

2009 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB93)

Received: 03/19/2009

Received By: **csundber**

Wanted: As time permits

Identical to LRB:

For: **Roger Roth (608) 266-7500**

By/Representing: **Jason Culotta**

This file may be shown to any legislator: **NO**

Drafter: **csundber**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Roth@legis.wisconsin.gov**

Carbon copy (CC:) to: **christopher.sundberg@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

DATCP recommendations for adding robocalls to do not call list

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	csundber 04/06/2009	nnatzke 04/06/2009		_____			
/1	csundber 05/06/2009	nnatzke 05/06/2009	mduchek 04/07/2009	_____	sbasford 04/07/2009	sbasford 04/07/2009	
/2	csundber 10/30/2009	nnatzke 11/02/2009	rschluet 05/06/2009	_____	cduerst 05/06/2009	cduerst 05/06/2009	
/3			jfrantze	_____	sbasford	sbasford	

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			11/02/2009 _____		11/02/2009	11/02/2009	

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/2		/3 nwn 11/2	rschluet 05/06/2009	_____	cdurst 05/06/2009	cdurst 05/06/2009	

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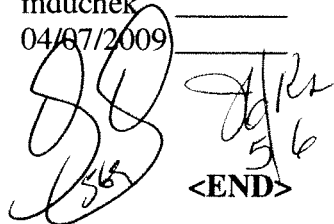
Instructions:

See attached

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/1		1/2 nwn 5/6	mduchek 04/07/2009	_____	sbasford 04/07/2009	sbasford 04/07/2009	

FE Sent For:


<END>

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Addl. Drafters:

Subject: **Trade Regulation - other**

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No specific pre topic given

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/?	csundber	/1 nwn 4/6	MT	RS JF			
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FE Sent For: 4/6 <END>

Sundberg, Christopher

From: Culotta, Jason
Sent: Wednesday, March 18, 2009 5:03 PM
To: Sundberg, Christopher
Subject: Adding automated calls to the Do Not Call List
Attachments: Auto Dialer edit4.doc

Chris,

Representative Roth had a meeting several weeks ago with DATCP regarding LRB-0403/1. DATCP requested the meeting, as they thought the bill Representative Roth had could be improved upon. Consequently, the department prepared the attached document, which is essentially a substitute amendment.

Representative Roth would like to have this prepared as a sub.

If you need to discuss drafting this with DATCP's legal counsel, feel free to contact David Ghilardi at 224-5030. Otherwise, feel free to call our office at 266-7500 with any questions as well.

Thanks,
--Jason

Sundberg, Christopher

From: Culotta, Jason
Sent: Wednesday, March 18, 2009 5:03 PM
To: Sundberg, Christopher
Subject: Adding automated calls to the Do Not Call List
Attachments: Auto Dialer edit4.doc

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If you need to discuss drafting this with DATCP's legal counsel, feel free to contact David Ghilardi at 224-5030. Otherwise, feel free to call our office at 266-7500 with any questions as well.
Thanks,
--Jason

Sundberg, Christopher

From: Ghilardi, David J - DATCP [David.Ghilardi@Wisconsin.gov]
Sent: Friday, March 20, 2009 2:32 PM
To: Sundberg, Christopher
Cc: Culotta, Jason; Rabbitt, Jim L - DATCP; Jenkins, Janet A - DATCP; Reinen, Michelle J - DATCP
Subject: RE: Adding automated calls to the Do Not Call List
Attachments: Auto Dialer Recommendations.pdf

We responded to Rep. Roth's request to review LRB-0403/1 with the attached memo, which describes two problems we perceived with LRB-0403/1.

After the memo was written, we perceived an additional problem with the phrase "a person who has a current business... relationship with the customer" in LRB-0403/1 on page 2, lines 18 and 19. We would interpret this phrase as having the same meaning as "current client" in the current s. 100.52(6)(b). We feel these two phrases, since they have the same meaning, should use the same wording.

It also appears that the exclusion of "current customers" from the prohibitions against an automatic telephone call, as well as the other exceptions to automatic telephone calls expressed in Section 3, would be best understood if they appear as an amendment to the current s. 100.52(6).

Our intent in providing this rewrite is to offer a solution to the problems we see with LRB-0403/1. We believe our rewrite will comply with the legislative intent expressed in the *Analysis* and complement the language in the current statute.

From: Sundberg, Christopher [mailto:Christopher.Sundberg@legis.wisconsin.gov]
Sent: Thursday, March 19, 2009 9:21 AM
To: Ghilardi, David J - DATCP
Cc: Subject: FW: Adding automated calls to the Do Not Call List

I've received your proposed rewrite of LRB-0403/1 from Rep. Roth's office. Could you give me a rundown on how it differs from AB 93 and the intended effect of the changes? I will need to modify the proposed rewrite in order to conform to our drafting rules, and I think I can do a better job if I understand what you intended to accomplish with the rewrite.

CS

From: Culotta, Jason
Sent: Wednesday, March 18, 2009 5:03 PM
To: Sundberg, Christopher
Subject: Adding automated calls to the Do Not Call List

Chris,
Representative Roth had a meeting several weeks ago with DATCP regarding LRB-0403/1. DATCP requested the meeting, as they thought the bill Representative Roth had could be improved upon. Consequently, the department prepared the attached document, which is essentially a substitute amendment.

Representative Roth would like to have this prepared as a sub.

If you need to discuss drafting this with DATCP's legal counsel, feel free to contact David Ghilardi at 224-5030.

Otherwise, feel free to call our office at 266-7500 with any questions as well.

Thanks,
--Jason

Department of Agriculture,
Trade and Consumer Protection
Office of Legal Counsel

Memorandum

Date: February 4, 2009
To: Janet Jenkins, Administrator, Division of Trade and Consumer Protection,
From: David J. Ghilardi, Assistant Legal Counsel
Subject: LRB-0403/1 - Extending the No Call List to Include Automated Phone Calls

The Current No Call Law

Wis. Stat. § 100.52(4)(a)1. prohibits the use of a prerecorded message in a telephone solicitation regardless of whether the call is made through the use of an automated dialer and regardless of whether the call recipient is on the No Call list, unless any of the following apply:

- The call using the prerecorded message is not intended to sell anything.
- The caller is a nonprofit organization such as a charity or a political organization. This applies whether or not the caller intends to sell anything.
- The recipient of the call specifically requested the call.

There are no current prohibitions against the use of an automatic dialer *per se*. The only prohibition that would apply occurs when the call resulting from an automatic dialer is a prerecording.

There is a legal argument that may be made under the current law that a call made by an automatic dialer using a prerecorded message is not a telephone solicitation since “telephone solicitation” is defined as the “initiation of a telephone conversation”, where a prerecorded message placed by an automatic dialer is never intended to initiate a “conversation.” If this argument were to be upheld, then there would be no prohibition against the use of a prerecorded call made with an automatic dialer. Although I believe this argument does not reflect the intent of the legislature and should not affect the department’s interpretation of this law, it would be helpful if the intent was clarified by amending the definitions to refer to a telephone “call” instead of a “conversation.”

The Intent of LRB-0403/1

The intent of the proposed bill is to prohibit telephone calls which meet all of the following:

- The call is made by an automatic dialer
- The call uses a prerecorded message.
- The call recipient is on the No Call list.

- The call recipient has not agreed to listen to the prerecorded message at any time before the prerecorded message is played.
- The caller is not a school or government unit and does not have a current relationship with the call recipient.

The exceptions for a school and government unit, and not any other type of nonprofit organization, makes it clear that the bill intends to extend the current No Call list protection to automatic dialer calls using prerecorded messages made by any nonprofit organization except schools and government units (unless there is a current relationship).

Problems with the Current Draft

As currently written, the proposed bill does not do what it intends to do. Although the definition of a “telephone solicitation” includes nonprofits that use automatic dialers, there is still an exclusion of nonprofits from the definition of “telephone solicitor” that applies even when the call involves an automatic dialer and a prerecorded message. This means that the law that says a telephone solicitor may not make a telephone solicitation to a telephone number on the No Call list would not apply to a nonprofit using an automatic dialer with a prerecorded message because the nonprofit is not a telephone solicitor.

Also, the proposed bill may end up decreasing the consumer protections provided by the No Call law. As discussed, the No Call law prohibits any unsolicited for-profit calls using prerecorded messages whether or not the call recipient is on the list. The proposed bill may be interpreted to say that an unsolicited for-profit call using both an automatic dialer and a prerecorded message is not prohibited unless the call recipient is on the No Call list. This would expose individuals who are not on the list to prerecorded messages that the current law prohibits.

The Fix

See attachment.

Proposed Rewrite of LRB-0403/1:

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

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

100.52 (1) (am) "Automatic dialing announcing device" means a device that does all of the following:

1. Dials a telephone number.
2. Disseminates, whether alone or in conjunction with another device, a prerecorded or synthesized voice message.

SECTION 2. 100.52 (1) (ar) of the statutes is created to read:

100.52 (1) (ar) "Automatic telephone call" means the unsolicited initiation of a telephone call made with an automatic telephone device that is not prohibited under sub. (4) (a) 1.

SECTION 3. 100.52 (1) (i) of the statutes is amended to read:

100.52 (1) (i) "Telephone ~~solicitation~~ sales call" means the unsolicited initiation of a telephone ~~conversation~~ call for the purpose of encouraging the recipient of the telephone call to purchase property, goods or services.

SECTION 4. 100.52 (1) (j) of the statutes is created to read:

100.52 (1) (j) "Telephone solicitation" means all of the following:

1. A telephone sales call.
2. An automatic telephone call.

SECTION 5. 100.52 (1) (j) of the statutes is renumbered 100.52 (1) (h) (intro.) and amended to read:

100.52 (1) (h) (intro.) "Telephone solicitor" means any of the following:

1. A person, other than a nonprofit organization or an employee or contractor of a nonprofit organization, that makes a telephone sales call.

SECTION 5. 100.52 (1) (h) 2. of the statutes is created to read:

100.52 (1) (h) 2. A person that makes or employs or contracts with another person to make an automatic telephone call.

SECTION 7. 100.52 (4) (a) 1. of the statutes is amended to read:

100.52 (4) (a) 1. Use an electronically prerecorded message in a telephone solicitation sales call without the consent of the recipient of the telephone call.

SECTION 8. 100.52 (6) (a) of the statutes is amended to read:

100.52 (6) (a) ~~The~~ A telephone ~~solicitation~~ sales call is made to a recipient in response to the recipient's request for the telephone solicitation.

SECTION 9. 100.52 (6) (b) of the statutes is amended to read:

100.52 (6) (b) ~~The~~ A telephone ~~solicitation~~ sales call 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. This paragraph does not apply if the recipient is a current client of an affiliate of such a person, but is not a current client of such a person.

SECTION 10. 100.52 (6) (c) of the statutes is created to read:

100.52 (6) (c) An automatic telephone call is initiated:

- a. By a school or school district to a student, parent of a student, or an employee.
- b. To a residential customer by a person who has a current business or personal relationship with the customer.
- c. By a governmental unit that is intended to alert a recipient of the call to a danger to the recipient's health or safety.

(END)

4/6/09 Jason Culotta/Roth

Draft emb to AB 93:

1. Prohibit calls by anyone (not just solicitors) using electronically prerecorded message to a person on the current list.
2. Create exceptions as in the bill.
3. Require person who wishes to make call using elec. prerecorded message not covered by exception to obtain copy of list, and require DATCP to promulgate rules for providing list to such a person, including fees.
4. Current penalty applies.



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2009 ASSEMBLY BILL 93

SA ✓
x-ref ✓

- ① AN ACT ...; ^{Gen.} relating to: prohibiting certain telephone calls using electronically
- ② prerecorded messages and granting rulemaking ^{a rule-making} authority.

Analysis by the Legislative Reference Bureau

Current law regulates "telephone solicitation," which is defined 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. Generally, under current law, a telephone solicitor may not make a telephone solicitation to a residential customer if the customer's telephone number is included in a nonsolicitation directory maintained by the Department of Agriculture, Trade and Consumer Protection (DATCP) listing residential customers who do not wish to receive telephone solicitations. Current law also prohibits a telephone solicitor from using an electronically prerecorded message in a telephone solicitation made to any recipient without the recipient's consent. Nonprofit organizations are not subject to current law regulating telephone solicitations.

This substitute amendment prohibits any person from using an electronically prerecorded message in a telephone call to a residential customer whose telephone number is included in the nonsolicitation directory, subject to the following exceptions: 1) a call initiated by a school or school district to a student, parent of a student, or an employee; 2) a call initiated to a residential customer by a person who

> has a current business or personal relationship with the customer; and 3) a call initiated by a governmental unit that is intended to alert a recipient of the call to a danger to the recipient's health or safety.

Under the substitute amendment, the department must promulgate rules requiring any person who uses, or requires an employee or contractor to use, an electronically prerecorded message in a telephone call to a residential customer in this state, other than a call covered by one of the exceptions in the substitute amendment, to register with and pay a fee to the department. A registration is valid for one year and may be renewed upon payment of a renewal fee to the department. In establishing the amounts of the fees, the department must consider the purpose for which the person uses the electronically prerecorded message and whether it is appropriate to charge amounts that are less than the registration and renewal fees currently paid by telephone solicitors.

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

and renewal

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

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

History: 1971 c. 125, 215; 1973 c. 90, 299, 333; 1975 c. 39 ss. 78m, 79, 79m, 79n, 732 (1); 1975 c. 224; 1975 c. 394 ss. 1, 27; 1977 c. 29 ss. 112 to 115v, 1650m (1), (4), 1654 (1); 1977 c. 87, 106, 181, 418; 1979 c. 34, 129, 221, 289, 335; 1981 c. 20, 66, 93, 283, 346, 357; 1983 a. 27, 132, 368; 1983 a. 410 ss. 5, 2202 (2); 1985 a. 7, 8, 29, 138, 153, 313; 1987 a. 27, 281, 354; 1987 a. 399 ss. 34 to 38, 38u; 1987 a. 403 s. 256; 1989 a. 31, 219, 227, 282, 284, 335, 336; 1991 a. 39, 269, 309, 315; 1993 a. 16, 166, 243, 437, 456, 497; 1995 a. 27, 42, 79, 460; 1997 a. 27, 197, 252, 264; 1999 a. 5, 9, 55, 185; 2001 a. 16, 38, 56, 103, 109; 2003 a. 33, 38, 133, 326, 327; 2005 a. 25; 2007 a. 20, 125, 223.

7 SECTION 2. 100.52 (title) of the statutes is amended to read:

8 100.52 (title) Telephone solicitations and electronically prerecorded
9 messages.

History: 2001 a. 16 ss. 2435 to 2446f, 2811b, 2821b; 2007 a. 226.

10 SECTION 3. 100.52 (2) (c) of the statutes is amended to read:

11 100.52 (2) (c) Except for copies of the nonsolicitation directory that are provided
12 to registered telephone solicitors under par. (d) and to persons registered under sub.

1 (6m) (c)✓, the nonsolicitation directory is not subject to inspection, copying, or receipt
2 under s. 19.35 (1) and may not be released by the department.

3 History: 2001 a. 16 ss. 2435 to 2446f, 2810b, 2821b; 2007 a. 226.

3 **SECTION 4.** 100.52 (2) (d) of the statutes is amended to read:

4 100.52 (2) (d) The department shall, on a semiannual basis, make the
5 nonsolicitation directory available by electronic transmission only to telephone
6 solicitors who are registered under sub. (3) and to persons registered under sub. (6m)✓
7 (c)✓. Upon the request of a telephone solicitor registered under sub. (3), the
8 department shall also provide a printed copy of the nonsolicitation directory to the
9 telephone solicitor. A telephone solicitor who receives a copy of the directory, or to
10 whom the directory is made available by electronic transmission, under this
11 paragraph or a person who receives a copy of the directory under sub. (6m) (c)✓ may
12 not solicit or accept from any person, directly or indirectly, anything of value in
13 exchange for providing the person with any information included in the copy.✓

14 History: 2001 a. 16 ss. 2435 to 2446f, 2810b, 2821b; 2007 a. 226.

14 **SECTION 5.** 100.52 (6m) of the statutes is created to read:

15 100.52 (6m) ELECTRONICALLY PRERECORDED MESSAGES.✓ (a) A person other than
16 a telephone solicitor or an employee or contractor of a telephone solicitor may not use
17 an electronically prerecorded message in a telephone call to a residential customer
18 if the nonsolicitation directory under sub. (2) (d) includes a listing for the residential
19 customer.✓

20 (b) Paragraph (a) does not apply to any of the following:✓

21 1. A call initiated by a school or school district to a student, parent of a student,
22 or an employee.✓

23 2. A call initiated to a residential customer by a person who has a current
24 business or personal relationship with the customer.✓

1 3. A call initiated by a governmental unit that is intended to alert a recipient
2 of the call to a danger to the recipient's health or safety.✓

3 (c) The department shall promulgate rules that require any person who uses,
4 or requires an employee or contractor to use, an electronically prerecorded message
5 in a telephone call to a residential customer in this state, other than the telephone
6 calls specified in par. (b) 1.✓ to 3.✓, to register with the department and pay a
7 registration fee to the department. The rules shall provide that a registration under
8 this paragraph✓ is valid for one year and may be renewed upon payment of a renewal
9 fee to the department. In establishing the amounts of the fees under this paragraph,✓
10 the department shall consider the purpose for which the person uses the
11 electronically prerecorded message and whether it is appropriate to charge amounts
12 that are less than the registration and renewal fees paid by telephone solicitors.✓

13

(END)

Sundberg, Christopher

From: Culotta, Jason
Sent: Wednesday, April 29, 2009 12:23 PM
To: Sundberg, Christopher
Subject: FW: further items to consider on the AB 93 sub

Here is David's response on bill collectors.

We would not like to change the current practice allowing these calls.

From: Ghilardi, David J - DATCP [<mailto:David.Ghilardi@Wisconsin.gov>]
Sent: Wednesday, April 29, 2009 12:11 PM
To: Culotta, Jason
Cc: Rabbitt, Jim L - DATCP; Jenkins, Janet A - DATCP
Subject: RE: further items to consider on the AB 93 sub

Bill collectors are not making a call for the purpose of soliciting, so they do not come under the current law. Under my February 4th draft, a bill solicitor, while being allowed to call for bill collection purposes (not a solicitation), would be prohibited from making a call using an automatic dialer. It's your decision as to whether you want to prohibit the bill collectors from using a taped message when containing debtors.

Please be aware that DFI licenses collection agencies under Wis. Stat. s. 218.04 and regulates debt collection practices under Wis. Stat. ch. 427.

From: Culotta, Jason [<mailto:Jason.Culotta@legis.wisconsin.gov>]
Sent: Wednesday, April 29, 2009 11:30 AM
To: Ghilardi, David J - DATCP
Subject: RE: further items to consider on the AB 93 sub

David,
Thanks for following up with me so quickly this morning.

1. We will plan on including alumni associations.
2. Will check with Chris on adopting these definitions
3. We'll talk with the division leadership on this. I do believe it will be easiest to allow the department to define it, but have a verbal commitment to keep the fee a reasonably low number for non-profits.
4. I'll check with Chris on this, too.

One additional clarification I'd like to get from DATCP is how bill collectors are treated. It is my understanding that currently, they are able to make automated calls to people on the Do Not Call List and these are considered part of a "business relationship." With this draft, we would not want to change the ability of those calls to be made. As bill collectors are not non-profits, I do not believe we would do so. But I just wanted to get your thought on how we may inadvertently impact those calls already made.

Thanks,
--Jason

From: Ghilardi, David J - DATCP [<mailto:David.Ghilardi@Wisconsin.gov>]
Sent: Wednesday, April 29, 2009 10:57 AM
To: Culotta, Jason
Cc: Rabbitt, Jim L - DATCP; Jenkins, Janet A - DATCP
Subject: RE: further items to consider on the AB 93 sub

Jason - Thank you or your call today reminding me of our overdue need to respond. The problem is trying to get Rabbitt and Jenkins together on this to discuss. I will go ahead and give you my response:

1. This is your call.
2. The language in the current law that allows this is found in s. 100.52(1)(i) which defines "Telephone solicitation" as the *unsolicited* initiation of a telephone conversation... It is also found at s. 100.52(4)(a)1. which says that a telephone solicitor may not use an electronically prerecorded message *without the consent of the recipient*. The draft that I sent you on February 4th continues this concept by defining both "automated telephone call" and "telephone sales call" as the *unsolicited initiation of a telephone call*. With this language in the definitions, we create the ability of the solicitor to get consent before hand so the call becomes *solicited* and avoids the prohibition in the law. There are other ways to do this that may work better for Chris in his latest draft.
3. This one I absolutely cannot comment on without talking to Rabbitt and Jenkins. Rabbitt is unavailable all day today.
4. This circumstance can be covered if the law is drafted to do so. I am not aware of the current draft language Chris has worked up following our last discussion, so I can't comment. I do think that our February 4th draft does not adequately describe this situation... but it is my understanding that Chris is going to significantly revise that draft.

I will do my best to get the attention of the division and get back to you.

From: Culotta, Jason [mailto:Jason.Culotta@legis.wisconsin.gov]
Sent: Tuesday, April 21, 2009 9:38 AM
To: Ghilardi, David J - DATCP
Subject: FW: further items to consider on the AB 93 sub

David,
Just wanted to check in and see if you had a chance to review these thoughts on the sub.
Thanks,
--Jason
6-7500

From: Sundberg, Christopher
Sent: Friday, April 10, 2009 12:42 PM
To: Culotta, Jason
Subject: RE: further items to consider on the AB 93 sub

1. Do you want to allow alumni association calls? I can draft it either way. (We would like to.)
2. I'll be happy to add that. Let me know if DATCP has some language in mind at this point. (Does DATCP have language?)
3. If the idea is to make the list cheaper for nonprofits, the bill could specify that cost should be based on the cost to DATCP of generating a copy (as opposed to the cost for telephone solicitors, which is currently based on a share of the cost of "establishing" (or for renewals, of "maintaining") the directory). (Looking for your thought on this.)
4. I think the situation you describe would constitute using an electronically pre-recorded message in a telephone call, even if nobody's on the line to listen to it. (Do you think we need to add additional language to resolve this?)

From: Culotta, Jason
Sent: Friday, April 10, 2009 11:14 AM

To: Sundberg, Christopher
Subject: further items to consider on the AB 93 sub

Chris,

Several questions were raised at the hearing that we will need to further address:

1. Adding the correct language specifying private institutions of higher education are included in the school exemption (would this include alumni associations that use auto calls to contact alumni?)
2. DATCP would like to allow an exemption for nonprofits to get consent to call people on the Do Not Call List who have signed a consent statement granting their permission to receive automated calls from the organization even after their membership has lapsed
3. An approximate number of what would be charged to nonprofits to purchase the list. This will likely be set by administrative rule; I need to work with DATCP to come up with a ball park figure for the committee. I just wanted you to be aware of what we're thinking on this.
4. A concern was raised with a Minnesota law banning automated calls that is circumvented by a live person calling during the day when no one is likely home and then leaving an automated message on the home answering machine. Representative Roth would like to prohibit this in our draft (if it doesn't cover this circumstance already)

Please feel free to share any thoughts you have on how any of these changes could be addressed.

Thanks again!

Jason Culotta
Legislative assistant
Office of Representative Roger Roth
266-7500

5/1 Jason/Roth

Redraft LRB 0021/1:

- ✓1. Add exception for alumni assn. calls.
- ✓2. P.3 l. 15 → "unsolicited" before "telephone"
3. Ensure that bill collectors may continue to use prerecorded messages.
- 4.

Sundberg, Christopher

From: Culotta, Jason
Sent: Monday, May 04, 2009 4:06 PM
To: Sundberg, Christopher
Subject: statutory resolution to issue of charging no call list fee to nonprofits

Chris,
I spoke with DATCP and Representative Roth today, and they have agreed to include a provision in our draft to say something similar to:

“The department shall charge non-profits for one-tenth the cost to for-profits” to purchase the do not call list from DATCP. Please let me know if there is some pitfall in this strategy that we are not seeing. The ability of the department to set the fee for for-profits will not be impacted statutorily in any way.

Hope that this is the last thing to resolve before we get our latest working draft.

Thanks again for your help with this, and please call me at 6-7500 with any questions or comments.
--Jason



**ASSEMBLY SUBSTITUTE AMENDMENT ,
TO 2009 ASSEMBLY BILL 93**

SA ✓

Regen.

1 AN ACT *to amend* 20.115 (8) (jm), 100.52 (title), 100.52 (2) (c) and 100.52 (2) (d);
2 and *to create* 100.52 (6m) of the statutes; **relating to:** prohibiting certain
3 telephone calls using electronically prerecorded messages and granting
4 rule-making authority. ✓ and making an appropriation

Analysis by the Legislative Reference Bureau

Current law regulates "telephone solicitation," which is defined 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. Generally, under current law, a telephone solicitor may not make a telephone solicitation to a residential customer if the customer's telephone number is included in a nonsolicitation directory maintained by the Department of Agriculture, Trade and Consumer Protection (DATCP) listing residential customers who do not wish to receive telephone solicitations. Current law also prohibits a telephone solicitor from using an electronically prerecorded message in a telephone solicitation made to any recipient without the recipient's consent. Nonprofit organizations are not subject to current law regulating telephone solicitations.

This substitute amendment prohibits any person from using an electronically prerecorded message in a telephone call to a residential customer whose telephone number is included in the nonsolicitation directory, subject to the following exceptions: 1) a call initiated by a school or school district to a student, parent of a

→

an unsolicited ✓

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student, or an employee; 2) a call initiated to a residential customer by a person who has a current business or personal relationship with the customer; and 3) a call initiated by a governmental unit that is intended to alert a recipient of the call to a danger to the recipient's health or safety.

Under the substitute amendment, the department must promulgate rules requiring any person who uses, or requires an employee or contractor to use, an electronically prerecorded message in a telephone call to a residential customer in this state, other than a call covered by one of the exceptions in the substitute amendment, to register with and pay a fee to the department. A registration is valid for one year and may be renewed upon payment of a renewal fee to the department.

In establishing the amounts of the fees, the department must consider the purpose for which the person uses the electronically prerecorded message and whether it is appropriate to charge amounts that are less than the registration and renewal fees currently paid by telephone solicitors.

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

1 SECTION 1. 20.115 (8) (jm) of the statutes is amended to read:
2 20.115 (8) (jm) *Telephone solicitation regulation.* All moneys received from
3 telephone solicitor registration and registration renewal fees paid under the rules
4 promulgated under s. 100.52 (3) (a) and from registration and renewal fees paid
5 under the rules promulgated under s. 100.52 (6m) (c) for establishing and
6 maintaining the nonsolicitation directory under s. 100.52 (2).

7 SECTION 2. 100.52 (title) of the statutes is amended to read:
8 **100.52 (title) Telephone solicitations and electronically prerecorded**
9 **messages.**

10 SECTION 3. 100.52 (2) (c) of the statutes is amended to read:
11 100.52 (2) (c) Except for copies of the nonsolicitation directory that are provided
12 to registered telephone solicitors under par. (d) and to persons registered under sub.
13 (6m) (c), the nonsolicitation directory is not subject to inspection, copying, or receipt
14 under s. 19.35 (1) and may not be released by the department.

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A-2

1 **SECTION 4.** [✓]100.52 (2) (d) of the statutes is amended to read:

2 100.52 (2) (d) The department shall, on a semiannual basis, make the
3 nonsolicitation directory available by electronic transmission only to telephone
4 solicitors who are registered under sub. (3) and to persons registered under sub. (6m)
5 (c). Upon the request of a telephone solicitor registered under sub. (3), the
6 department shall also provide a printed copy of the nonsolicitation directory to the
7 telephone solicitor. A telephone solicitor who receives a copy of the directory, or to
8 whom the directory is made available by electronic transmission, under this
9 paragraph or a person who receives a copy of the directory under sub. (6m) (c) may
10 not solicit or accept from any person, directly or indirectly, anything of value in
11 exchange for providing the person with any information included in the copy.

12 **SECTION 5.** [✓]100.52 (6m) of the statutes is created to read:

13 100.52 (6m) ELECTRONICALLY PRERECORDED MESSAGES. (a) A person other than
14 a telephone solicitor or an employee or contractor of a telephone solicitor may not use
15 an electronically prerecorded message in ^①a telephone call to a residential customer
16 if the nonsolicitation directory includes a listing for the residential customer. ^{an unsolicited}

17 (b) Paragraph (a) does not apply to any of the following:

18 1. A call initiated by a school or school district to a student, parent of a student,
19 or an employee.

20 2. A call initiated to a residential customer by a person who has a current
21 business or personal relationship with the customer.

22 3. A call initiated by a governmental unit that is intended to alert a recipient
23 of the call to a danger to the recipient's health or safety.

24 (c) The department shall promulgate rules that require any person who uses,
25 or requires an employee or contractor to use, an electronically prerecorded message

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3-23

1 in a telephone call to a residential customer in this state, other than the telephone
 2 calls specified in par. (b) 1. to ³, to register with the department and pay a
 3 registration fee to the department. ⁵ The rules shall provide that a registration under
 4 this paragraph is valid for one year and may be renewed upon payment of a renewal
 5 fee to the department.

In establishing the amounts of the fees under this paragraph,
 6 the department shall consider the purpose for which the person uses the
 7 electronically prerecorded message and whether it is appropriate to charge amounts
 8 that are less than the registration and renewal fees paid by telephone solicitors.

(END)

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4-5

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0021/2ins
CTS:.....

1

✓ **Insert A-1:**

; (4) a call initiated by a college or university to a graduate of the college or university;
and (5) a call initiated by a debt collector for the purpose of collecting a debt

2

✓ **Insert A-2:**

Under the substitute amendment, registration and renewal fees for persons who use
electronically prerecorded messages must equal the fee charged for a telephone
solicitor under current law, except that the fees for nonprofit organizations may not
exceed one-tenth of the fee charged for a telephone solicitor.

3

Insert 3-23:

4

4. A call initiated by a college or university to a graduate of the college or
university.

5

6

5. A call initiated by a debt collector for the purpose of collecting a debt.

7

Insert 4-5:

8

The department shall establish registration and renewal fees under this paragraph
equal to fees applicable to telephone solicitors under sub. (3) (a), except that the
registration and renewal fees for nonprofit organizations may not exceed one-tenth
of the fees applicable to telephone solicitors under sub. (3) (a).

9

10

11



ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2009 ASSEMBLY BILL 93

SAV

1 Regen.
AN ACT *to amend* 20.115 (8) (jm), 100.52 (title), 100.52 (2) (c) and 100.52 (2) (d);
2 and *to create* 100.52 (6m) of the statutes; **relating to:** prohibiting certain
3 telephone calls using electronically prerecorded messages, granting
4 rule-making authority, and making an appropriation.

Analysis by the Legislative Reference Bureau

Current law regulates "telephone solicitation," which is defined 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. Generally, under current law, a telephone solicitor may not make a telephone solicitation to a residential customer if the customer's telephone number is included in a nonsolicitation directory maintained by the Department of Agriculture, Trade and Consumer Protection (DATCP) listing residential customers who do not wish to receive telephone solicitations. Current law also prohibits a telephone solicitor from using an electronically prerecorded message in a telephone solicitation made to any recipient without the recipient's consent. Nonprofit organizations are not subject to current law regulating telephone solicitations.

This substitute amendment prohibits any person from using an electronically prerecorded message in an unsolicited telephone call to a residential customer whose telephone number is included in the nonsolicitation directory, subject to the following exceptions: 1) a call initiated by a school or school district to a student, parent of a

student, or an employee; 2) a call initiated to a residential customer by a person who has a current business or personal relationship with the customer; 3) a call initiated by a governmental unit that is intended to alert a recipient of the call to a danger to the recipient's health or safety; 4) a call initiated by a college or university to a graduate of the college or university; and 5) a call initiated by a debt collector for the purpose of collecting a debt.

Under the substitute amendment, the department must promulgate rules requiring any person who uses, or requires an employee or contractor to use, an electronically prerecorded message in a telephone call to a residential customer in this state, other than a call covered by one of the exceptions in the substitute amendment, to register with and pay a fee to the department. A registration is valid for one year and may be renewed upon payment of a renewal fee to the department. Under the substitute amendment, registration and renewal fees for persons who use electronically prerecorded messages must equal the fees charged for a telephone solicitor under current law, except that the fees for nonprofit organizations may not exceed one-tenth of the fee charged for a telephone solicitor.

INS
2-1

as affected by 2009 Wisconsin Act 28

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

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

- 2
- 3
- 4
- 5
- 6

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

7 SECTION 2. 100.52 (title) of the statutes is amended to read:

8 **100.52 (title) Telephone solicitations and electronically prerecorded**
9 **messages.**

10 SECTION 3. 100.52 (2) (c) of the statutes is amended to read:

11 100.52 (2) (c) Except for copies of the nonsolicitation directory that are provided
12 to registered telephone solicitors under par. (d) and to persons registered under sub.

1 (6m) (c), the nonsolicitation directory is not subject to inspection, copying, or receipt
2 under s. 19.35 (1) and may not be released by the department.


3 **SECTION 4.** 100.52 (2) (d) of the statutes is amended to read:

4 100.52 (2) (d) The department shall, on a semiannual basis, make the
5 nonsolicitation directory available by electronic transmission only to telephone
6 solicitors who are registered under sub. (3) and to persons registered under sub. (6m)
7 (c). Upon the request of a telephone solicitor registered under sub. (3), the
8 department shall also provide a printed copy of the nonsolicitation directory to the
9 telephone solicitor. A telephone solicitor who receives a copy of the directory, or to
10 whom the directory is made available by electronic transmission, under this
11 paragraph or a person who receives a copy of the directory under sub. (6m) (c) may
12 not solicit or accept from any person, directly or indirectly, anything of value in
13 exchange for providing the person with any information included in the copy.

14 **SECTION 5.** 100.52 (6m) of the statutes is created to read:

15 100.52 (6m) ELECTRONICALLY PRERECORDED MESSAGES. (a) A person other than
16 a telephone solicitor or an employee or contractor of a telephone solicitor may not use
17 an electronically prerecorded message in an unsolicited telephone call to a
18 residential customer if the nonsolicitation directory includes a listing for the
19 residential customer.

20 (b) Paragraph (a) does not apply to any of the following:

21 1. A call initiated by a school or school district to a student, parent of a student,
22 or an employee.  *including a postsecondary
schools*

23 2. A call initiated to a residential customer by a person who has a current
24 business or personal relationship with the customer.

① INS 2-1

~~Wis. Act 28 s. 194p - continued~~

①

Page 1 of 1

20.115 (8) (jm) Telephone solicitation regulation. All moneys received from telephone solicitor registration and registration renewal fees paid under the rules promulgated under s. 100.52 (3) (a) not appropriated under sub. (1) (im) for establishing and maintaining the nonsolicitation directory under s. 100.52 (2).

plain text

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and from registration and renewal fees paid under the rules promulgated under s. 100.52 (6m) (c)