



Budget Briefs

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TELEMARKETING: DO-NOT-CALL LIST

The biennial state budget act (2001 Wisconsin Act 16), passed by the legislature and signed by Governor Scott McCallum on August 30, 2001, creates a nonsolicitation directory, which allows residential telephone customers in Wisconsin to register for inclusion on a “do-not-call” list to avoid contacts by telemarketers. The state-run directory is expected to begin operations in the first half of 2002.

RESTRICTING TELEPHONE SOLICITATIONS

Under Act 16, telemarketers must register on an annual basis if they hire employees or contractors to make telephone solicitations to residential customers in Wisconsin for the purpose of selling property, goods, or services. Registration and renewal fees will be determined by the Department of Agriculture, Trade and Consumer Protection (DATCP), based on the directory’s cost and the number of telephone lines the solicitor uses for sales calls.

The law, which is applicable to both in-state and out-of-state solicitors, exempts nonprofit groups, such as political parties and charitable and fraternal organizations. As passed by the legislature, the bill did not make an exception for nonprofit organizations, but a veto by the governor created the exemption. Business people who make their own sales calls are also exempt.

Solicitors covered by the law may not make a sales call to any party listed in the current nonsolicitation directory. Updated directories will be provided to registrants in electronic format on a semiannual basis with printed copies available on request. The listing can be distributed only to registered solicitors, and they are prohibited from selling any of the information. The directory is exempted from the state’s open records law, and DATCP may not release it to anyone other than registrants.

Registered solicitors may call persons listed in the directory if the call is made in response to the telephone customer’s request or if that person is a current client of the person selling the property, goods, or services. The client exception does not extend to affiliates of the solicitor.

A person who makes a telemarketing call is required to give personal identification and state the identity of the person or organization that is selling the property, goods, or services or will be receiving the contribution, donation, grant, or pledge. Although the do-not-call list is available only to residential customers, the solicitor who makes a telephone solicitation to a nonresidential customer must, if requested, provide a mailing address so the customer who does not wish to receive telephone solicitations may contact the solicitor individually to block further calls.

ENFORCEMENT AND PENALTIES

Telephone solicitors or their employees or contractors who make sales calls in violation of the law are subject to a \$100 forfeiture for each incident. DATCP is required to investigate alleged violations and may bring legal action for temporary injunctive or other relief. The governor used his veto power to: 1) reduce the potential fine from \$10,000 to \$100 per violation;

2) eliminate authority for civil lawsuits by customers against noncomplying telemarketers; and 3) eliminate a supplemental forfeiture of up to \$10,000 for making certain prohibited sales calls to elderly or disabled people. He stated in his veto message that he considered the \$10,000 fine excessive and that a \$100 forfeiture for each incident would deter frequent violators but not unduly penalize occasional mistakes.

LISTINGS IN THE DIRECTORY

DATCP will promulgate the administrative rules governing the directory. When the procedures are in place (as anticipated within the next nine months), state residents will be notified through the news media about signing up. Residential customers who receive basic local exchange telephone service are eligible for a do-not-call listing, but those who operate a business phone at their residence are not. After initial signup, residential customers must renew their registrations every two years to remain in the directory. The program, which will be free to eligible customers, will be funded by the registration fees paid by the telephone solicitors.

RELATED LAWS

Current State Regulations. The DATCP administrative rules formally establishing the nonsolicitation directory are expected to be in place by mid-2002. In the meantime, existing state regulations, based on Federal Communications Commission rules promulgated in response to the Telephone Consumer Protection Act of 1991, provide limited customer protection from unwanted telephone solicitations. Under these state regulations, customers may block calls by notifying an individual solicitor that they do not wish to receive any further telephone calls from that particular seller. Unlike the nonsolicitation directory, which applies to all registered solicitors, sellers must be contacted individually. Wisconsin regulations do not contain an expiration on do-not-call requests. In addition, the rules prohibit calls before 8 a.m. or after 9 p.m. without the prior consent of the consumer. These DATCP provisions will continue to be applicable to nonresidential customers, such as those operating businesses out of their homes, whose business lines are not covered by Act 16.

Industry Self-regulation. Until the state nonsolicitation directory begins operation, consumers who wish to reduce telemarketing calls may request to be placed on the do-not-call list offered by the Direct Marketing Association, which operates with the voluntary cooperation of telemarketers. Customers wishing to sign up for this list may write: Telephone Preference Service, Direct Marketing Association, P.O. Box 9014, Farmingdale, NY 11735-9014.

FURTHER INFORMATION

For further information, contact the DATCP Bureau of Consumer Protection at (608) 224-4965 or (800) 422-7128. Section 100.52, Wisconsin Statutes, which creates the nonsolicitation directory, can be found in the text of 2001 Wisconsin Act 16 on the Internet at <http://www.legis.state.wi.us/2001/data/acts/01act16.pdf>