

2013 DRAFTING REQUEST

Bill

Received: 9/27/2012 Received By: mkunkel
Wanted: As time permits Companion to LRB:
For: Jon Erpenbach (608) 266-6670 By/Representing: Julie
May Contact: Drafter: mkunkel
Subject: Trade Regulation - other Addl. Drafters:
Extra Copies: MPG

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

Pre Topic:

No specific pre topic given

Topic:

Regulation of telephone automatic dialing-announcing devices

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 9/27/2012 | | | _____ | | | |
| /P1 | mkunkel 10/2/2012 | scalvin 10/3/2012 | 9/28/2012 | _____ | lparisi 9/28/2012 | | |
| /1 | | | 10/3/2012 | _____ | mbarman 10/3/2012 | srose 10/4/2012 | State |

FE Sent For:

↳ At
Intro.

<END>

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| /? | mkunkel 9/27/2012 | | | _____ | | | |
| /P1 | | scalvin 9/28/2012 | 9/28/2012 | | lparisi 9/28/2012 | | |
| FE Sent For: | | 11 sac 10/3/12 | 11 sac 10/3/12 | | | | |

<END>

Handwritten signature and date 10/3/12

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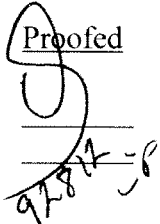
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|--------------|----------------|---------------------|---------------------|---|------------------|-----------------|-----------------|
| 1/? | mkunkel | 1/PI sac 9/28/12 | 1/PI sac 9/28/12 |  | | | |

FE Sent For:

<END>

Kunkel, Mark

From: Laundrie, Julie

Sent: Thursday, April 19, 2012 8:46 AM

To: Kunkel, Mark

Subject: p draft request Erpenbach

<https://www.allclearid.com/data-breach/news?article=indiana-court-rules-autodialer-law-is-constitutional>

Hey Mark,

Senator Erpenbach is exploring the legal possibilities of regulating all robo calls. So I would like to have you draft (for input from outside groups and for a looksee for next session) is a similar robo-call law to the Indiana law which has been upheld in Federal District 7 and Indiana Supreme Court so Jon can take a look at it.

Let me know if you have questions –

Julie

Julie Laundrie

Office of Senator Jon Erpenbach

608-266-6670 104 South

media contact cell 608-772-0110

4/19/2012



HOME

Breach Hotline 1.877.441.3009

Consumer Protection | Business Protection



BREACH RESPONSE

BREACH PREPARATION

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Data Breach News

Indiana court rules Autodialer Law is constitutional

April 11, 2012

The Indiana Supreme Court ruled by decision 4-1 in the case, State of Indiana v. Economic Freedom Fund and others, No. 07S00-1008-MI-411, on 29 December 2011 that the state's Autodialer Law does not violate the Indiana Constitution. Under the Law, telemarketers are only permitted to make automated calls to households if a live operator first obtains the consumer's permission or if the recipient opts in to receiving such calls. The Court stated that the Autodialer Law's live-operator requirement does not violate the free speech clause of Indiana's Constitution, contained in Article 1, Section 9, which prohibits the legislature from passing laws 'restraining the free interchange of thought and opinion, or restricting the right to speak, write, or print, freely, on any subject.'

The Court's ruling read: 'The purpose behind the Autodialer Law "is to protect the privacy, tranquility, and efficiency of telephone customers"... it is well established that the protection of residential privacy is a significant governmental interest. The United States Supreme Court has "repeatedly held that individuals are not required to welcome unwanted speech into their own homes and that the government may protect this freedom" '.

"This ruling is a big win for Indiana consumers and the state's strict telephone privacy statute", said Gregory F. Zoeller, Indiana's Attorney General. "Over the years, we have worked diligently to ensure [Indiana residents] are not contacted at home with annoying, unsolicited automated calls. Indiana's Autodialer Law exists to prevent everyday citizens from receiving unwanted messages and we will continue to protect this law against any and all challenges... Political candidates pulling for votes by robo-calling Indiana residents during the upcoming election cycle can expect a swift response from the Attorney General's Office". Those who breach the Law can face civil penalties of up to \$5,000 per violation.



The state suit was brought by FreeEats.com, which made political robo-calls during a 2006 congressional campaign on behalf of Economic Freedom Fund. FreeEats.com challenged the constitutionality of the Law and argued that the requirement for a live operator to introduce the recorded message was a violation of constitutionally protected free speech.

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*** Statutes current through Act P.L. 110 of the 2012 First Regular Session ***
*** Annotations current through May 31, 2012 for Indiana Supreme Court cases, through May 25, 2012 for Indiana Appellate Court cases, through May 31, 2012 Indiana Tax Court cases, and through May 30, 2012 for Federal court cases. ***

Title 24 Trade Regulations; Consumer Sales and Credit
Article 5 Consumer Sales
Chapter 14 Regulation of Automatic Dialing Machines

Go to the Indiana Code Archive Directory

Burns Ind. Code Ann. § 24-5-14-1 (2012)

24-5-14-1. "Automatic dialing-announcing device" defined.

As used in this chapter, "automatic dialing-announcing device" means a device that:

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

HISTORY: P.L.151-1988, § 1.

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

Telemarketing

NOTES TO DECISIONS

Applicability.

Applicability.

Indiana's Autodialer Law, *IC 24-5-14-1* et seq., unambiguously applies to all autodialer calls and not just to auto-dialed consumer transaction calls with commercial messages. *State v. Am. Family Voices, Inc.*, 898 N.E.2d 293, 2008 Ind. LEXIS 1188 (2008).

State of Indiana's complaint asserting violations of *IC 24-5-14-5(b)* was improperly dismissed under TR. 12(B)(6); state alleged actionable claims against various named and unnamed telemarketers under Indiana's Autodialer Law, *IC 24-5-14-1* et seq., by alleging that the telemarketers made or caused to be made telephone calls to telephone numbers in Indiana using an autodialer that disseminated prerecorded messages, that the recipients did not consent to the calls, that the calls were not preceded by a live operator, and that the calls did not fall within the ambit of messages that the law

has always allowed pursuant to *IC 24-5-14-5(a)*. *State v. Am. Family Voices, Inc.*, 898 N.E.2d 293, 2008 Ind. LEXIS 1188 (2008).



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Go to the Indiana Code Archive Directory

Burns Ind. Code Ann. § 24-5-14-2 (2012)

24-5-14-2. "Caller" defined.

As used in this chapter, "caller" means an individual, corporation, limited liability company, partnership, unincorporated association, or the entity that attempts to contact, or contacts, a subscriber in Indiana by using a telephone or telephone line.

HISTORY: P.L.151-1988, § 1; P.L.8-1993, § 364.

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

Telemarketing



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Title 24 Trade Regulations; Consumer Sales and Credit
 Article 5 Consumer Sales
 Chapter 14 Regulation of Automatic Dialing Machines

Go to the Indiana Code Archive Directory

Burns Ind. Code Ann. § 24-5-14-3 (2012)

24-5-14-3. "Commercial telephone solicitation" defined.

(a) As used in this chapter, "commercial telephone solicitation" means any unsolicited call to a subscriber when:

- (1) The person initiating the call has not had a prior business or personal relationship with the subscriber; and
- (2) The purpose of the call is to solicit the purchase or the consideration of the purchase of goods or services by the subscriber.

(b) The term does not include calls initiated by the following:

- (1) The state or a political subdivision (as defined by *IC 36-1-2-13*) for exclusively public purposes.
- (2) The United States or any of its subdivisions for exclusively public purposes (involving real property in Indiana).

HISTORY: P.L.151-1988, § 1.

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

Telemarketing



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 Article 5 Consumer Sales
 Chapter 14 Regulation of Automatic Dialing Machines

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Burns Ind. Code Ann. § 24-5-14-4 (2012)

24-5-14-4. "Subscriber" defined.

As used in this chapter, "subscriber" means:

- (1) A person who has subscribed to telephone service from a telephone company; or
- (2) Other persons living or residing with the subscribing person.

HISTORY: P.L.151-1988, § 1.

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

Telemarketing



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Title 24 Trade Regulations; Consumer Sales and Credit
 Article 5 Consumer Sales
 Chapter 14 Regulation of Automatic Dialing Machines

Go to the Indiana Code Archive Directory

Burns Ind. Code Ann. § 24-5-14-5 (2012)

24-5-14-5. Conditions for using automatic dialing-announcing device -- Exceptions.

(a) This section does not apply to messages:

- (1) From school districts to students, parents, or employees;
- (2) To subscribers with whom the caller has a current business or personal relationship; or
- (3) Advising employees of work schedules.

- school board s.115.001(7)
- governing body of a private school or de fund under s.115.001(3r)

(b) A caller may 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

- operator of a charter school under s.118.40

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

HISTORY: P.L.151-1988, § 1.

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

Telemarketing

NOTES TO DECISIONS

Constitutionality. Applicability. Federal Action Challenging Statute. Preemption.

Constitutionality.

Firm engaged in automated political telephone calls was not entitled to a preliminary injunction to stop the state of Indiana from enforcing its statute prohibiting such calls, *IC 24-5-14-5*, because it was not likely to prevail on the merits of its suit given that the statute did not unduly burden interstate commerce or violate free speech. *FreeEats.com, Inc. v. Indiana ex. rel. Carter*, -- *F. Supp. 2d* --, 2006 U.S. Dist. LEXIS 77534 (S.D. Ind. 2006), rev'd, *FreeEats.com, Inc. v. Indiana*, 502 F.3d 590, 2007 U.S. App. LEXIS 21823 (7th Cir. Ind. 2007).

Preliminary injunction should not have been granted to a company making political calls because there was no reasonable likelihood of success on a claim that *IC 24-5-14-5(b)* violated *Ind. Const., art. 1, § 9*; a live-operator requirement did not impose a substantial obstacle on the right to engage in political speech. *State v. Econ. Freedom Fund*, -- *N.E.2d* --, 2011 Ind. LEXIS 1096 (2011).

Indiana Supreme Court declines to extend the holding from *Mitchell v. Mitchell*, 695 N.E.2d 920, 1998 Ind. LEXIS 77 (Ind. 1998), to orders granting or denying preliminary injunctions; therefore, an issue under *U.S. Const., amend. 1* was not before the supreme court because the trial court did not address the merits of the claim. At any rate, the *U.S. Const., amend. 1* argument relating to political speech in the context of *IC 24-5-14-5* was likely to fail because the relationship-based exceptions did not affect the content neutrality of the law, and it was narrowly tailored to serve a significant governmental interest while leaving open ample alternative channels for communication of the information. *State v. Econ. Freedom Fund*, -- *N.E.2d* --, 2011 Ind. LEXIS 1096 (2011).

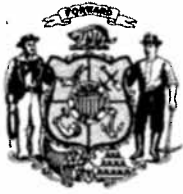
Applicability.

State of Indiana's complaint asserting violations of *IC 24-5-14-5(b)* was improperly dismissed under TR. 12(B)(6); state alleged actionable claims against various named and unnamed telemarketers under Indiana's Autodialer Law, *IC 24-5-14-1* et seq., by alleging that the telemarketers made or caused to be made telephone calls to telephone numbers in Indiana using an autodialer that disseminated prerecorded messages, that the recipients did not consent to the calls, that the calls were not preceded by a live operator, and that the calls did not fall within the ambit of messages that the law has always allowed pursuant to *IC 24-5-14-5(a)*. *State v. Am. Family Voices, Inc.*, 898 N.E.2d 293, 2008 Ind. LEXIS 1188 (2008).

Federal Action Challenging Statute.

State was not entitled to a stay of a federal action brought by a firm engaged in automated political telephone calls that challenged a state statute restricting such calls, *IC 24-5-14-5*, because abstention was not appropriate under the circumstances. While the state had a pending state court action that sought to enforce the law against the firm, the federal court declined to abstain because it found that the case involved important federal issues that required urgent attention, and the state court case was unlikely to be resolved in a prompt fashion. *FreeEats.com, Inc. v. Indiana ex. rel. Carter*, -- *F. Supp. 2d* --, 2006 U.S. Dist. LEXIS 77534 (S.D. Ind. 2006), rev'd, *FreeEats.com, Inc. v. Indiana*, 502 F.3d 590, 2007 U.S. App. LEXIS 21823 (7th Cir. Ind. 2007).

Extraordinary circumstances warranting exemption from the Younger abstention doctrine do not exist with regard to Indiana's Automated Dialing Machine Statute (ADMS), *IC 24-5-14-5*, which generally prohibits the use of automatic dialing machines to send prerecorded messages to Indiana telephone subscribers, because the statute is not flagrantly and patently violative of express constitutional prohibitions in its every clause, sentence, and paragraph, and in whatever



O-NOTE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SOON

IN
9-27

regent

1 AN ACT ^{regent} relating to: regulating use of telephone automatic
2 dialing-announcing devices and providing a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

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

4 SECTION 2. 100.522[✓] of the statutes is created to read:

5 **100.522 Automatic dialing-announcing devices.** (1) DEFINITIONS. In this
6 section:

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

9 1. Selects and dials telephone numbers.

1 2. Working alone or in conjunction with other equipment, disseminates a
2 prerecorded or synthesized voice message to the telephone number called.

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

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

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

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

8 (2) PROHIBITION; EXCEPTIONS. (a) Except as provided in par. (b), a caller may not
9 use or connect to a telephone line an automatic dialing-announcing device unless
10 any of the following apply:

11 1. The subscriber has knowingly or voluntarily requested, consented to,
12 permitted, or authorized receipt of the message.

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

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

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

19 2. Messages to subscribers with whom the caller has a current business or
20 personal relationship.

21 3. Messages advising employees of work schedules.

22 (3) TERRITORIAL APPLICATION. This section applies to any interstate or intrastate
23 message received by a subscriber in this state.

person

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0159/P1dn

MDK:f:...

see

-date-

3. Proposed s. 100.522 (2)(a) 1., like the Indiana law, refers to who "knowingly or voluntarily" authorizes receipt of a message. I recommend changing the language to "knowingly and voluntarily" or eliminating the reference to "knowingly or voluntarily." Please let me know what you think.

Sen. Erpenbach:

As you requested, this preliminary draft is based on an Indiana law (Ind. Code s. 24-5-14-5 and related definitions). Please note the following about this draft:

1. I made minor changes to the language and structure of the Indiana law. In particular, the Indiana law creates an exception for certain messages from school districts. See Ind. Code s. 24-5-14-5 (a) (1). I expanded the exception to include messages from school boards, as well as the governing bodies of private schools and charter school operators. As a result, the exception applies to both public and private schools. Is that okay?

2. The definition of "subscriber" in proposed s. 100.522 (1) (c) 1. refers to a "telephone company" and "telephone service," but, like the Indiana law, the draft does not define those terms. I think those terms would be broadly interpreted to apply to both landline and wireless service. If you want to revise the draft to clarify this issue, please let me know.

3. Proposed s. 100.522 (2) (b) 2. creates an exception for messages to subscribers with whom a caller has a current business or personal relationship. Note that, if necessary, DATCP may rely promulgate rules interpreting what constitutes such a relationship. See s. 227.11 (2) (a) (intro.), which grants any state agency the power to promulgate rules interpreting provisions in statutes that the agency administers.

4. Proposed s. 100.522 (3), (4), and (5), which deal with territorial application, enforcement, and a penalty, are based on s. 100.52 (7), (9), and (10), which pertain to the state's do-not-call list.

5. Under current law, s. 100.52 (4) (a) 1. prohibits persons who make commercial telephone solicitations from using electronically prerecorded messages without the recipient's consent. That provision is no longer necessary, as this draft prohibits anybody, including a commercial or political solicitor, from using automatic dialing-announcing devices unless an exemption applies. That is why the draft repeals s. 100.52 (4) (a) 1.

6. I delayed the effective date by approximately 3 months to give people time to change their business practices to comply with the law. Is that okay?

7. The Indiana Supreme Court has held that the Indiana law does not violate the free speech clause of the Indiana constitution because the law does not impose a substantial obstacle to the right to engage in free speech. See *State of Indiana v. Economic Freedom Fund*, 959 N.E.2d 794, 806 (Ind. 2011). In that decision, the Indiana Supreme Court also noted that the Indiana law would likely withstand a challenge that it violates the 1st Amendment of the U.S. Constitution. According to the Indiana Supreme Court, the appropriate test for such a challenge is whether the law is narrowly tailored to serve a significant governmental interest while leaving open ample alternative channels for communication of information. That test was appropriate because the law is content neutral (i.e. the law applies to all autodialed calls regardless of content) and because the law restricts speech through private channels to reach private residences. 959 N.E.2d at 802. The Indiana Supreme Court found that the law would likely pass that test. However, note that a different state or federal court might reach a different result.
8. The Indiana law has also been challenged in federal court. In fact, the Indiana Supreme Court itself noted that a federal district court had found that a federal law preempted the state law, but that that finding did not affect the Indiana Supreme Court's decision. 959 N.E.2d at 800, n. 3, citing *Patriotic Veterans, Inc. v. Indiana ex rel. Zoeller*, 821 F. Supp.2d 1074 (S.D. Ind. 2011). In the *Patriotic Veterans*, a federal district court held that the Federal Telephone Consumer Protection Act (FTCPA), 47 USC 227, preempted the state law. The plaintiffs in that federal case also argued that the state law violated the 1st Amendment of the United States Constitution. However, because the federal district court found preemption, the federal district court determined that it was not necessary or appropriate to address the 1st Amendment argument. Note that the federal district court's decision has been appealed to the 7th Circuit, which has not yet taken any action. Also note that other federal courts have held that the FTCPA does **not** preempt statutes in other states. See, e.g., *Van Bergen v. Minnesota*, 59 F.3d 1541 (8th Cir. 1995) (upholding a state law similar to the Indiana law) and *Palmer v. Sprint Nextel Corp.*, 674 F. Supp.2d 1224 (W.D. Wash. 2009) (upholding a state law prohibiting the use of automatic dialing and announcing devices in commercial telephone solicitations). case

Please let me know whether you have any questions or redraft instructions.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0159/P1dn
MDK:sac:rs

September 28, 2012

Sen. Erpenbach:

As you requested, this preliminary draft is based on an Indiana law (Ind. Code s. 24-5-14-5 and related definitions). Please note the following about this draft:

1. I made minor changes to the language and structure of the Indiana law. In particular, the Indiana law creates an exception for certain messages from school districts. See Ind. Code s. 24-5-14-5 (a) (1). I expanded the exception to include messages from school boards, as well as the governing bodies of private schools and charter school operators. As a result, the exception applies to both public and private schools. Is that okay?
2. The definition of "subscriber" in proposed s. 100.522 (1) (c) 1. refers to a "telephone company" and "telephone service," but, like the Indiana law, the draft does not define those terms. I think those terms would be broadly interpreted to apply to both landline and wireless service. If you want to revise the draft to clarify this issue, please let me know.
3. Proposed s. 100.522 (2) (a) 1., like the Indiana law, refers to who "knowingly or voluntarily" authorizes receipt of a message. I recommend changing the language to "knowingly and voluntarily" or eliminating the reference to "or voluntarily." Please let me know what you think.
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dialing-announcing devices unless an exemption applies. That is why the draft repeals s. 100.52 (4) (a) 1.

7. I delayed the effective date by approximately 3 months to give people time to change their business practices to comply with the law. Is that okay?

8. The Indiana Supreme Court has held that the Indiana law does not violate the free speech clause of the Indiana constitution because the law does not impose a substantial obstacle to the right to engage in free speech. See *State of Indiana v. Economic Freedom Fund*, 959 N.E.2d 794, 806 (Ind. 2011). In that decision, the Indiana Supreme Court also noted that the Indiana law would likely withstand a challenge that it violates the 1st Amendment of the U.S. Constitution. According to the Indiana Supreme Court, the appropriate test for such a challenge is whether the law is narrowly tailored to serve a significant governmental interest while leaving open ample alternative channels for communication of information. That test was appropriate because the law is content neutral (i.e. the law applies to all autodialed calls regardless of content) and because the law restricts speech through private channels to reach private residences. 959 N.E.2d at 802. The Indiana Supreme Court found that the law would likely pass that test. However, note that a different state or federal court might reach a different result.

9. The Indiana law has also been challenged in federal court. In fact, the Indiana Supreme Court itself noted that a federal district court had found that a federal law preempted the state law, but that that finding did not affect the Indiana Supreme Court's decision. 959 N.E.2d at 800, n. 3, citing *Patriotic Veterans, Inc. v. Indiana ex rel. Zoeller*, 821 F. Supp.2d 1074 (S.D. Ind. 2011). In the *Patriotic Veterans* case, a federal district court held that the Federal Telephone Consumer Protection Act (FTCPA), 47 USC 227, preempted the state law. The plaintiffs in that federal case also argued that the state law violated the 1st Amendment of the United States Constitution. However, because the federal district court found preemption, the federal district court determined that it was not necessary or appropriate to address the 1st Amendment argument. Note that the federal district court's decision has been appealed to the 7th Circuit, which has not yet taken any action. Also note that other federal courts have held that the FTCPA does *not* preempt statutes in other states. See, e.g., *Van Bergen v. Minnesota*, 59 F.3d 1541 (8th Cir. 1995) (upholding a state law similar to the Indiana law) and *Palmer v. Sprint Nextel Corp.*, 674 F. Supp.2d 1224 (W.D. Wash. 2009) (upholding a state law prohibiting the use of automatic dialing and announcing devices in commercial telephone solicitations).

Please let me know whether you have any questions or redraft instructions.

Mark D. Kunkel
Senior Legislative Attorney
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Kunkel, Mark

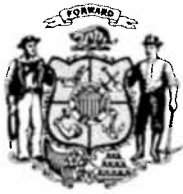
From: Kunkel, Mark
Sent: Monday, October 01, 2012 11:39 AM
To: Kunkel, Mark
Subject: 13-0159

Per Julie in Erpenbach's office, in response to d-note items for the /P1:

3. Change to "knowingly and voluntarily"
4. Delete the exemption.

All other items are okay.

Mark D. Kunkel
Senior Legislative Attorney
Legislative Reference Bureau
(608) 266-0131



1

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SOON
IN 10-2

INSERT 1A

I tried
to run
redraft,
but there
was an
error
- MDK

redrafted to
11 by sac.

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

~~This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.~~

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

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

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

6 **100.522 Automatic dialing-announcing devices. (1) DEFINITIONS.** In this
7 section:

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

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

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

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

- 7 1. A person who has subscribed to telephone service from a telephone company.
- 8 2. Any other person living or residing with a person described in subd. 1.

9 (2) PROHIBITION; EXCEPTIONS. (a) Except as provided in par. (b), a caller may not
10 use or connect to a telephone line an automatic dialing-announcing device unless
11 any of the following apply:

12 1. The subscriber has knowingly *or* voluntarily requested, consented to,
13 permitted, or authorized receipt of the message.

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

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

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

20 2. Messages to subscribers with whom the caller has a current business or
21 personal relationship.

22 3. Messages advising employees of work schedules.

23 (3) TERRITORIAL APPLICATION. This section applies to any interstate or intrastate
24 message received by a person in this state.

1

INSERT 1A:

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, 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 organization 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.

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 (also to) investigate violations of the bill and bring enforcement actions for violations. The (also bill) 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.

Rose, Stefanie

From: Knutson, Tryg
Sent: Wednesday, October 03, 2012 3:15 PM
To: LRB.Legal
Subject: Draft Review: LRB -0159/1 Topic: Regulation of telephone automatic dialing-announcing devices

Please Jacket LRB -0159/1 for the SENATE.