

2013 DRAFTING REQUEST

Bill

Received: 1/3/2013 Received By: mkunkel  
 Wanted: As time permits Same as LRB:  
 For: Dave Hansen (608) 266-5670 By/Representing: Jon Mielke  
 May Contact: Drafter: mkunkel  
 Subject: Trade Regulation - other Addl. Drafters:  
 Extra Copies: MPG

Submit via email: YES  
 Requester's email: Sen.Hansen@legis.wisconsin.gov  
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Prohibit political "robocalls"

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>
/?	mkunkel 1/10/2013	scalvin 1/10/2013	rschluet 1/10/2013	_____			
/1				_____	srose 1/10/2013	srose 1/18/2013	State

FE Sent For:

↪ At Intro.

<END>

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/? mkunkel

A SAC  
01/10/13



Handwritten signature and date 1/10/13

==

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FE Sent For:

<END>

## Kunkel, Mark

---

**From:** Mielke, Jon  
**Sent:** Monday, January 07, 2013 3:20 PM  
**To:** Kunkel, Mark  
**Subject:** RE: Drafting request

Hi Mark,

Everybody.

Thanks,

Jon

**From:** Kunkel, Mark  
**Sent:** Monday, January 07, 2013 3:17 PM  
**To:** Mielke, Jon  
**Subject:** RE: Drafting request

Jon:

Do you want to ban political robocalls to everybody, or ban them only for people who have signed up for the state's do-not call list?

--Mark

**From:** Mielke, Jon  
**Sent:** Wednesday, January 02, 2013 9:22 AM  
**To:** Kunkel, Mark  
**Subject:** RE: Drafting request

Hi Mark,

Re: update on the political robocall ban request

We would like a draft which would only ban political robocalls.

Thanks,

Jon Mielke  
Office of Sen. Dave Hansen

**From:** Kunkel, Mark  
**Sent:** Wednesday, November 28, 2012 11:23 AM  
**To:** Mielke, Jon  
**Subject:** RE: Drafting request

I'm still checking into it, but, in case you haven't seen it, I found a reference to Wyoming and Arkansas here, which is an Illinois legislative agency's report on robocalls: <http://www.ilga.gov/commission/lru/feb2010FirstRdg.pdf>

**From:** Kunkel, Mark  
**Sent:** Wednesday, November 28, 2012 11:18 AM  
**To:** Mielke, Jon  
**Subject:** RE: Drafting request

Let me check into that. It could be that a state decided to focus on political calls in spite of the 1<sup>st</sup> Amendment concern, and the state hasn't been sued on 1<sup>st</sup> Amendment grounds. But I'll get back to you on that.  
--Mark

**From:** Mielke, Jon  
**Sent:** Wednesday, November 28, 2012 11:16 AM  
**To:** Kunkel, Mark  
**Cc:** Wadd, Jay  
**Subject:** RE: Drafting request

Thanks, Mark.

We will get back to you ASAP about how to proceed. One question, though. We have information that indicates that political robocalls are prohibited in Arkansas and Wyoming. Could this just be part of an overall ban?

Jon

**From:** Kunkel, Mark  
**Sent:** Wednesday, November 28, 2012 11:10 AM  
**To:** Mielke, Jon  
**Subject:** RE: Drafting request

Jon:

Federal law prohibits robocalls of any type (not just political calls) to cell phones. See 47 U.S.C. § 227(b)(1)(A). You could prohibit robocalls of any type to landlines and cell phones. If you limit your request to political robocalls, you will probably increase the risk that the legislation will violate the 1<sup>st</sup> Amendment. In general, restrictions on speech that are content-neutral have a better chance of success against a 1<sup>st</sup> Amendment challenge. If you focus only on robocalls with a political content, then your bill would not be content-neutral.

If you do want to apply the prohibition to all types of robocalls, you may want to consider creating some exceptions. For example, see the Minnesota law below, which prohibits use of the devices that make robocalls (i.e., automatic dialing-announcing devices), except as specified.

Note that even if you want a bill that is content-neutral and applies to all types of calls, it may still be subject to 1<sup>st</sup> Amendment challenges. However, the state has a lesser burden in validating a content-neutral restriction on speech.

Please let me know how you want to proceed with this request.

--Mark

Minn. Stats. 325E.27 USE OF PRERECORDED OR SYNTHESIZED VOICE MESSAGES.

A caller shall not use or connect to a telephone line an automatic dialing-announcing device unless: (1) the subscriber has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message; or (2) the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered. This section and section 325E.30 do not apply to (1) messages from school districts to students, parents, or employees, (2) messages to subscribers with whom the caller has a current business or personal relationship, or (3)

messages advising employees of work schedules. This section does not apply to messages from a nonprofit tax-exempt charitable organization sent solely for the purpose of soliciting voluntary donations of clothing to benefit disabled United States military veterans and containing no request for monetary donations or other solicitations of any kind.

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**From:** Mielke, Jon  
**Sent:** Tuesday, November 27, 2012 10:30 AM  
**To:** Kunkel, Mark  
**Subject:** Drafting request

Hi Mark,

I am not sure if this request should fall under the heading of utilities or elections.

Sen. Hansen would like to draft legislation which would ban the use of all automated political robo-calls. The FTC currently bans them from using cell phones, Sen. Hansen would like to ban them from land-line numbers as well.

Thanks,

Jon Mielke  
Office of Sen. Dave Hansen  
266-5670



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-0259/1

MDK:saw

SUC

O-NOTE

2013 BILL

SOON  
IN 1-10

for political messages

- 0985/1

RM NOT  
RUN

prohibiting the

- 1 AN ACT to repeal 100.52 (4) (a) 1.; and to create 100.522 of the statutes; relating
- 2 to: ~~regulating~~ use of telephone automatic dialing-announcing devices and
- 3 providing a penalty.

**Analysis by the Legislative Reference Bureau**

Current law prohibits certain telephone solicitors and their employees and contractors from using an electronically prerecorded message in a telephone solicitation without the consent of the recipient of the telephone call. The prohibition applies to messages that encourage the recipient to purchase property, goods, or services. The prohibition does not apply to nonprofit organizations, which are excluded from the definition of "telephone solicitor."

This bill ~~repeals the foregoing prohibition and instead~~ prohibits any caller from using an automatic dialing-announcing device to disseminate a prerecorded or synthesized voice message unless an exception applies. The bill defines "automatic dialing-announcing device" as a device that selects and dials telephone numbers and that, working alone or in conjunction with other equipment, disseminates such a message. The bill defines "caller" as any person who uses a telephone or telephone line to contact or attempt to contact a telephone service subscriber or any person living or residing with such a subscriber. Unlike current law, the bill is not limited to telephone solicitors. Also unlike current law, nonprofit organizations are subject to the prohibition. In addition, the bill applies to any type of message, and, unlike current law, is not limited to messages encouraging the purchase of property, goods, or services. In addition, the bill applies to any interstate or intrastate message that is received by a person in this state.

that has a political purpose

INSEAT 1A

voice

voice

**BILL**

The bill includes exceptions that allow a caller to use an automatic dialing-announcing device under specified circumstances. First, a caller may use such a device to contact or attempt to contact a telephone service subscriber who has knowingly and voluntarily requested, consented to, permitted, or authorized receipt of the message disseminated by the device. Another exception allows a caller to use such a device if the disseminated message is immediately preceded by a live operator who obtains the telephone service subscriber's consent before the message is delivered. Also, the prohibition does not apply to messages from public school boards, governing bodies of certain private schools, or charter school operators to their students, parents, or employees. The prohibition also does not apply to messages advising employees of work schedules.

Under current law, the Department of Agriculture, Trade and Consumer Protection (DATCP) enforces certain requirements regarding telephone solicitors. The bill requires DATCP to also investigate violations of the bill and bring enforcement actions for violations. The bill also creates a civil forfeiture of no more than \$100 for each violation of the bill, which is the same amount as the civil forfeiture under current law for violating the telephone solicitor requirements.

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

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

1 SECTION 1. 100.52(4)(a) 1. of the statutes is repealed.

2 SECTION 2. 100.522 of the statutes is created to read:

3 **100.522 Automatic dialing-announcing devices.** (1) DEFINITIONS. In this  
4 section:

5 (a) "Automatic dialing-announcing device" means a device that does all of the  
6 following:

- 7 1. Selects and dials telephone numbers.
- 8 2. Working alone or in conjunction with other equipment, disseminates a
- 9 prerecorded or synthesized voice message to the telephone number called.

10 (b) "Caller" means any person that attempts to contact or contacts a subscriber  
11 in this state by using a telephone or telephone line.

12 (c) "Subscriber" means any of the following:

INSEAT 2-1

BF  
political message



**BILL**

1 1. A person who has subscribed to telephone service from a telephone company.

2 2. Any other person living or residing with a person described in subd. 1.

3 (2) PROHIBITION. ~~As provided in par. (b),~~ <sup>voice</sup> caller may not

4 use or connect to a telephone line an automatic dialing-announcing device ~~unless~~

5 ~~any of the following apply:~~

6 1. The subscriber has knowingly and voluntarily requested, consented to,  
7 permitted, or authorized receipt of the message.

8 2. The message is immediately preceded by a live operator who obtains the  
9 subscriber's consent before the message is delivered.

10 (b) This subsection does not apply to any of the following:

11 1. Messages to students, parents, or employees from a school board, as defined  
12 in s. 115.001 (7), the governing body of a private school, as defined in s. 115.001 (3r),  
13 or the operator of a charter school under s. 118.40.

14 2. Messages advising employees of work schedules.

15 (3) TERRITORIAL APPLICATION. This section applies to any interstate or intrastate

16 <sup>voice</sup> message received by a person in this state.

17 (4) ENFORCEMENT. The department shall investigate violations of this section  
18 and may bring an action for temporary or permanent injunctive or other relief for any  
19 violation of this section.

20 (5) PENALTY. A caller who violates this section may be required to forfeit not  
21 more than \$100 for each violation.

**SECTION 3. Effective date.**

22 (1) This act takes effect on the first day of the 4th month beginning after  
23 publication.  
24

(END)

to disseminate a <sup>voice</sup> message that  
has a political purpose.

2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0985/lins  
MDK:.....

1

**INSERT 1A:**

The prohibition applies to a voice message that has a "political purpose," which has the same meaning as under current state campaign finance law. Under that meaning, "political purpose" includes the purpose of influencing an election, recall, or referendum vote.

2

**INSERT 2-1:**

3

(c) "Political purpose" has the meaning given in s. 11.01 (16).<sup>✓</sup>

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

LRB-0985/1dn

MDK:f:....

*sac*

*- date -*

Sen. Hansen:

Violations of this bill are subject to the same penalty that applies to violations of the state's "do-not-call" list, which is a \$100 civil forfeiture for each violation. If you want a different penalty, let me know and I will revise the bill.

Mark D. Kunkel  
Senior Legislative Attorney  
Phone: (608) 266-0131  
E-mail: [mark.kunkel@legis.wisconsin.gov](mailto:mark.kunkel@legis.wisconsin.gov)

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

LRB-0985/1dn  
MDK:sac:rs

January 10, 2013

Sen. Hansen:

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Mark D. Kunkel  
Senior Legislative Attorney  
Phone: (608) 266-0131  
E-mail: [mark.kunkel@legis.wisconsin.gov](mailto:mark.kunkel@legis.wisconsin.gov)

**Rose, Stefanie**

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**From:** Wagnitz, John  
**Sent:** Friday, January 18, 2013 11:35 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -0985/1 Topic: Prohibit political \_robocalls\_

Please Jacket LRB -0985/1 for the SENATE.