 Old Pine Circle, Racine, Wisconsin 53402.

7. Paul Bunczak is a licensed auctioneer in Wisconsin, a resident of Wausau, who uses telephone solicitations to sell products, goods or services to and for other people. He resides at 5005 Camelia Lane, Wausau, Wisconsin 54401.

8. The Department of Agriculture, Trade and Consumer Protection is a department within the executive branch of government of the State of Wisconsin, created under section 15.13, Stats., and charged with the duty, among others, to make and enforce administrative regulations as authorized by the legislature as necessary and proper pursuant to chapters 93 to 100 of the Wisconsin statutes. DATCP is a proper party defendant in this case under section 227.40(1), Stats.

9. Secretary Rod Nilsestuen, appointed to his public office by the Governor under sec. 15.05(1)(d), Stats., is the head of DATCP and a proper party defendant in this case pursuant to section 227.40(1), Stats.

10. The Court has subject matter jurisdiction over this action and personal jurisdiction over the defendants pursuant to sections 227.40(1) and 806.04, Stats.

11. The Joint Committee for Review of Administrative Rules ("JCRAR"), upon service of this complaint, is entitled to become a party to this action and be heard pursuant to sections 227.40(5) and 804.06(11), Stats.

BACKGROUND

12. On August 30, 2001, Governor Scott McCallum signed the 2001-2003 biennial budget bill into law. The budget bill, 2001 Wisconsin Act 16, contained a telephone solicitation control provision, popularly known as the "Do Not Call List," codified at section 100.52 of the Wisconsin Statutes. By statute, violators of the proscriptions on telephone solicitations face forfeitures of up to \$100 for each violation. Sec. 100.52(10), Stats. DATCP has announced publicly, however, that pursuant to its own interpretation of section 100.26, Stats., the forfeitures can reach \$10,000 for each violation.

13. The statute allows residential (but not business) telephone customers to place themselves on a state-maintained list of individuals who do not wish to receive telephone solicitations by or on behalf of telephone solicitors. Telephone solicitors are, subject to limited exceptions, prohibited by the statute from contacting individuals on the list. *See* sec. 100.52(2) and (4), Stats. Dubbed a “nonsolicitation directory,” the list has been distributed by DATCP, and it will continue to be maintained, amended and distributed by DATCP to registered “telephone solicitors” as defined by the statute.

14. The nonsolicitation directory is voluntary: consumers must “opt in” to obtain its benefits. Residential phone customers who wish to be included in the directory can contact DATCP by telephone, letter, or e-mail. After this initial notification, telephone customers must contact DATCP biennially to remain in the directory. Sec. 100.52(2)(a) and (b), Stats.

15. According to news reports, DATCP Secretary Nilsestuen has said that more than 1.1 million residential telephone customers have placed themselves on the list.

16. Telephone solicitors – defined in the statute as “person[s], other than ... nonprofit organization[s] or an employee or contractor of ... nonprofit organization[s], that employ[] or contract[] with an individual to make a telephone solicitation” – are required to register with DATCP. Upon registration, they receive the nonsolicitation directory and, by law, may not solicit individuals on the list. Sec. 100.52(1)(j) and (3), Stats.

17. A “telephone solicitation” is defined in the statute 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.” Sec. 100.52(1)(i), Stats.

18. The statute prescribes a registration fee for telephone solicitors:

The amount of the registration fee shall be based on the cost of establishing the nonsolicitation directory, and the amount that an individual telephone solicitor is required to pay shall be based on the number of telephone lines used by the telephone solicitor to make telephone solicitations. The [DATCP] rules shall also require a telephone solicitor that registers with the department [DATCP] to pay an annual registration renewal fee to the department. The amount of the registration renewal fee shall be based on the cost of maintaining the nonsolicitation directory.

Sec. 100.52(3)(a), Stats.

19. The statute prohibits telephone solicitors from calling residential customers listed in the directory, unless the recipient of the call has requested (or consented to) the solicitation or is a current client or customer of the entity whose products are the basis for the telephone solicitation. *See* sec. 100.52(4) and (6), Stats. Telephone solicitors are also prohibited from making calls to nonresidential (that is, commercial) customers, but only if the telephone solicitors have received individual notice by mail that the nonresidential customer does not wish to receive telephone solicitations. Sec. 100.52(4)(a)3, Stats.

20. The statute requires DATCP to draft and promulgate certain rules:

- for establishing, maintaining and updating the nonsolicitation directory;
- establishing requirements and procedures for residential customers to request a listing in the directory; and
- requiring registration by telephone solicitors that use employees or contractors to make telephone solicitations.

Sec. 100.52(2)(b) and (3), Stats.

21. DATCP began the rule-making process by publishing a statement of the rule's intended scope in the Wisconsin Administrative Register, No. 549, effective September 15,

2001. The agency then produced a draft of the rule and, on March 19, 2002, submitted it to the Legislative Council's Administrative Rules Clearinghouse.

22. The Legislative Council's Administrative Rules Clearinghouse issued a report on the rule, Clearinghouse Rule 02-036, on April 16, 2002.

23. DATCP then held public hearings and received public comments on the proposed rule through May 2002.

24. After the public comment period, DATCP revised the rule and, on July 24, 2002, transmitted the proposed rule for legislative review under section 227.19, Stats.

25. The President of the Senate and the Speaker of the Assembly referred the rule to the appropriate standing committees in the legislature. At the end of the review period, the rule was sent to the Revisor of Statutes and to the Secretary of State on October 14, 2002.

26. The rule was published in the Wisconsin Administrative Register as section ATCP 127 on November 30, 2002, with an initial effective date of December 1, 2002. A copy of the rule accompanies this complaint as Exhibit A.

27. DATCP began accepting telephone numbers from residential telephone customers for the non-solicitation directory during the fall of 2002. The agency initially sent the directory to telephone solicitors in December 2002, distributing an updated directory in March which took affect in April 2003.

28. Since the "Do Not Call" list and DATCP's rule took effect, a number of businesses, trade associations and individuals have sought clarification from DATCP of the rule's impact on particular business activities and businesses in Wisconsin. The rule has remained unchanged.

REQUEST FOR DECLARATORY JUDGMENT

29. Section 227.40, Stats., grants this Court “exclusive” authority to render a declaratory judgment on the validity of administrative rules promulgated by state agencies.

30. This Court should render a declaratory judgment in this case invalidating the rule because, in drafting and promulgating the rule, DATCP significantly exceeded the authority granted it by the legislature in section 100.52, Stats. In so doing, DATCP’s rule has violated sections 227.10 and 227.11, Stats. The challenged rule interferes with and impairs, or threatens to interfere with and impair, the legal rights and privileges of the plaintiffs and others.

CLAIM I

DATCP Exceeded its Statutory Authority pursuant to Section 227.40(4)(a)

31. Plaintiffs restate each and every allegation of paragraphs 1 through 30 as set forth above.

32. Section 227.40(4)(a), Stats., provides that “the court shall declare [an administrative] rule invalid if it finds that it...exceeds the statutory authority of the agency....” *De novo* judicial review is required for any challenge to an administrative rule on the ground that the agency exceeded its statutory authority. *Seider v. O’Connell*, 236 Wis. 2d 211, 612 N.W.2d 659 (2000).

33. DATCP exceeded its authority pursuant to section 227.10(2), Stats., because it drafted and promulgated a rule that conflicts with state law. Specifically, ATCP 127 *et seq.* conflicts with or impermissibly expands section 100.52, Stats., in at least the following ways:

A. *DATCP's Rule Narrows The Unambiguous And Express Statutory Exemption For Nonprofit Organizations, Improperly Subjecting To Section 100.52 Nonprofit Organizations That The Legislature Expressly Intended To Exempt.*

34. The statute defines “telephone solicitor” to mean a “person, *other than a nonprofit organization* or an employee or contractor of a nonprofit organization, that employs or contracts with an individual to make a telephone solicitation.” Sec. 100.52(1)(j), Stats. (emphasis added).

35. Section 100.52(3)(a), Stats., requires DATCP to promulgate rules for the registration of telephone solicitors. Notwithstanding that, the rule itself does not define the terms “telephone solicitor” or “nonprofit organization.” However, ATCP 127.80(10) defines “telephone solicitation” and lists exclusions from the definition of telephone solicitation. Subsection (10)(a) states that a telephone solicitation does not include a telephone call encouraging the call recipient to buy property, goods or services from a nonprofit organization – but only if the nonprofit organization complies with Subchapter III of ch. 440, Stats., *and* only if its sale proceeds are exempt from Wisconsin sales tax *and* federal income tax.

36. DATCP has ignored the legislature’s express, unqualified statutory exemption for nonprofit organizations and invalidated it for many organizations, including plaintiffs WRA and others. By narrowing the exemption, DATCP has impermissibly subjected to the rule nonprofit organizations with sales proceeds subject to Wisconsin sales tax and federal income tax.

B. *DATCP's Rule Improperly Alters The Statutory Exception For Contact With Current Clients.*

37. The statute does not prohibit telephone solicitations of consumers on the nonsolicitation directory if the “telephone solicitation is made to a recipient who is a current client of the person selling the property, goods or services that is the reason for the telephone solicitation.” Sec. 100.52(6)(b), Stats.

38. Neither “current client” nor “client” is defined by the statute, creating an appropriately defined exception that allows businesses to continue, using telephone solicitation if they wish, their business relationship with current clients. There is no requirement anywhere in the statute that the telephone solicitation relate to the precise goods or services already provided to that client.

39. Like the statute, the rule recognizes a “current client” exception. *See* ATCP 127.80(10)(d). However, DATCP has chosen to define “client” in the rule as a “person who has a current agreement to receive, from the telephone caller or the person on whose behalf the call is made, property, goods or services *of the type promoted by the phone call.*” ATCP 127.80(2) (emphasis added).

40. Not only has DATCP replaced the clear and unambiguous term “client” with DATCP’s own expanded definition, it has altered the language of the statutory exception, within the definition itself, by gratuitously adding the phrase “of the type that is promoted by the phone call” and the phrase “telephone caller.”

41. The drafter’s note to the administrative rule itself emphasizes the new strict definition created by DATCP to narrow the “current client” exception:

[I]f a local telephone provider encourages a current customer to purchase other local telephone services, the customer is a current ‘client’ under this definition. But a local telephone service customer is not a current ‘client’ when the local telephone service provider encourages that customer to purchase *long distance* telephone services.

Note to sec. ATCP 127.80(2) (emphasis added).

42. DATCP also added the requirement that the call recipient have “a current agreement to receive” the property, goods or services being promoted by the call. In this regard, the rule is again more restrictive than the statute, which does not require an “agreement” or restrict telephone solicitation to the same property, goods or services already sold to the client.

43. On March 11, 2003, DATCP Secretary Nilsestuen issued an interpretation of the rule's current client exception in response to WRA's concerns regarding the scope of that exception. A copy of that interpretation is attached as Exhibit B. According to Secretary Nilsestuen:

- Realtors may call anyone who requests the call without violating the No Call rule; and
- Realtors may call a current customer for any purpose related to their business relationship without violating the No Call rule; and
- Realtors may call any party to a real estate transaction for any purpose related to the transaction without violating the No Call rule.

While these interpretations favor WRA's members and consumers, they are not the law upon which WRA can rely, and they are inconsistent with the statute *and* the rule.

44. In sum, DATCP's rule, by narrowing the current client exception provided by law, expands the potential scope of the rule for all of the plaintiffs and impermissibly limits the ability of the plaintiffs and others to continue or expand their current business relationships.

C. DATCP's Rule Improperly Alters The Clear Statutory Definition Of "Residential Customer," Eliminating The Exclusion For Businesses Operated Out Of Residences.

45. The statute defines "residential customer" as "an individual who is furnished with basic local exchange service by a telecommunications utility, *but does not include an individual who operates a business at his or her residence.*" Sec. 100.52 (1)(f), Stats. (emphasis added). The emphasized portion of the definition was included, of course, so that telephone solicitations to mixed-use (that is, business and residential) properties would not be prohibited.

46. DATCP has arbitrarily eliminated the legislatively prescribed exemption for telephone solicitations to mixed-use property by drafting and promulgating its rule – with no exclusion for businesses operated out of homes. *See* ATCP 127.80(5).

47. DATCP exceeded its authority by drafting and promulgating a rule that, contrary to the unambiguous mandate of the statute, rewrote the definition of “residential customers” to support the agency’s own version of public policy.

48. As a result of DATCP’s impermissible inclusion of mixed-use properties within the rule’s prohibitions, each of the plaintiffs as well as others are in jeopardy of substantial civil penalties and potential civil lawsuits for calling mixed-use properties whose owners are in the nonsolicitation directory.

D. *DATCP Has Created A Registration Fee Structure Inconsistent With The Fee Structure Required By Section 100.52, Stats.*

49. The statute mandates that the amount of the initial registration fee established by DATCP “shall be based on the cost of establishing the nonsolicitation directory, and *the amount that an individual telephone solicitor is required to pay shall be based on the number of telephone lines used by the telephone solicitor to make telephone solicitations.*” Sec. 100.52(3)(a), Stats. (emphasis added). The statute also directs that the rule require that telephone solicitors pay an annual registration renewal fee (after and in addition to paying the registration fee) based on the cost of maintaining the nonsolicitation directory. *Id.*

50. DATCP’s fee structure differs substantially from the statute’s mandate. ATCP 127.81 establishes fees with the following provisions:

- an initial registration fee of \$700, regardless of the number of telephone lines employed. ATCP 127.81(3)(a).
- subsequent annual fees of \$500, regardless of the number of telephone lines employed. *Id.*
- supplementary annual fees of \$75 for each telephone line used to make telephone solicitations, but only for businesses that have registered four or more telephone lines. ATCP 127.81(3)(b).

- additional fees for registrants to receive the nonsolicitation directory, including: \$25 for each e-mail address; \$25 for each address to which a CD-ROM is sent; and \$1,000 for each hard copy sent. ATCP 127.81(3)(c)-(e).
- fees are capped at \$20,000. ATCP 127.81(3).

51. The rule, as drafted and promulgated by DATCP, includes a fee structure inconsistent with, broader and more burdensome than the statute.

52. DATCP's fee structure encompasses both the cost of maintaining the nonsolicitation directory *and* the cost of enforcing the statute and the rule – a financial burden that the statute does not permit to be shifted to registrants.

53. DATCP's fee structure is so dramatically at odds with the fee structure mandated by the statute that, in the first full year of registration and fee collection, DATCP estimates that it will collect \$1.8 million in registration fees – almost \$1.5 million more than the \$470,000 contemplated before registration began. *See* Joint Committee on Finance Paper #155, "Do-not Call List Revenues," a copy of which is attached as Exhibit C.

54. DATCP's fee cap of \$20,000 impermissibly shifts the financial burden from large telemarketing companies to small businesses, including many of WRA, WNA and WAHU's members as well as individual plaintiffs Mary Ripp and Paul Bunczak.

55. As a result of the fee structure created not by the legislature but solely by DATCP, many businesses and individuals, including the plaintiffs, are either prevented from doing business by telephone with some customers or forced to pay a disproportionate share of the "costs of maintaining the nonsolicitation directory." Moreover, all "telephone solicitors" registering with DATCP are, as a result of DATCP's fee structure, forced to fund the enforcement efforts of the statute, a cost the statute does not permit to be shifted to them.

E. DATCP's Rule Impermissibly Requires Registration By Individuals, Conflicting With The Statute's Mandate That Only The Telephone Solicitor – That Is, An Employer Or Contractor As Defined In The Statute – Need Register With The Agency.

56. DATCP again exceeded its statutory authority by expanding the definition of “telephone solicitation” – and, subsequently, the registration requirement – contradicting the express mandate of authority granted by section 100.52, Stats.

57. The statute defines “telephone solicitor” to mean “a person, other than a nonprofit organization or an employee or contractor of a nonprofit organization, *that employs or contracts with an individual* to make a telephone solicitation.” Sec. 100.52(1)(j), Stats. (emphasis added). The statute also directs DATCP to promulgate rules requiring any telephone solicitor “who requires an employee or contractor to make a telephone solicitation to a residential customer in this state” to register with the department. Sec. 100.52(3)(a), Stats. The statute, therefore, only requires registration by telephone solicitors that, by definition, employ *others* to make telephone solicitations on their behalf or contract with others to make telephone solicitations on their behalf.

58. DATCP's rule, however, states that “no *individual* may make a telephone solicitation to a residential telephone customer *unless the telephone solicitation is covered by a registration under this section.*” ATCP 127.81(1)(c) (emphasis added).

A. In ATCP 127.80(10)'s definition of telephone solicitation, subsection (b) states that a telephone call made by an individual, acting on his or her own behalf and not as an employee or agent for any other person, is not considered a telephone solicitation under the rule. *See* ATCP 127.80(10)(b).

B. Yet that same subsection further states that the “exemption” for individuals does *not* apply to individuals who sell or promote the sale of property, goods or services for another person or sell or promote the sale of goods that the caller buys from another person who controls or limits the caller’s sales methods.

59. That unilateral expansion by DATCP brings a host of individuals – those not employed by or contracting with a telephone solicitor, including plaintiffs Mary Ripp, Edward Chamberlain and Paul Bunczak – within the rule’s scope. They are, however, expressly excluded from the statute by its own terms.

60. The agency’s expansion of the registration requirement adversely impacts thousands of individuals around the state, including the plaintiffs Paul Bunczak, Mary Ripp, Edward Chamberlain and all active real estate licensees including those who are WRA members.

F. *DATCP Exceeded Its Authority By Creating A Private Right Of Action For Damages Against Alleged Violators – A Right Not Included In The Statute Because It Was Vetoed By The Governor.*

61. Section 2446b of 2001 Wisconsin Act 16, as adopted by the legislature, created section 100.52(8), Stats., which provided a private cause of action for any alleged violations of the “Do Not Call” law. However, Governor McCallum vetoed that provision when he signed the bill into law.

62. Now, a division of the executive branch of state government has revived the private right of action by a rule that is contrary to the statute’s express provisions and the Governor’s veto. In doing so, DATCP has exercised executive power it does not have – indeed, contrary to the directive of the executive himself.

63. DATCP created the private right of action by impermissibly claiming that its rule was drafted and promulgated under both section 100.52, Stats., and section 100.20(2), Stats. Section 100.20(5), a part of chapter 100 that addresses unfair trade practices, provides a private cause of action. A note to the agency's "Do Not Call" rules states that "a person who suffers a monetary loss because of a violation of this chapter may sue the violator directly under sec. 100.20(5) Stats., and may recover twice the amount of the loss, together with costs and reasonable attorneys' fees." Prefatory note to Chapter ATCP 127, *see* Exhibit A.

64. DATCP's unlawful revival of the private cause of action for damages and attorneys' fees exceeded its authority and exposes the plaintiffs and others to the potential for serial civil litigation.

G. *DATCP Exceeded Its Authority To The Extent The Rule Purports To Trigger Forfeitures Up To \$10,000 And Fines Up To \$5,000.*

65. DATCP's rule appears to impose penalties that exceed the terms of the statute.

66. The statute creates a forfeiture of up to \$100 for each violation of the Wisconsin "Do Not Call" law. Section 100.52(10). The statute does not provide for any fines.

67. Now, a division of the executive branch of state government appears to have increased the potential forfeiture ten-fold and created a fine – contrary to the statute's express provisions.

68. DATCP increased the potential penalty by expressly invoking section 100.20 as a basis for the rule – triggering the forfeiture and fine provisions of sections 100.26(3) and (6), Stats., for violations of orders entered under section 100.20.

69. Section 100.26(3) provides for a fine of up to \$5,000 and section 100.26(6) provides for a forfeiture of up to \$10,000. Both penalties exceed the bounds of the legislature's

mandated penalties in the statute. The statute expressly provides for a forfeiture of \$100 for each violation and it does not provide for any fines. *See* sec. 100.52(10), Stats.

70. DATCP's unilateral and unlawful increase in the penalties for violating Wisconsin's "Do Not Call" law exceeded its authority and exposes the plaintiffs and others to potential penalties in excess of those contemplated and provided by the legislature.

H. *DATCP's Rule Extends The Clear Definition Of "Telephone Solicitation" Beyond The Statutory Definition.*

71. The statute defines "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." Sec. 100.52(1)(i), Stats.

72. DATCP's rule defines "telephone solicitation" as an "unsolicited telephone call for the purpose of encouraging the call recipient to buy property, goods, or services, *or that is part of a plan or scheme to encourage the call recipient to buy property, goods or services.*" ATCP 127.80(10) (emphasis added).

73. DATCP's definition of "telephone solicitation" in the rule is broader – and, as a result, more vague and ambiguous – than the statute allows.

74. DATCP's expansion of the definition to include a "plan" to "encourage the call recipient to buy property, goods or services" converts what would otherwise be a goodwill call or cautioning call—from a realtor or insurance agent, for example, to encourage a non-client involved in a transaction or claim to contact an inspector, adjuster, doctor or attorney – into a prohibited telephone solicitation if the recipient has placed herself in the nonsolicitation directory.

75. The vagueness and ambiguity injected by DATCP put the plaintiffs and others in jeopardy of unknowingly violating the “Do Not Call” law and emphasizes the overbreadth of DATCP’s rule and the consequential conflict with the “Do Not Call” law.

CLAIM II

DATCP Exceeded the Bounds of Section 100.20

76. Plaintiffs restate each and every allegation of paragraphs 1 through 75 as set forth above.

77. DATCP asserts that it has promulgated its rule pursuant to both section 100.52, Stats., *and* section 100.20, Stats. The promulgation of the rule under section 100.20 is not authorized by section 100.52. However, even if the basis for the “Do Not Call” rule – and DATCP’s authority to promulgate the rule – were not exclusively found in section 100.52, DATCP’s effort to promulgate and apply the rule within section 100.20 exceeds the agency’s statutory authority.

78. Section 100.20 regulates methods of competition and prohibits unfair trade practices. Among the activities regulated by section 100.20 are “close-out” sales and motor vehicle sales practices. Section 100.20 is specific in its reach:

(a) [DATCP] after public hearing may issue general orders forbidding methods of competition in business or trade practices in businesses which are determined by the department to be unfair.

79. Telephone solicitation is not, *per se*, an “unfair” trade practice or “business,” nor is telephone solicitation addressed anywhere within section 100.20. Moreover, DATCP has never made the requisite finding of “unfairness,” nor does it have any record on which it could justify such a finding. The legislature has chosen to codify the law only in section 100.52 without reliance or reference to any other statute.

80. In fact, the statute clearly includes calls within its definition and regulation of “telephone solicitation” that are neither “unfair” nor “business.” If the legislature intended its regulation of such calls under Section 100.52 to invoke the inconsistent coverage of Section 100.20, it would have done so. It did not.

81. DATCP has invoked section 100.20 for the impermissible purpose and with the impermissible effect of, first, reviving the private cause of action specifically vetoed from section 100.52 by the Governor and, second, increasing the potential forfeiture for a violation from \$100 to \$10,000.

82. Section 100.20 creates a private cause of action for monetary damages for “[a]ny person suffering pecuniary loss because of a violation by any other person of any order issued under [section 100.20].” Sec. 100.20(5), Stats. Persons suffering pecuniary loss may sue for damages and are entitled to double their pecuniary loss, the costs of their suit and a reasonable attorney’s fee. *Id.*

83. In addition to impermissibly reviving the private cause of action, DATCP’s claimed authority under section 100.20 also subjects plaintiffs and others to government enforcement actions under section 100.20(6), and forfeitures up to \$10,000 for each violation pursuant to section 100.26(6).

84. DATCP had no authority to invoke section 100.20 in the drafting and promulgation of the rule on telephone nonsolicitation and, by so doing, has impermissibly subjected all of the plaintiffs and others to actions for civil damages and penalties.

85. Only the legislative branch may create a cause of action, and the law presumes there is no private cause of action for damages for violation of a statute unless and until the

legislature expressly creates one. In the absence of a private cause of action created by law, DATCP has exceeded its authority by imposing such liability by rule.

REQUEST FOR RELIEF

WHEREFORE, plaintiffs demand judgment as follows:

1. Temporarily enjoining DATCP from enforcement of the rule promulgated under section 100.52, Stats., during the pendency of these proceedings;
2. Permanently enjoining DATCP from enforcement of the rule promulgated under section 100.52, Stats.;
3. Temporarily enjoining DATCP from enforcement of any part of the rule promulgated under section 100.20, Stats., during the pendency of these proceedings;
4. Permanently enjoining DATCP from enforcement of any part of the rule promulgated under section 100.20, Stats.;
5. Declaring that DATCP exceeded its rule-making authority and that the rule is invalid and striking the rule in its entirety from the Wisconsin Administrative Code; and
6. Awarding plaintiffs such other relief as this Court deems just and equitable.

Dated: May 9, 2003.

LA FOLLETTE GODFREY & KAHN

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Chapter ATCP 127

DIRECT MARKETING

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Note: This chapter is adopted under authority of s. 100.20 (2), Stats., and is administered by the Wisconsin department of agriculture, trade and consumer protection. Violations of this chapter may be prosecuted under s. 100.20 (6) and s. 100.26 (3) or (6), Stats. A person who suffers a monetary loss because of a violation of this chapter may sue the violator directly under s. 100.20 (5), Stats., and may recover twice the amount of the loss, together with costs and reasonable attorneys' fees. Subchapter V is also adopted under authority of s. 100.52, Stats. A telephone solicitation to a residential telephone customer included on the "no-call" list under subch. V does not, by itself, result in a monetary loss for which the customer may seek recovery under s. 100.20(5), Stats., unless the residential telephone customer sustains an actual monetary loss as a result of another violation of this chapter.

Note: Chapter Ag 127 was renumbered ch. ATCP 127 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448. Chapter ATCP 127 as it existed on July 31, 1999 was repealed and a new chapter ATCP 127 was created effective August 1, 1999.

Subchapter I — Definitions

ATCP 127.01 Definitions. In this chapter:

(1) "Acquirer" means a financial institution or other person who, under a license or authorization granted by a credit card system operator, authorizes merchants to honor credit cards and submit credit card sales drafts for payment through the credit card system.

(2) "Consumer" means an individual to whom a seller advertises, offers to sell, sells or promotes the sale of consumer goods or services. "Consumer" does not include an individual who purchases consumer goods or services in a business capacity, or for resale to others.

(3) "Consumer goods or services" means goods or services typically used for personal, family or household purposes. "Consumer goods or services" includes personal investment opportunities, personal business opportunities and personal training courses but does not include any of the following:

(a) Investment opportunities, business opportunities and training courses when offered to a business, rather than a consumer.

(b) Real estate, other than cemetery lots or timeshares as defined in s. 707.02 (24), Stats.

(c) Pay-per-call services sold in compliance with s. 196.208, Stats.

(d) A newspaper subscription that the consumer may cancel at any time without penalty.

(4) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(5) "Credit card" means any card or other device which entitles an authorized holder to obtain goods, services or other things of value on credit.

(6) "Credit card sales draft" means any record or evidence of a credit card transaction.

(7) "Credit card system" means the system through which credit card transactions, using credit cards issued or licensed by the credit card system operator, are processed for payment.

(8) "Credit card system operator" means a person who operates a credit card system, or who licenses others to operate a credit card system.

(9) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection.

(10) "Disclose" means to make a clear and conspicuous statement which is reasonably designed to be noticed and readily understood by the consumer.

(11) "Individual" means a natural person.

(12) "Investment opportunity" means anything, tangible or intangible, that is offered, sold or traded based wholly or in part on representations, either express or implied, about past, present or future income, profit or appreciation. "Investment opportunity" does not include a security sold in compliance with ch. 551, Stats., or a franchise investment sold in compliance with ch. 553, Stats.

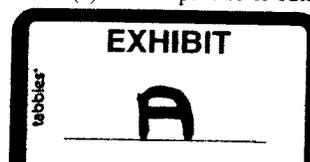
(13) "Mass advertisement" means a solicitation which a seller publishes or makes accessible to an unrestricted mass audience. "Mass advertisement" includes a solicitation published in a newspaper, magazine, radio broadcast, television broadcast or internet home page. "Mass advertisement" does not include a solicitation which a seller addresses to an individual consumer, to a consumer's residence, or to a gathering of consumers invited by means of telephone, mail or face-to-face solicitations under this chapter.

(14) "Merchant" means a person who is authorized, under a written agreement with an acquirer, to honor credit cards and submit credit card sales drafts to the acquirer for payment and processing through the credit card system.

(15) "Person" means an individual, corporation, partnership, cooperative, limited liability company, trust or other legal entity.

(16) "Prize promotion" means any of the following:

(a) A sweepstakes or other game of chance.



(b) A seller's express or implied representation that a consumer has won, has been selected to receive, may be eligible to receive, or may have a chance to receive a prize.

(c) Any communication from a seller to a consumer in which the seller is required to give the consumer a prize notice under s. 100.171, Stats.

(17) "Purchase" means to buy or lease consumer goods or services.

(18) "Purchase contract" means an agreement to purchase consumer goods or services, regardless of whether that agreement is subject to a later right of cancellation. "Purchase contract" does not include the following agreements, but does include a purchase commitment which arises under any of those agreements as a result of the consumer's subsequent action or omission:

(a) An agreement authorizing the trial delivery of consumer goods or services which the consumer has not yet agreed to purchase, provided that the agreement includes no minimum purchase requirement.

(b) A negative option plan that is covered by and complies with 16 CFR 425.

Note: Some direct marketers offer trial delivery plans in which the consumer agrees to receive trial deliveries of goods which the consumer has not yet agreed to purchase. Under these agreements, a consumer is typically free to reject or return any trial delivery without purchasing that delivery. But under the trial delivery agreement, the seller may bill the consumer for the delivered goods if the consumer fails to reject or return the delivery within a specified time. Although the consumer's initial agreement to receive trial deliveries is not itself a "purchase contract" (unless it includes a minimum purchase commitment), the consumer effectively enters into a "purchase contract" for a particular delivery when the consumer fails to return or reject that delivery according to the trial delivery agreement.

(19) "Sale" means the passing of an ownership or leasehold interest in consumer goods or services to a consumer for a price.

(20) "Sell" means to engage in the sale of consumer goods or services, or to accept payment pursuant to a purported sale of consumer goods or services.

(21) "Seller" means a person, other than a bank, savings bank, savings and loan association, credit union, insurance company, public utility or telecommunications carrier engaged in exempt activities under s. 93.01 (1m), Stats., who is engaged in the business of selling, offering to sell, or promoting the sale of consumer goods or services to consumers. "Seller" includes all of the following:

(a) A person who accepts payment for a purported sale of consumer goods or services to a consumer.

(b) An employee or agent of a seller.

(c) A person who makes home solicitations under arrangement with a seller.

Note: For example, a telemarketing firm that makes telephone solicitations on behalf of a "seller" is also a "seller" for purposes of this chapter. Individual employees of the telemarketing firm are also "sellers," for purposes of this chapter, when making telephone solicitations to consumers.

(22) "Solicitation" means a communication received by a consumer at a place other than the seller's regular place of business, in which a seller offers or promotes the sale of consumer goods or services to a consumer, or which is part of a seller's plan or scheme to sell consumer goods or services to a consumer. "Solicitation" does not include any of the following:

(a) A mass advertisement.

(b) A telephone, mail or electronic communication initiated by the consumer, unless prompted by the seller's prior solicitation to the consumer.

Note: Paragraph (b) does not except a face-to-face communication.

(c) A written communication that invites a consumer to the seller's regular place of business.

(d) A communication initiated by a consumer at an established public market, unless that communication was prompted by the seller's prior solicitation to the consumer.

Note: For example, a routine transaction at a farmers market is not a "solicitation" under this chapter, even though it occurs at a place other than the seller's "regular place of business."

(e) The delivery, to a consumer, of goods or services sold to the consumer in a transaction other than a telephone, mail or face-to-face transaction under this chapter.

Note: A "solicitation" under sub. (22) is covered by this rule even though it is not the first communication between the seller and the consumer.

(23) "Written" or "in writing," as applied to a seller's disclosure to a consumer, means legibly printed on paper or another tangible nonelectronic medium that is delivered to the consumer, or legibly printed in an electronic form that the consumer can electronically retrieve, store or print for future reference.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99; CR 02-036: am. (15), Register November 2002 No. 563, eff. 12-1-02.

Subchapter II — Telephone Solicitations

ATCP 127.02 Definitions. In this subchapter:

(1) "Telephone solicitation" means a solicitation, under s. ATCP 127.01 (22), that a seller makes to a consumer by telephone, videoconferencing, or other interactive electronic voice communications.

(2) "Telephone transaction" means any of the following:

(a) A telephone solicitation.

(b) Purchase contracts and other dealings that result from a telephone solicitation.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.04 Opening disclosures. (1) **DISCLOSURES REQUIRED.** A seller making a telephone solicitation shall disclose all of the following to the consumer before asking any questions or making any statements other than an initial greeting:

(a) The name of the principal seller.

Note: For example, a telemarketing firm making solicitations on behalf of another company must disclose the name of the company for which it is acting as agent. The telemarketing firm may also disclose its own identity, but is not required to do so.

(b) The name of the individual making the telephone solicitation.

Note: For example, if Mary Smith makes telephone solicitations for the ABC Company, Smith must disclose her individual name. Under sub. (3) (b), Smith may use a fictitious name which uniquely identifies her if the ABC Company keeps a record of that uniquely identifying fictitious name.

(c) That the seller is offering or promoting the sale of consumer goods or services.

(d) The nature of the goods or services which the seller is offering or promoting.

(2) **FICTITIOUS NAMES.** (a) A seller may not use any fictitious name under sub. (1) (a) or s. ATCP 127.06 (1) (d), except that a seller may use a trade name if all of the following apply:

1. The seller is widely known by and consistently does business under that name.

2. The name does not have the tendency or capacity to confuse or mislead the consumer as to the seller's true identity.

(b) An individual making a telephone solicitation as an employee or agent of a seller may disclose a fictitious individual name under sub. (1) (b) if all of the following apply:

1. No other individual making telephone solicitations for the same seller uses the same fictitious name.

2. The seller for whom the individual is making the telephone solicitation keeps records under s. ATCP 127.18 (1) (d) which correlate the fictitious name with the actual name and address of the individual seller.

Note: Subsection (2) (b) balances the needs of consumers against the privacy interests of individuals employed to make solicitations on behalf of a seller.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.06 Disclosures prior to sale. (1) **DISCLOSURES REQUIRED.** In a telephone transaction, a seller shall disclose all of the following to a consumer before the consumer enters into any purchase contract, and before the seller takes the consumer's credit card number or accepts any payment from the consumer:

(a) The nature and quantity of consumer goods or services included in the sale.

(b) The total cost to purchase and receive the consumer goods or services.

(c) All material terms and conditions affecting the sale, receipt or use of the consumer goods or services, including credit terms if any.

Note: Consumer credit disclosures under par. (c) must comply with applicable requirements under ch. 422, Stats., and federal law.

(d) The name of the principal seller.

Note: For example, a telemarketing firm making solicitations on behalf of another company must disclose the name of the company for which it is acting as agent.

(e) At least one of the following:

1. The principal seller's mailing address.

2. A local or toll-free telephone number, answered during normal business hours, at which the consumer may contact the principal seller and obtain the principal seller's address.

(f) The seller's policy related to refunds, cancellations, exchanges or repurchases if any of the following apply:

1. The seller has a policy that prevents or substantially limits refunds, cancellations, exchanges or repurchases.

2. The seller makes any claim or representation regarding refunds, cancellations, exchanges or repurchases.

(2) FORM OF DISCLOSURE. A seller shall make the disclosures under sub. (1) in writing, except that a seller may make the disclosures orally if at least one of the following applies:

(a) The seller confirms the disclosures in writing at or before the time the seller first delivers the consumer goods or services to the consumer, and before the seller submits any credit card sales draft for payment or takes any other payment from the consumer.

(b) The seller does both of the following in writing at or before the time the seller first delivers consumer goods or services to the customer:

1. Confirms the oral disclosures.

2. Discloses, in substance, that the consumer may cancel the sale after the first delivery and obtain a full refund. The seller may specify a cancellation deadline, provided that the deadline is at least 7 days after the first delivery.

(3) LANGUAGE OTHER THAN ENGLISH. (a) If the primary language used in a telephone solicitation is not English, the seller shall make the disclosures under sub. (1) in the language primarily used.

(b) If the primary language used in a telephone transaction is not English, every written agreement signed by the consumer shall be in English and the language primarily used.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.08 Prize promotions. (1) ILLEGAL LOTTERIES. In a telephone transaction, no seller may use a prize promotion that violates s. 945.02 (3), Stats.

(2) PRIZE NOTICE; REQUIREMENTS. In a telephone transaction, no seller may use a prize promotion that violates s. 100.171, Stats.

(3) PRIZE PROMOTIONS; MISREPRESENTATIONS. No seller may misrepresent the material terms of a prize promotion used in a telephone transaction.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.10 Unauthorized payment. No seller in a telephone transaction may obtain or submit for payment any check, draft or other negotiable instrument drawn on a consumer's account without that consumer's express, verifiable authorization. The following authorizations are considered verifiable:

(1) An express written authorization. Express written authorization may include the consumer's signature on the check, draft or negotiable instrument.

(2) An express oral authorization if all of the following apply:

(a) The oral authorization is tape recorded and made available upon request to the consumer's bank.

(b) The oral authorization clearly authorizes payment for the goods and services offered to the consumer.

(c) The oral authorization clearly indicates that the consumer received information specifying all of the following:

1. The date and amount of the check, draft or instrument.

2. The payor's name.

3. The number of payments, if more than one.

4. A telephone number for consumer inquiries that is answered during normal business hours.

5. The date of the consumer's oral authorization.

(3) An authorization which the seller confirms in writing, provided that all of the following apply:

(a) The seller sends the written confirmation to the consumer before the seller submits the check, draft or other negotiable instrument for payment.

(b) The written confirmation includes all of the following information:

1. The date and amount of the check, draft or instrument.

2. The payor's name.

3. The number of payments, if more than one.

4. A telephone number for consumer inquiries that is answered during normal business hours.

5. The date of the consumer's authorization.

6. A procedure by which the consumer can obtain a refund from the seller if the written confirmation is inaccurate.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.12 Credit card laundering. (1) No merchant may present to or deposit into a credit card system for payment, or cause another person to present to or deposit into a credit card system for payment, any credit card sales draft generated by a telephone transaction that is not a sale by that merchant to the holder of that credit card.

(2) No person may employ, solicit or cause a merchant to violate sub. (1).

(3) No seller engaged in a telephone transaction may, by means of a business relationship or affiliation with a merchant, obtain access to a credit card system unless that access is authorized by that merchant's written agreement with the credit card system operator, or with an acquirer licensed or authorized by the credit card system operator.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.14 Misrepresentations. No seller may do any of the following, directly or by implication, in a telephone transaction:

(1) Misrepresent a seller's identity, affiliation, location or characteristics.

(2) Misrepresent the nature, purpose or intended length of a solicitation.

(3) Misrepresent the nature or terms of a telephone transaction, or any document related to that transaction.

(4) Misrepresent the cost of goods or services offered or promoted by a seller, or fail to disclose material costs payable by the consumer.

(5) Misrepresent the nature, quantity, material characteristics, performance or efficacy of the goods or services offered or promoted by a seller.

(6) Misrepresent or fail to disclose material restrictions, limitations or conditions on the purchase, receipt, use or return of goods or services offered or promoted by a seller.

(7) Misrepresent the material terms of a seller's refund, cancellation, exchange, repurchase or warranty policies.

(8) Misrepresent that a seller is offering consumer goods or services free of charge or at a reduced price.

(9) Misrepresent that a seller is affiliated with, or endorsed by, any government or 3rd-party organization.

(10) Represent that the seller has specially selected the consumer unless the representation is true and the seller concurrently discloses to the consumer the specific basis on which the seller makes the representation. The seller may not misrepresent that basis.

(11) Represent that the seller is conducting a special sales promotion, is making a special offer limited to a few persons, is making a special offer for a limited period of time, or is authorized to place the offered goods or services in a limited number of homes, unless the representation is true and the seller concurrently discloses to the consumer the specific basis on which the representation is made. The seller may not misrepresent that basis.

(12) Represent that the seller is participating in a contest or conducting a survey unless the representation is true and all of the following apply:

(a) The seller first makes all of the opening disclosures under s. ATCP 127.04.

(b) The seller concurrently discloses the name of the contest or survey sponsor, and the specific terms of the contest or survey.

(c) The seller concurrently discloses that the seller is attempting to sell goods or services, or to obtain information to identify sales prospects, if that is the case.

(13) Misrepresent any material aspect of a personal investment opportunity offered to the consumer, including any aspect such as risk, liquidity, earnings potential or profitability.

(14) Fail to disclose, in connection with every purported offer of free goods or services in a telephone transaction, any costs which the consumer must incur and any conditions which the consumer must meet in order to receive those free goods or services. This does not prohibit a combination offer that is covered by, and complies with, s. 100.18 (2), Stats.

(15) Make any false, deceptive or misleading representation to a consumer.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.16 Prohibited practices. No seller may do any of the following in a telephone transaction:

(1) Threaten, intimidate or harass a consumer.

(2) Repeatedly or continuously cause a consumer's telephone to ring, or repeatedly or continuously engage a consumer in telephone conversation, if the seller knows or reasonably should know that those actions will have the effect of annoying, abusing or harassing the consumer.

(3) Initiate a telephone solicitation to a consumer before 8:00 AM or after 9:00 PM without the prior consent of the consumer. Time, for purposes of this section, is the local time at the place where the consumer resides.

(4) Initiate a telephone solicitation to a consumer who has previously stated that he or she does not wish to receive telephone solicitations from the seller for whom the solicitation is being made. A seller does not violate this subsection if all of the following apply:

(a) The seller has established and implemented clear written procedures that are reasonably designed to prevent violations.

(b) The seller has trained its personnel in the procedures under par. (a).

(c) The seller maintains a recorded list of persons who have stated that they do not wish to be called by the seller for whom solicitations are being made.

(d) The repeat call is the result of a good faith error, and is not the result of an intentional or systematic disregard of the prohibition under this subsection.

(5) Request or receive payment for seeking or arranging a loan or extension of credit until the consumer actually receives that loan or extension of credit, if the seller has represented that efforts to obtain a loan or extension of credit would likely be successful.

(6) Fail to do either of the following if the transaction qualifies as a consumer approval transaction under s. 423.201, Stats., and is not subject to s. 423.202 (4), Stats.:

(a) Provide a notice under s. 423.203, Stats., of the consumer's right to cancel.

(b) Honor the consumer's right to cancel under s. 423.202, Stats.

Note: Under s. 423.202, Stats., a consumer may cancel a consumer approval transaction until midnight of the 3rd business day after the seller gives the consumer a required written notice of cancellation rights under s. 423.203, Stats. The consumer's cancellation rights under s. 423.202, Stats., are in addition to any other cancellation rights which the consumer may have under contract law.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.18 Recordkeeping. (1) RECORDS REQUIRED. A seller engaged in telephone transactions shall keep all of the following records related to those transactions:

(a) Copies of all telephone solicitation scripts, and all sales and promotional materials used in telephone transactions. This paragraph does not require a seller to keep duplicate copies of substantially identical documents.

(b) The following records related to each prize which the seller offers or awards to consumers if the seller represents to any consumer, directly or by implication, that the prize has a value of \$25 or more:

1. An identification of the prize.

2. The name and last known address of every consumer who received the prize.

(c) The name and last known address of every consumer who purchased goods or services in a telephone transaction with the seller, the date on which the consumer purchased those goods or services, the date on which the seller provided those goods or services to the consumer, and the amount which the consumer paid for those goods or services.

(d) The following information related to every individual who has made telephone solicitations as the seller's employee or agent:

1. The individual's name, last known address and telephone number.

2. Every fictitious name which the individual has used when making telephone solicitations. No seller may permit more than one employee or contract agent to use the same fictitious name.

3. The individual's job title or titles.

(e) All verifiable authorizations required under s. ATCP 127.10.

(2) **KEEPING RECORDS.** (a) A seller shall keep each record required under sub. (1) for at least 2 years after the seller creates that record.

Note: A seller may keep records required under sub. (1) in the form, manner, format and place in which the seller would normally keep those records in the ordinary course of business.

(b) The department, pursuant to an investigation of possible violations of this subchapter, may ask a seller to provide copies of records under sub. (1) that are reasonably relevant to that investigation. The seller shall provide the requested copies within a reasonable time specified by the department.

Note: See ss. 93.15 and 93.16, Stats.

(c) An agent engaged in telephone transactions on behalf of a principal seller need not keep duplicate copies of records which that principal seller keeps according to this section. A principal seller who contracts to have an agent keep records for the principal seller need not keep duplicate copies of records which that agent keeps according to that contract and this section. An employee need not keep duplicate copies of records that his or her employer keeps according to this section.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.20 Assisting violations. No person may knowingly assist any seller to engage in any activity or practice in violation of this subchapter.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

Subchapter III — Mail Solicitations

ATCP 127.30 Definitions. In this subchapter:

(1) "Catalog" means a multi-page written publication which a seller publishes at least annually, and which contains all of the following:

- (a) The seller's name and address.
- (b) Written or graphic descriptions of goods or services which the seller offers for sale.
- (c) The prices at which the goods or services under par. (b) are offered for sale.

(2) "Mail solicitation" means a written or graphic solicitation, under s. ATCP 127.01 (22), that a seller delivers by mail or other means to a consumer's residence or to a consumer who is individually identified in the solicitation. "Mail solicitation" includes a telefax or electronic mail solicitation. "Mail solicitation" does not include a catalog, a radio or television broadcast, an internet home page, a telephone solicitation under subch. II or a face-to-face solicitation under subch. IV.

(3) "Mail transaction" means any of the following:

- (a) A mail solicitation.
- (b) Purchase contracts and other dealings that result from a mail solicitation.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.32 Opening disclosures. (1) DISCLOSURES REQUIRED. A mail solicitation shall disclose all of the following in writing:

(a) The name of the principal seller.

Note: For example, a firm making mail solicitations on behalf of another company must disclose the name of the company for which it is acting as agent. The firm may also disclose its own identity, but is not required to do so.

- (b) That the seller is offering or promoting the sale of consumer goods or services.
- (c) The nature of the goods or services which the seller is offering or promoting.

(2) **FICTITIOUS NAMES.** A seller may not use any fictitious name under sub. (1) (a) or s. ATCP 127.34 (1) (d), except that a seller may use a trade name if all of the following apply:

- (a) The seller is widely known by and consistently does business under that name.
- (b) The name does not have the tendency or capacity to confuse or mislead the consumer as to the seller's true identity.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.34 Disclosures prior to sale. (1) DISCLOSURES REQUIRED. In a mail transaction, a seller shall disclose all of the following to a consumer, in writing, before the consumer enters into a purchase contract and before the seller takes the consumer's credit card number or accepts any payment from the consumer:

- (a) The nature and quantity of consumer goods or services included in the sale.
- (b) The total cost to purchase and receive the consumer goods or services.
- (c) All material terms and conditions affecting the sale, receipt or use of the consumer goods or services, including credit terms if any.

Note: Consumer credit disclosures under par. (c) must comply with applicable requirements under ch. 422, Stats., and federal law.

- (d) The name and mailing address of the principal seller.
- (e) The seller's policy related to refunds, cancellations, exchanges or repurchases if any of the following apply:
 1. The seller has a policy that prevents or substantially limits refunds, cancellations, exchanges or repurchases.
 2. The seller makes any claim or representation regarding refunds, cancellations, exchanges or repurchases.

(2) **LANGUAGE OTHER THAN ENGLISH.** If the primary language used in a mail solicitation is not English, the seller shall make the disclosures under sub. (1) in the language primarily used.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.36 Prize promotions. (1) ILLEGAL LOTTERIES. In a mail transaction, no seller may use a prize promotion that violates s. 945.02 (3), Stats.

(2) **PRIZE NOTICE; REQUIREMENTS.** In a mail transaction, no seller may use a prize promotion that violates s. 100.171, Stats.

(3) **PRIZE PROMOTIONS; MISREPRESENTATIONS.** No seller may misrepresent the material terms of a prize promotion used in a mail transaction.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.38 Unauthorized payment. No seller in a mail transaction may obtain or submit for payment any check, draft or other negotiable instrument drawn on a consumer's account without that consumer's express, verifiable authorization. The authorization shall comply with s. ATCP 127.10.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.40 Delivering ordered goods. A seller in a mail transaction shall comply with s. 100.174, Stats.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.42 Credit card laundering. (1) No merchant may present to or deposit into a credit card system for payment, or cause another person to present to or deposit into a credit card system for payment, any credit card sales draft generated by a mail transaction that is not a sale by that merchant to the holder of that credit card.

(2) No person may employ, solicit or cause a merchant to violate sub. (1).

(3) No seller engaged in a mail transaction may, by means of a business relationship or affiliation with a merchant, obtain access to a credit card system unless that access is authorized by that merchant's written agreement with the credit card system operator, or with an acquirer licensed or authorized by the credit card system operator.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.44 Misrepresentations. No seller may do any of the following, directly or by implication, in a mail transaction:

(1) Misrepresent a seller's identity, affiliation, location or characteristics.

(2) Misrepresent the nature or purpose of a mail solicitation.

(3) Misrepresent the nature or terms of a mail transaction, or any document related to that transaction.

(4) Misrepresent the cost of goods or services offered or promoted by a seller, or fail to disclose material costs payable by the consumer.

(5) Misrepresent the nature, quantity, material characteristics, performance or efficacy of the goods or services offered or promoted by a seller.

(6) Misrepresent or fail to disclose material restrictions, limitations or conditions on the purchase, receipt, use or return of goods or services offered or promoted by a seller.

(7) Misrepresent the material terms of a seller's refund, cancellation, exchange, repurchase or warranty policies.

(8) Misrepresent that a seller is offering consumer goods or services free of charge or at a reduced price.

(9) Misrepresent that a seller is affiliated with, or endorsed by, any government or 3rd-party organization.

(10) Misrepresent that the seller has specially selected the consumer.

(11) Misrepresent that the seller is conducting a special sales promotion, is making a special offer limited to a few persons, is

making a special offer for a limited period of time, or is authorized to place the offered goods or services in a limited number of homes.

(12) Represent that the seller is participating in a contest or conducting a survey unless the representation is true and all of the following apply:

(a) The seller first makes all of the opening disclosures under s. ATCP 127.32.

(b) The seller concurrently discloses the name of the contest or survey sponsor, and the specific terms of the contest or survey.

(c) The seller concurrently discloses that the seller is attempting to sell goods or services, or to obtain information to identify sales prospects, if that is the case.

(13) Misrepresent any material aspect of a personal investment opportunity offered to the consumer, including any aspect such as risk, liquidity, earnings potential or profitability.

(14) Fail to disclose, in connection with every purported offer of free goods or services in a mail transaction, any costs which the consumer must incur and any conditions which the consumer must meet in order to receive those free goods or services. This does not prohibit a combination offer that is covered by, and complies with, s. 100.18 (2), Stats.

(15) Make any false, deceptive or misleading representation to a consumer.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.46 Prohibited practices. No seller may do any of the following in a mail transaction:

(1) Threaten, intimidate or harass a consumer.

(2) Request or receive payment for seeking or arranging a loan or extension of credit until the consumer actually receives that loan or extension of credit, if the seller has represented that efforts to obtain a loan or extension of credit would likely be successful.

(3) Fail to do either of the following if the transaction qualifies as a consumer approval transaction under s. 423.201, Stats., and is not subject to s. 423.202 (4), Stats.:

(a) Provide a notice under s. 423.203, Stats., of the consumer's right to cancel.

(b) Honor the consumer's right to cancel under s. 423.202, Stats.

Note: Under s. 423.202, Stats., a consumer may cancel a consumer approval transaction until midnight of the 3rd business day after the seller gives the consumer a required written notice of cancellation rights under s. 423.203, Stats. The consumer's cancellation rights under s. 423.202, Stats., are in addition to any other cancellation rights which the consumer may have under contract law.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.48 Recordkeeping. (1) RECORDS REQUIRED. A seller engaged in mail transactions shall keep all of the following records related to those transactions:

(a) Copies of all mail solicitations and other documents provided to consumers in mail transactions. This paragraph does not require a seller to keep duplicate copies of substantially identical documents.

(b) The following records related to each prize which the seller offers or awards to consumers if the seller represents to any consumer, directly or by implication, that the prize has a value of \$25 or more:

1. An identification of the prize.

2. The name and last known address of every consumer who received the prize.

(c) The name and last known address of every consumer who purchased goods or services in a mail transaction with the seller, the date on which the consumer purchased those goods or services, the date on which the seller provided those goods or services to the consumer, and the amount which the consumer paid for those goods or services.

(d) Documentation that the seller has systems and procedures which assure compliance, in the ordinary course of business, with s. 100.174, Stats.

(2) **KEEPING RECORDS.** (a) A seller shall keep each record required under sub. (1) for at least 2 years after the seller creates that record.

Note: A seller may keep records required under sub. (1) in the form, manner, format and place in which the seller would normally keep those records in the ordinary course of business.

(b) The department, pursuant to an investigation of possible violations of this subchapter, may ask a seller to provide copies of records under sub. (1) that are reasonably relevant to that investigation. The seller shall provide the requested copies within a reasonable time specified by the department.

Note: See ss. 93.15 and 93.16, Stats.

(c) An agent engaged in mail transactions on behalf of a principal seller need not keep duplicate copies of records which that principal seller keeps according to this section. A principal seller who contracts to have an agent keep records for the principal seller need not keep duplicate copies of records which that agent keeps according to that contract and this section. An employee need not keep duplicate copies of records that his or her employer keeps according to this section.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.50 Assisting violations. No person may knowingly assist any seller to engage in any activity or practice in violation of this subchapter.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

Subchapter IV — Face-to-Face Solicitations

ATCP 127.60 Definitions. In this subchapter:

(1) "Face-to-face solicitation" means a solicitation, under s. ATCP 127.01 (22), that a seller makes in a face-to-face encounter with a consumer.

Note: For example, a door-to-door seller is engaged in "face-to-face solicitations."

(2) "Face-to-face transaction" means any of the following:

(a) A face-to-face solicitation.

(b) Purchase contracts and other dealings that result from a face-to-face solicitation.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.62 Opening disclosures. (1) DISCLOSURES REQUIRED. In a face-to-face solicitation, a seller shall disclose all of the following to the consumer:

(a) The name of the principal seller.

Note: For example, if Mary Smith makes door-to-door solicitations as an employee or agent of the ABC Company, Smith must disclose the name of the ABC Company.

(b) The name of the individual making the face-to-face solicitation.

Note: For example, if Mary Smith makes door-to-door solicitations for the ABC Company, she must also disclose her individual name. Under sub. (3) (b), Smith may use a fictitious name which uniquely identifies her if the ABC Company keeps a record of that uniquely identifying fictitious name.

(c) That the seller is offering or promoting the sale of consumer goods or services.

(d) The nature of the goods or services which the seller is offering or promoting.

(2) **MAKING THE DISCLOSURES.** A seller shall make the disclosures under sub. (1) before asking any questions or making any statements to a consumer, other than an initial greeting. The seller shall make the disclosures orally and in writing.

(3) **FICTITIOUS NAMES.** (a) A seller may not use any fictitious name under sub. (1) (a) or s. ATCP 127.64 (1) (d), except that a seller may use a trade name if all of the following apply:

1. The seller is widely known by and consistently does business under that name.

2. The name does not have the tendency or capacity to confuse or mislead the consumer as to the seller's true identity.

(b) An individual making face-to-face solicitations as an employee or agent of another seller may disclose a fictitious individual name under sub. (1) (b) if all of the following apply:

1. No other individual making face-to-face solicitations for the same seller uses the same fictitious name.

2. The seller for whom the individual is making the face-to-face solicitation keeps records under s. ATCP 127.76 (1) (d) that correlate the fictitious name with the actual name and address of the individual seller.

Note: Subsection (3) (b) balances the needs of consumers against the privacy interests of individuals employed to make face-to-face solicitations on behalf of a seller.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.64 Disclosures prior to sale. (1) DISCLOSURES REQUIRED. In a face-to-face transaction, a seller shall disclose all of the following to a consumer, in writing, before the consumer enters into any purchase contract and before the seller takes the consumer's credit card number or accepts any payment from the consumer:

(a) The nature and quantity of consumer goods or services included in the sale.

(b) The total cost to purchase and receive the consumer goods or services.

(c) All material terms and conditions affecting the sale, receipt or use of the consumer goods or services, including credit terms if any.

Note: Consumer credit disclosures under par. (c) must comply with applicable requirements under ch. 422, Stats., and federal law.

(d) The name, mailing address and telephone number of the principal seller.

Note: For example, an individual making face-to-face solicitations on behalf of the ABC company must disclose the name, address and telephone number of that company.

(e) The seller's policy related to refunds, cancellations, exchanges or repurchases if any of the following apply:

1. The seller has a policy that prevents or substantially limits refunds, cancellations, exchanges or repurchases.

2. The seller makes any claim or representation regarding refunds, cancellations, exchanges or repurchases.

(2) **COPIES OF SALES AGREEMENTS.** Whenever a consumer signs any written agreement in a face-to-face transaction, the seller shall provide the consumer with a true copy of that agreement.

(3) **LANGUAGE OTHER THAN ENGLISH.** (a) If the primary language used in a face-to-face solicitation is not English, the seller shall make the disclosures under sub. (1) in the language primarily used.

(b) If the primary language used in a face-to-face transaction is not English, every written agreement signed by the consumer shall be in English and the language primarily used.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.66 Prize promotions. (1) ILLEGAL LOTTERIES. In a face-to-face transaction, no seller may use a prize promotion that violates s. 945.02 (3), Stats.

(2) **PRIZE NOTICE; REQUIREMENTS.** In a face-to-face transaction, no seller may use a prize promotion that violates s. 100.171, Stats.

(3) **PRIZE PROMOTIONS; MISREPRESENTATIONS.** No seller may misrepresent the material terms of a prize promotion used in a face-to-face transaction.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.68 Unauthorized payment. No seller in a face-to-face transaction may obtain or submit for payment any check, draft or other negotiable instrument drawn on a consumer's account without that consumer's express, written authorization. Express written authorization may include the customer's signature on the check, draft or negotiable instrument.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.70 Credit card laundering. (1) No merchant may present to or deposit into a credit card system for payment, or cause another person to present to or deposit into a credit card system for payment, any credit card sales draft generated by a face-to-face transaction that is not a sale by that merchant to the holder of that credit card.

(2) No person may employ, solicit or cause a merchant to violate sub. (1).

(3) No seller engaged in a face-to-face transaction may, by means of a business relationship or affiliation with a merchant, obtain access to a credit card system unless that access is authorized by that merchant's written agreement with the credit card system operator, or with an acquirer licensed or authorized by the credit card system operator.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.72 MISREPRESENTATIONS. No seller may do any of the following, directly or by implication, in a face-to-face transaction:

(1) Misrepresent a seller's identity, affiliation, location or characteristics.

(2) Misrepresent the nature, purpose or intended length of a face-to-face solicitation.

(3) Misrepresent the nature or terms of a face-to-face transaction, or any document related to that transaction.

(4) Misrepresent the cost of goods or services offered or promoted by a seller, or fail to disclose material costs payable by the consumer.

(5) Misrepresent the nature, quantity, material characteristics, performance or efficacy of the goods or services offered or promoted by a seller.

(6) Misrepresent or fail to disclose material restrictions, limitations or conditions on the purchase, receipt, use or return of goods or services offered or promoted by a seller.

(7) Misrepresent the material terms of a seller's refund, cancellation, exchange, repurchase or warranty policies.

(8) Misrepresent that a seller is offering consumer goods or services free of charge or at a reduced price.

(9) Misrepresent that a seller is affiliated with, or endorsed by, any government or 3rd-party organization.

(10) Represent that the seller has specially selected the consumer unless the representation is true and the seller concurrently discloses to the consumer the specific basis on which the seller makes the representation. The seller may not misrepresent that basis.

(11) Represent that the seller is conducting a special sales promotion, is making a special offer limited to a few persons, is making a special offer for a limited period of time, or is authorized to place the offered goods or services in a limited number of homes, unless the representation is true and the seller concurrently discloses to the consumer the specific basis on which the representation is made. The seller may not misrepresent that basis.

(12) Represent that the seller is participating in a contest or conducting a survey unless the representation is true and all of the following apply:

(a) The seller first makes all of the opening disclosures under s. ATCP 127.62.

(b) The seller concurrently discloses the name of the contest or survey sponsor, and the specific terms of the contest or survey.

(c) The seller concurrently discloses that the seller is attempting to sell goods or services, or to obtain information to identify sales prospects, if that is the case.

(13) Misrepresent any material aspect of a personal investment opportunity offered to the consumer, including any aspect such as risk, liquidity, earnings potential or profitability.

(14) Fail to disclose, in connection with every purported offer of free goods or services in a face-to-face transaction, any costs

which the consumer must incur and any conditions which the consumer must meet in order to receive those free goods or services. This does not prohibit a combination offer that is covered by, and complies with, s. 100.18 (2), Stats.

(15) Make any false, deceptive or misleading representation to a consumer.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.74 Prohibited practices. No seller may do any of the following in a face-to-face transaction:

(1) Threaten, intimidate or harass a consumer.

(2) Fail to leave a consumer's premises upon request.

(3) Request or receive payment for seeking or arranging a loan or extension of credit until the consumer actually receives that loan or extension of credit, if the seller has represented that efforts to obtain a loan or extension of credit would likely be successful.

(4) Fail to do either of the following if the transaction qualifies as a consumer approval transaction under s. 423.201, Stats., and is not subject to s. 423.202 (4), Stats.:

(a) Provide a notice under s. 423.203, Stats., of the consumer's right to cancel.

(b) Honor the consumer's right to cancel under s. 423.202, Stats.

Note: Under s. 423.202, Stats., a consumer may cancel a consumer approval transaction until midnight of the 3rd business day after the seller gives the consumer a required written notice of cancellation rights under s. 423.203, Stats. The consumer's cancellation rights under s. 423.202, Stats., are in addition to any other cancellation rights which the consumer may have under contract law.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.76 Recordkeeping. (1) RECORDS REQUIRED. A seller engaged in face-to-face transactions shall keep all of the following records related to those transactions:

(a) Copies of all advertising, brochures, sales scripts, seller training materials, sales and promotional materials, and documents provided to consumers in face-to-face transactions. This paragraph does not require a seller to keep duplicate copies of substantially identical documents.

(b) The following records related to each prize which the seller offers or awards to consumers if the seller represents to any consumer, directly or by implication, that the prize has a value of \$25 or more:

1. An identification of the prize.

2. The name and last known address of every consumer who received the prize.

(c) The name and last known address of every consumer who purchased goods or services in a face-to-face transaction with the seller, the date on which the consumer purchased those goods or services, the date on which the seller provided those goods or services to the consumer, and the amount which the consumer paid for those goods or services.

(d) The following information related to every individual who has made face-to-face solicitations as the seller's employee or agent:

1. The individual's name, last known address and telephone number.

2. Every fictitious name which the individual has used when making face-to-face solicitations. No seller may permit more than one employee or contract agent to use the same fictitious name.

3. The individual's job title or titles.

(e) All written authorizations required under s. ATCP 127.68.

(2) **KEEPING RECORDS.** (a) A seller shall keep each record required under sub. (1) for at least 2 years after the seller creates that record.

Note: A seller may keep records required under sub. (1) in the form, manner, format and place in which the seller would normally keep those records in the ordinary course of business.

(b) The department, pursuant to an investigation of possible violations of this subchapter, may ask a seller to provide copies of

records under sub. (1) that are reasonably relevant to that investigation. The seller shall provide the requested copies within a reasonable time specified by the department.

Note: See ss. 93.15 and 93.16, Stats.

(c) An agent engaged in face-to-face transactions on behalf of a principal seller need not keep duplicate copies of records which that principal seller keeps according to this section. A principal seller who contracts to have an agent keep records for the principal seller need not keep duplicate copies of records which that agent keeps according to that contract and this section. An employee need not keep duplicate copies of records that his or her employer keeps according to this section.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.78 Assisting violations. No person may knowingly assist any seller to engage in any activity or practice in violation of this subchapter.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

Subchapter V — Telephone Solicitations; No-Call List

ATCP 127.80 Definitions. In this subchapter:

(1) "Basic local exchange service" has the meaning given in s. 196.01 (1g), Stats.

(2) "Client" means a person who has a current agreement to receive, from the telephone caller or the person on whose behalf the call is made, property, goods or services of the type promoted by the telephone call.

Note: For example, if a local telephone service provider encourages a current customer to purchase other local telephone services, the customer is a current "client" under this definition. But a local telephone service customer is not a current "client" when the local telephone service provider encourages that customer to purchase long distance telephone services.

(3) "Nonresidential telephone customer" means a person, other than a residential customer, who receives telecommunications service from a telecommunications utility.

(4) "No-call list" means a list compiled and distributed according to s. ATCP 127.82.

(5) "Residential telephone customer" means an individual in this state who receives basic local exchange service from a telecommunications utility.

(6) "Telephone call" means a voice communication over any part of the electromagnetic spectrum to customer premises equipment.

Note: If a telecommunications provider initiates a voice communication with a customer during a telephone conversation between the customer and a third party, the telecommunications provider has initiated a "telephone call" as that term is used in this subchapter.

(7) "Telephone line" means a circuit or channel, including a voice grade equivalent channel, that is derived from a line, cable or digital facility, and that may be used to make a telephone call.

(8) "Telecommunications service" has the meaning given in s. 196.01 (9m), Stats.

(9) "Telecommunications utility" has the meaning given in s. 196.01 (10), Stats., and includes an "alternative telecommunication utility" as defined in s. 196.01 (1d), Stats.

(10) "Telephone solicitation" means an unsolicited telephone call for the purpose of encouraging the call recipient to buy property, goods or services, or that is part of a plan or scheme to encourage the call recipient to buy property, goods or services. "Telephone solicitation" does not include any of the following:

(a) A telephone call encouraging the call recipient to buy property, goods or services from a nonprofit organization if all the following apply:

1. The nonprofit organization complies with subch. III of ch. 440, Stats., if applicable.

2. Sale proceeds, if any, are exempt from Wisconsin sales tax and federal income tax.

Note: The definition of "telephone solicitation" applies to phone calls promoting sales, not charity donations. But it may cover charity solicitations that are really part

of a plan or scheme to sell property, goods or services. Subchapter III of ch. 440, Stats., regulates charitable solicitations.

Telephone calls promoting sales by nonprofit organizations are exempt if the sale proceeds are exempt from Wisconsin sales tax and federal income tax. Section 77.54(7m), Stats., defines the scope of the Wisconsin sales tax exemption for sales by nonprofit organizations. Federal income tax laws require an otherwise exempt nonprofit organization to pay income tax on "unrelated business taxable income" as defined in 26 CFR 1.512(a)-1.

(b) A telephone call made by an individual acting on his or her own behalf, and not as an employee or agent for any other person. This exemption does not apply to a caller who does any of the following:

1. Sells or promotes the sale of property, goods or services for another person.

Note: For example, self-employed insurance agents are not exempt from this subchapter when they or their employees make telephone calls to promote the sale of insurance policies offered by insurance companies. But an insurance company may register under s. ATCP 127.81(1)(b) on behalf of self-employed insurance agents and their employees who telemarket the company's insurance.

2. Sells or promotes the sale of goods that the caller buys from another person who controls or limits the caller's sales methods.

(c) A telephone call made in response to the call recipient's affirmative request for that call.

Note: A failure to respond to a negative option ("we will call unless you say no") is not an "affirmative request" under par. (c).

(d) A telephone call made to a current client.

Note: See definition of "client" under sub. (2).

(e) A telephone call made to a number listed in the current local business telephone directory.

(f) One telephone call to determine whether a former client mistakenly allowed a contractual relationship to lapse.

(g) A telephone call made to determine a former client's level of satisfaction, unless the call is part of a plan or scheme to encourage the former client to purchase property, goods or services.

(i) A telephone call, made to a party to an existing contract, that is necessary to complete that contract.

History: CR 02-036; cr. Register November 2002 No. 563, eff. 12-1-02.

ATCP 127.81 Telephone solicitors; registration.

(1) **REGISTRATION REQUIRED.** (a) No person may employ or contract with any individual to make telephone solicitations to residential telephone customers unless one of the following applies:

1. That person is currently registered with the department under this section. This registration covers telephone solicitations made by individuals acting as employees or agents of the registrant.

2. The telephone solicitations are covered by a registration under par. (b).

(b) A person who sells property, goods or services may register under this section on behalf of a person who employs or contracts with individuals to make telephone solicitations promoting the purchase of property, goods or services from the registrant. This registration covers telephone solicitations that those individuals make for that purpose. It does not cover telephone solicitations promoting the purchase of property, goods or services from persons other than the registrant.

Note: For example, an insurance company may register under par. (b) on behalf of a self-employed insurance agent whose employees telemarket that company's insurance. But that registration does not cover the agent's employees when they telemarket another company's insurance.

(c) No individual may make a telephone solicitation to a residential telephone customer unless the telephone solicitation is covered by a registration under this section.

(2) **ANNUAL REGISTRATION.** To register under this section, a person shall complete an annual registration form provided by the department. The registrant shall file, with the registration form, all quarterly fee installments required under sub. (3m). The registration form shall include all the following:

(a) The registrant's correct legal name, and all trade names under which the registrant does business.

(b) The registrant's principal business address and telephone number. The business address shall include street address, zip code, state or province, and nation.

(c) The registrant's federal tax identification (FEIN) number.

(d) The name and address of the registrant's registered agent in this state, if any.

(e) The name and address of a person who will accept service of process on behalf of the registrant, if other than a registered agent under par. (d).

(f) The name, address and telephone number of a person who may respond, on behalf of the registrant, to department notices and inquiries.

(g) The number of telephone lines that will be used to make telephone solicitations under the registration.

(h) The telephone number assigned to each telephone line counted under par. (g).

(i) The number of individuals who will make telephone solicitations under the registration. The registrant shall provide the names of the individuals if the department requests those names. A person who registers under sub. (1) (b) on behalf of another person shall identify that other person.

(j) A statement indicating the form in which the registrant wishes to receive no-call lists. A registrant may receive no-call lists in one or more of the following forms:

1. By e-mail transmission to one or more e-mail addresses provided by the registrant. Each e-mail address shall be that of the registrant, or a person covered by the registration.

2. As a compact disc, mailed to one or more addresses provided by the registrant. Each address shall be that of the registrant, or a person covered by the registration. The registrant shall specify the number of compact discs to be included in each mailing.

3. In hard-copy printed form, mailed to one or more addresses provided by the registrant. Each address shall be that of the registrant, or a person covered by the registration. The registrant shall specify the number of hard-copy lists to be included in each mailing.

(3) **FEEES.** A person registering under sub. (2) shall pay the following annual fees, or an annual fee of \$20,000, whichever is less:

(a) A basic annual registration fee of \$700 for the first year of registration, and \$500 for each subsequent year.

(b) A supplementary annual fee of \$75 for each telephone line identified under sub. (2) (g). This fee does not apply if the registrant identifies fewer than 4 telephone lines under sub. (2) (g).

(c) A supplementary annual fee of \$25 for each e-mail address identified under sub. (2) (j) 1. This fee does not apply if the registrant identifies only one e-mail address under sub. (2) (j) 1.

(d) A supplementary annual fee of \$25 for each address identified under sub. (2) (j) 2. If the registrant asks the department to send more than one annual set of compact discs to any address, the registrant shall pay an additional fee of \$25 for each additional set of discs sent to that address.

(e) A supplementary annual fee of \$1,000 for each address identified under sub. (2) (j) 3. If the registrant asks the department to send more than one annual set of hard-copy lists to any address, the registrant shall pay an additional fee of \$1,000 for each additional set of hard-copy lists sent to that address.

Note: An "annual set" under pars. (d) and (e) consists of the 4 quarterly list updates under s. ATCP 127.82 (5).

(3m) **QUARTERLY INSTALLMENTS.** A registrant shall pay the annual fees under sub. (3) in quarterly installments, as follows:

(a) The first quarterly installment is due by the first day of the registration year, or on the date of initial registration, whichever is later.

(b) The second quarterly installment is due on March 1 of the registration year, or on the date of initial registration, whichever is later.

(c) The third quarterly installment is due on June 1 of the registration year, or on the date of initial registration, whichever is later.

(d) The fourth quarterly installment is due on September 1 of the registration year, or on the date of initial registration, whichever is later.

(4) **REGISTRATION EXPIRES.** A registration under this section expires on November 30 of each year.

(5) **REDUCTION OR WAIVER OF QUARTERLY INSTALLMENTS.** The department may reduce or waive one or more quarterly installments under sub. (3m) if the department's projected fiscal-year-end cash balance in the appropriation under s. 20.115 (8) (jm), Stats., exceeds the department's projected fiscal year expenditures from that appropriation during that fiscal year by at least 15%. A reduction or waiver, if any, shall apply to all registrants. A reduction, if any, shall be a uniform percentage reduction in the quarterly installment that a registrant would otherwise pay. A reduction or waiver of a quarterly installment reduces, by the amount of that reduction or waiver, the annual fee required under sub. (3).

(6) **UPDATED INFORMATION.** A registrant shall do all the following whenever there is a material change in the information provided under sub. (2) during a registration year:

(a) Notify the department of the change.

(b) Pay any additional fees owed for that registration year as a result of the change.

History: CR 02-036: cr. Register November 2002 No. 563, eff. 12-1-02.

ATCP 127.82 No-call list. (1) **COMPILING THE LIST.** The department shall compile a no-call list containing the telephone numbers and ZIP codes of residential telephone customers who indicate, according to sub. (3), that they do not wish to receive telephone solicitations.

(2) **SOLICITATIONS PROHIBITED.** No person may make a telephone solicitation, either directly or through an employee or agent, to a residential telephone customer whose telephone number appears on the current no-call list. A telephone solicitation made in violation of this subsection does not, by itself, result in a monetary loss for which a residential telephone customer may seek recovery under s. 100.20 (5), Stats., unless that customer sustains an actual monetary loss as a result of another violation of this chapter.

(3) **INDIVIDUALS INCLUDED ON THE LIST.** (a) A residential telephone customer or the customer's caregiver may contact the department to have the customer included on the no-call list. The residential telephone customer or caregiver shall give the department all the following information:

1. The customer's telephone number including area code.
2. The customer's postal ZIP code.
3. The customer's name and address, if requested by the department. The department may not include the customer's name or address on the no-call list.
4. The caregiver's name and address, if a caregiver contacts the department on behalf of the customer. The department may not include the caregiver's name or address on the no-call list.

Note: The department will publish a telephone number and website address that residential telephone customers may contact to sign up for the no-call list. The no-call list will include only the customer's telephone number and ZIP code.

(b) No person, other than a residential telephone customer or the customer's caregiver, may ask the department to include the customer on the no-call list.

(4) **DISTRIBUTING THE LIST.** The department shall distribute the no-call list to each person who is currently registered with the department under s. ATCP 127.81. The department shall distribute the no-call list to the addresses, and in the manner, specified by the registrant under s. ATCP 127.81 (2) (j). A no-call list takes effect on the date specified by the department. The effective date shall be not sooner than 10 business days after the department distributes the list.

(5) **UPDATING THE LIST.** The department shall compile and distribute an updated no-call list every 3 months. The department shall distribute each updated list in the manner provided under sub.

(4). An updated list takes effect on the date specified by the department. The effective date shall be not sooner than 10 business days after the department distributes the list.

(6) **LIST DELETIONS AND RENEWALS.** The department shall delete a residential telephone customer from the no-call list 2 years after that customer last applied for listing. The customer or the customer's caregiver may renew the customer's listing at any time, in the manner provided for an original listing under sub. (3).

(7) **NO RE-DISTRIBUTION BY LIST RECIPIENTS.** A person who receives a no-call list may not distribute any part of that list to another person, except that a current registrant under s. ATCP 127.81 may redistribute the list to persons covered by that registration.

(8) **LIST NOT OPEN TO PUBLIC INSPECTION.** (a) The department may not release a no-call list, or any information collected under sub. (3), except that:

1. The department may release a no-call list to a person currently registered under s. ATCP 127.81, or to persons covered by that registration, as provided in this section.

2. The department may release a no-call list as necessary to enforce this subchapter, or to comply with a subpoena or judicial process, subject to any protective orders that may be necessary to ensure the confidentiality of the list.

3. The department may release a no-call list to the federal trade commission or other federal agency maintaining a national no-call list.

Note: See s. 100.52 (2) (c), Stats.

History: CR 02-036: cr. Register November 2002 No. 563, eff. 12-1-02.

ATCP 127.83 Telephone solicitation practices.

(1) Persons making telephone solicitations shall comply with applicable requirements in subchapter II.

(2) No person may do any of the following:

(a) Make a telephone solicitation in violation of s. ATCP 127.81 or 127.82.

(b) Use an electronically prerecorded message in a telephone call for the purpose of encouraging a residential or nonresidential telephone customer to purchase property, goods or services, without the prior consent of that telephone customer. This paragraph does not apply if the person meets the provisions of s. ATCP 127.80 (10) (a) or (b).

(c) Make a telephone solicitation to a nonresidential telephone customer if the nonresidential telephone customer has notified the person by mail that the nonresidential telephone customer does not wish to receive telephone solicitations.

(d) Require, instruct or authorize any person to violate this subchapter, or knowingly facilitate any person's violation of this subchapter.

(e) Use caller-ID blocking when making a telephone solicitation.

(f) Falsify any information required under this subchapter.

(3) A person making a telephone solicitation to a residential telephone customer shall give the call recipient, at the call recipient's request, the number of the registration under s. ATCP 127.81 that covers the telephone solicitation.

(4) A person making a telephone solicitation to a nonresidential telephone customer shall give the call recipient, at the call recipient's request, a mailing address to which the nonresidential telephone customer may mail a notice under sub. (2) (c). The person shall provide the mailing address within 10 days after the call recipient requests it.

History: CR 02-036: cr. Register November 2002 No. 563, eff. 12-1-02.

ATCP 127.84 Record keeping. Persons who employ or contract individuals to make telephone solicitations shall comply with record keeping and record production requirements applicable to sellers under s. ATCP 127.18.

History: CR 02-036: cr. Register November 2002 No. 563, eff. 12-1-02.



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

March 11, 2003

William Malkasian, President
Wisconsin Realtors Association
4801 Forest Run Road, Suite 201
Madison, Wisconsin 53704

Re: Wisconsin No Call program

Dear Mr. Malkasian:



We have reviewed the Wisconsin Realtor Association's concerns you presented at our meeting on February 21, 2003, about implementation of the Wisconsin No Call program. It appears to us that these concerns have been addressed in the current No Call rule in a way that avoids unfair and unnecessary constraints on the business practices of Wisconsin realtors, while adhering to the legislature's intent to establish a viable No Call program. Because of this, as further explained in this letter, we do not see any reason to reopen the rule.

The No Call law generally prohibits a telephone call, for the purpose of making a solicitation, to a number on the No Call list. The law and rule provide exceptions to this prohibition. The rule interprets the No Call law and prohibits unfair trade practices that violate the intent of the No Call law.

The department was aware the realtors' concerns when it adopted the No Call rule, and took care to address them as fairly as possible. The No Call rule provides that:

Realtors may call anyone who requests the call without violating the No Call rule.

It is not a telephone solicitation under the No Call rule for a realtor to call any person who requested the call. This request does not have to be in writing, although a realtor may want to get the request in writing whenever convenient. For example, if a customer calls the realtor's office and asks an office worker to have a realtor call back, the subsequent phone call by the realtor to the customer is not a telephone solicitation and is not regulated by the No Call rule.

If a realtor obtains a list of referrals from another business, calls to those referrals will not be a telephone solicitation under the No Call law if the referral customer requested the call. The realtor should do his or her best to make sure that the listed referral customers requested the calls before using the list.

Realtors may call a current customer for any purpose related to their business relationship without violating the No Call rule.

Under the No Call rule, it is not a telephone solicitation if a realtor calls a current customer *for any purpose related to their current business relationship*. For example, a realtor who represents a seller may call the seller to encourage the seller to make a purchase that is related to the seller's real estate transaction without violating the No Call rule.

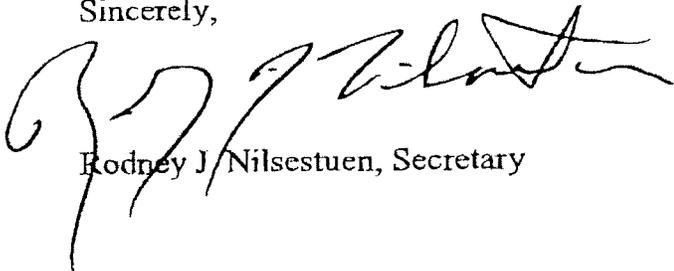
Realtors may call any party to a real estate transaction for any purpose related to the transaction without violating the No Call rule.

Under the No Call rule, it is not a telephone solicitation if a realtor calls a party to a real estate transaction in which the realtor is involved to encourage the party to purchase something necessary to complete the transaction. Nor is it a telephone solicitation for a realtor to call a party in a real estate transaction for the purpose of processing the transaction.

For example, where the realtor represents the buyer on an offer to purchase, the realtor may call the seller on behalf of the buyer to complete the terms of the offer to purchase. The realtor may also call the seller on behalf of the buyer to remind the seller to purchase title insurance, or a septic tank, that is necessary to complete the sale of real estate. None of these examples is a telephone solicitation under the No Call rule.

Jim Rabbitt and I appreciate the opportunity we had to talk with you about the No Call program. We trust that implementation of the No Call program will go smoothly for Wisconsin realtors, and offer any assistance we are able to provide towards that end.

Sincerely,



Rodney J. Nilsestuen, Secretary



Legislative Fiscal Bureau

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May 1, 2003

Joint Committee on Finance

Paper #155

Do-not Call List Revenues (Agriculture, Trade & Consumer Protection)

CURRENT LAW

The Department of Agriculture, Trade and Consumer Protection's (DATCP) telephone solicitation (no-call) program, which was created in 2001 Act 16, requires most telemarketers who sell property, goods or services to register with DATCP and prohibits them from calling, for the purpose of solicitation, consumers who register their phone number on the no-call list maintained by the Department. Businesses are required to purchase this no-call list from DATCP and are not allowed to solicit the phone numbers on the list. This program is administered by DATCP under administrative rule ATCP 127.

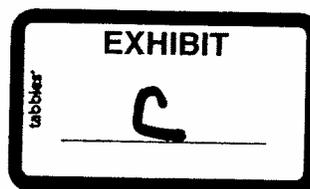
GOVERNOR

[This function and related funding would be transferred to the Department of Justice as part of the consumer protection transfer under the bill.]

DISCUSSION POINTS

1. 2001 Act 16 provided DATCP with 5.5 staff and a new, program revenue (PR) continuing appropriation for administration of the telemarketer no-call program. During rule promulgation, DATCP indicated costs for the program would total about \$550,000 for 2002-03, \$492,200 in 2003-04 and \$582,600 in 2004-05 (costs are higher in the year residential renewals are required and lower in the non-renewal year).

2. Funding for the no-call program comes from fees paid by businesses that solicit consumers via telephone, and are listed in ATCP 127. This rule specifies that telemarketers pay an initial registration fee of \$700, with \$500 annual renewal fees thereafter, plus additional fees of \$75 per phone line over three used for telemarketing. Total annual fees are capped at \$20,000 per



registrant. Upon registration, the business is sent the no-call list. Under ATCP 127, the Department collects these fees from telephone solicitors in quarterly installments. If the program is producing revenue in excess of 15% above the amount needed to fund the program in a fiscal year, the quarterly solicitor fees may be uniformly reduced or suspended by DATCP until needed to again fund the program. The revenues are deposited in a program revenue continuing appropriation for administration of the program. The first quarterly installment was due on December 1, 2002, or on the date of initial registration of the telemarketer. The third quarterly installment will be due on June 1, 2003.

3. The most recent no-call list was published on April 1, 2003, and contained over 1.1 million residential telephone numbers. The list will be updated and published quarterly by DATCP, with consumers required to renew their listing every two years, with no cost to consumers for registration or renewal.

4. Revenues under administrative rule ATCP 127 were initially estimated at approximately \$470,000 in 2002-03 and \$550,000 annually thereafter. To date, 601 telemarketers have registered with DATCP and paid \$1.3 million in fees. DATCP officials indicate one reason revenues are higher than expected is due to telemarketers making their payment for the entire year (rather than making quarterly payments). Another source of the higher than expected revenue comes from the number of phone lines used for solicitation by registered telemarketers. Original estimates assumed only four telemarketers would use more than 100 lines for telemarketing, while DATCP has already registered about 65 telemarketers that use more than 100 lines. The Department estimates the fees will generate about \$1.8 million by October, 2003 (the first full-year of collection) if the fee level is not adjusted.

5. The Department has not yet invoked its option to reduce or suspend fees. Therefore, the appropriation account is expected to have a June 30, 2003, balance in excess of \$600,000. Agency and industry officials indicate the fees were collected for operation costs of the program and that any balance should be used to reduce or suspend registrations fees. However, the Committee could consider lapsing the balance to the general fund on the effective date of the bill. DATCP could still significantly reduce telephone solicitation fees in the 2003-05 biennium to fund its ongoing program costs averaging \$537,000 annually.

6. Further, the bill provides expenditure authority of \$283,500 annually for the program. The appropriation could be increased by \$208,700 in 2003-04 and \$299,100 in 2004-05 to reflect anticipated expenditures (\$492,200 in 2003-04 and \$582,600 in 2004-05). However, since the appropriation is continuing, all monies received may be expended by the agency with the approval of DOA (2002-03 expenditures are estimated at \$600,000 or more). The appropriation amounts reflect the best estimates of expenditures. Since the account has generated significant surpluses to date, converting the appropriation to annual could be considered. Under an annual appropriation the agency may only expend the amount appropriated. Any increase in expenditure authority would have to be approved through legislation, or by the Joint Committee on Finance under s. 16.515 of the statutes (14-day passive review procedure).

ALTERNATIVES

1. Specify that \$600,000 from the DATCP telephone solicitation program revenue account lapse to the general fund on the effective date of the act.

<u>Alternative 1</u>	<u>GPR</u>
2003-05 REVENUE (Change to Bill)	\$600,000

2. Specify that \$300,000 from the DATCP telephone solicitation program revenue account lapse to the general fund on the effective date of the act.

<u>Alternative 2</u>	<u>GPR</u>
2003-05 REVENUE (Change to Bill)	\$300,000

3. In addition to, or in lieu of, alternative #1 or 2, provide an additional \$208,700 PR in 2003-04 and \$299,100 PR in 2004-05 to reflect estimated expenditures for the no-call program. Further, convert the continuing appropriation to annual.

<u>Alternative 3</u>	<u>PR</u>
2003-05 FUNDING (Change to Bill)	\$507,800

4. Take no action.

Prepared by: Daryl Hinz