



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #151

Do Not Call List Revenues (Agriculture, Trade and 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. Under the bill, \$666,900 and 6.5 positions would be provided annually for administration and enforcement of the no-call program. However, the bill would transfer administration and enforcement of the no-call program to the Department of Justice (DOJ) effective October 1, 2005, or the effective date of the bill, whichever is later, as a part of the transfer of most consumer protection functions from DATCP to DOJ.

2. The most recent no-call list was published on April 1, 2005, and contained almost 1.5 million residential telephone numbers, and was provided to 625 telemarketers. The list will continue to be updated and published quarterly by DATCP. Consumers are required to renew their listing every two years, with no costs for their initial registration or subsequent renewals.

3. Funding for the no-call program comes from fees paid by businesses that solicit consumers via telephone, and are specified in ATCP 127. 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. ATCP 127 specifies that 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 again needed to fund the program. The first quarterly installment was due on December 1, 2002, or on the date of initial registration of the telemarketer.

4. Revenues under administrative rule ATCP 127 were initially estimated at approximately \$470,000 in 2002-03 and \$550,000 annually thereafter. However, actual revenues were \$1.7 million in 2002-03 and \$1.6 million in 2003-04 (only three quarterly fees were collected in each of these fiscal years). Due to a large balance in the telephone solicitation appropriation account that resulted from higher than expected revenues, 2003 Act 33 transferred \$600,000 from the account to the state's general fund in 2003-04.

5. ATCP 127 requires DATCP to reduce or waive one or more of the quarterly payments made by telemarketers that fund the program if the Department projects a year-end balance in the telephone solicitation appropriation account that exceeds projected fiscal year expenditures by at least 15%. Due to the existence of a large balance in the account, DATCP has waived the quarterly payments that were due September 1, 2003, September 1, 2004, December 1, 2004 and March 1, 2005.

6. In June, 2004, in response to a lawsuit filed by a group of businesses, a Dane County Circuit Court generally upheld the legality of ATCP 127. However, the court ruled that DATCP did not have discretion on whether to reduce or eliminate quarterly fees when program revenues exceeded projected expenditures, but rather must do so when this is the case.

7. Annual revenues from the program are projected to be around \$2.1 million in the 2005-07 biennium were DATCP to collect all four quarterly payments, meaning each quarterly payment DATCP collects would result in revenue of approximately \$525,000 being deposited into the telephone solicitation appropriation account. However, as a result of the court ruling, DATCP would not collect fees under this program again until the account balance is projected to drop below \$100,000 (which would not be expected to occur before mid-2006). The account will have a projected July 1, 2005, balance of approximately \$780,000, and authorized 2005-06 expenditures of \$666,900.

8. It could be argued that since the appropriation account is projected to have a June 30, 2005, balance of approximately \$780,000, and that the Department could resume collecting fees for operation costs of the program should the balance fall below \$100,000, the Committee could consider lapsing some amount of funding to the state's general fund. However, others argue that the fees collected by DATCP from telemarketers should be used to fund the operations of the no-call

program. They argue that any lapse from the telephone solicitation appropriation account will only require DATCP to collect additional fees from telemarketers sooner, with the effect being a tax on telemarketers that will be deposited to the general fund. Further, opponents of a lapse argue that DATCP has collected more fees than it should have in the past, and past surplus revenues collected from telemarketers should be used for the purposes for which they were paid (to fund the administration and enforcement of the no-call program).

9. Under current law, DATCP officials plan to collect one quarterly fee in the 2005-07 biennium. This fee would likely be the quarterly payment due on December 1, 2006. It should be noted that any new telemarketers that register with DATCP will not be required to make any payment to the Department until DATCP collects the next quarterly fee (meaning that it would be possible for a telemarketer new to the state to go until December 1, 2006, without making a payment).

10. If \$600,000 were to be lapsed to the general fund, DATCP would likely collect one quarterly payment in fiscal year 2005-06 (likely in December, 2005) and one and one-half payments in 2006-07 (December, 2006, and June, 2007). If \$400,000 were lapsed to the general fund, DATCP would likely collect one quarterly payment in each fiscal year (likely in December, 2005, and December, 2006). If \$200,000 were lapsed, DATCP would likely collect one-half of a quarterly payment in fiscal year 2005-06 and a full quarterly payment in 2006-07.

11. In addition, since the appropriation is continuing, all monies received may be expended by the agency with the approval of DOA. 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-REV</u>
2005-07 REVENUE (Change to Bill)	\$600,000

2. Specify that \$400,000 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-REV</u>
2005-07 REVENUE (Change to Bill)	\$400,000

3. Specify that \$200,000 from the DATCP telephone solicitation program revenue account lapse to the general fund on the effective date of the act.

<u>Alternative 3</u>	<u>GPR-REV</u>
2005-07 REVENUE (Change to Bill)	\$200,000

4. In addition to, or in lieu of, one of the above alternatives, convert the continuing telephone solicitation program revenue appropriation to annual.

5. Take no action.

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