Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
CONSUMER BANKERS ASSOCIATION	)	CG Docket No. 02-278
	)	
Petition for Declaratory Ruling with Respect to Certain Provisions of the Wisconsin Statutes and Wisconsin Administrative Code	)	

PETITION FOR DECLARATORY RULING

The Consumer Bankers Association ("CBA"), pursuant to section 554(e) of the Administrative Procedure Act, 5 U.S.C. § 554(e), and section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, respectfully requests the Commission to issue a declaratory ruling that certain sections of the Wisconsin Statutes and Wisconsin Administrative Code are preempted as applied to interstate telephone calls.

DISCUSSION

The CBA's member institutions have customers in every state of the United States, including Wisconsin.[1] In order to advise existing customers of opportunities, such as the availability of more favorable interest rates, that those customers may find to be of value, CBA's

[1] The Consumer Bankers Association was founded in 1919 and is a not-for-profit trade association that provides leadership and representation on retail banking issues such as privacy, fair lending, and consumer protection legislation/regulation. The CBA develops policy that affects financial institution retail products and services. CBA members include most of the nation's largest bank holding companies and hold two-thirds of the industry's total assets. CBA is the recognized voice on retail banking issues in the nation's capital. Member institutions are the leaders in consumer finance (auto, home equity and education), retail electronic commerce, small business services, and community development.

member institutions place interstate telephone calls to those customers in compliance with the Telephone Customer Protection Act ("TCPA") and this Commission's implementing rules.[2]

Under the Commission's regulations, telephone solicitation calls may be placed to persons with whom the caller has an established business relationship ("EBR"), even where the called party's number has been entered on the national do-not-call registry.[3] An established business relationship, in turn, is defined in the Commission's rules as "a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber's purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three months preceding the date of the call, which relationship has not been previously terminated by either party."[4]

Wisconsin also has enacted statutory restrictions on telemarketing.[5] Among other provisions, the Wisconsin statute states that a "telephone solicitor or an employee or contractor of a telephone solicitor may not do any of the following:

1. Use an electronically prerecorded message in a telephone solicitation without the consent of the recipient of the telephone call.
2. Make a telephone solicitation to a residential customer if the [Wisconsin] nonsolicitation directory that is provided or made available to the telephone solicitor . . . includes a listing for the residential customer.
3. Make a telephone solicitation to a nonresidential customer if the nonresidential customer has provided notice by mail . . . that the nonresidential customer does not wish to receive telephone solicitations."[6]

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[2] 47 U.S.C. § 227; 47 C.F.R. § 64.1200.

[3] 47 C.F.R. § 69.1200(c)(2).

[4] *Id.* § 69.1200(f)(3).

[5] Wisconsin's statutory restrictions on telephone solicitations are codified at Wis. Stat. § 100.52 (2003), and the implementing regulations are codified at Wis. Admin. Code, Agriculture, Trade and Consumer Protection, §§ 127.02-127.20 and 127.80-127.84. *See* Attachments 1 and 2.

[6] Wis. Stat. § 100.52(4)(a)(2003).

These provisions, which the Wisconsin statute expressly makes applicable to interstate calls, are significantly more restrictive than this Commission's telemarketing rules.[7] Specifically, the Wisconsin statute and implementing rules prohibit certain categories of calls that are within the scope of this Commission's established business relationship exception. The categories of calls that are permitted by this Commission but prohibited by Wisconsin include: (1) calls made to residential subscribers who have made an inquiry or application regarding products or services offered by the caller, but have not expressly asked to be called in response to that inquiry or application; (2) calls made to residential subscribers who have engaged in a completed purchase or transaction with the caller; (3) calls made to existing customers for the purpose of offering additional or different products from those the seller already is providing to the customer; and (4) calls from an affiliate of the entity with whom the residential customer has an existing relationship. These inconsistencies between federal law and the Wisconsin statute subject CBA's members to "multiple, conflicting regulations" in the area of interstate telemarketing and are preempted by the TCPA and this Commission's rules.[8]

1. Wisconsin Does Not Recognize Past Inquiries Concerning The Caller's Goods Or Services As The Basis For An EBR

Wisconsin permits telephone solicitations to be made to "a recipient in response to the recipient's request for the telephone solicitation."[9] This inquiry-based exception is substantially narrower than the Commission's exception for calls to residential subscribers that have made an "inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call."[10] Compliance with Wisconsin's

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[7] "This section applies to any interstate telephone solicitation received by a person in this state . . . ." *Id.* § 100.52(7).

[8] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14064 ¶ 84 (2003) (*"TCPA Order"*).

[9] Wis. Stat. § 100.52(6)(a).

[10] 47 C.F.R. § 69.1200(f)(3).

requirement not only would impose additional costs on CBA's members, but would prevent providers of products and services from responding promptly, by means of telephone calls, to inquiries from Wisconsin residents. Specifically, when an inquiry is received from a state other than Wisconsin, the CBA members can respond in the most efficient way, which typically will be by means of a return telephone call. However, if the customer is a Wisconsin subscriber and did not expressly request a "telephone solicitation" -- even though the subscriber might reasonably have assumed that the CBA member would respond by telephone -- the CBA member either must fail to answer the inquiry or must choose a slower, less direct medium. Such degradation of customer service is inconsistent with Commission policy and the interests of consumers.

2. Wisconsin Does Not Recognize Calls To Persons Who Have Engaged In Completed Transactions With The Caller As The Basis For An EBR

The Wisconsin statute permits telephone solicitors to place calls to a residential customer who is a "current client of the person selling the property, goods, or services that is the reason for the telephone solicitation."[11] The term "client," in turn, is defined in the implementing regulations as a "person who has a current agreement to receive, from the telephone caller . . ., property, goods or services of the type promoted by the . . . call."[12] This restrictive interpretation is reinforced by the "Frequently Asked Questions" made available on the website of the Wisconsin Department of Agriculture, Trade and Consumer Protection. In response to the question, "Does the Do Not Call List stop all telemarketing calls," the Department states, among other things, that there is an exception for "[c]alls made to an existing customer -- for example,

[11] Wis. Stat. § 100.52(6)(b).

[12] Wis. Admin. Code, Agriculture, Trade and Consumer Protection, § 127.80(2).

calls from: the bank you have a checking account with, your phone company or your credit card company."[13]

Although many customers of the CBA's member institutions fit within this definition of Wisconsin's "current client" category, many others -- including persons who have engaged in recent, completed transactions with those institutions and therefore come within this Commission's EBR exception – apparently are not current clients under Wisconsin law and cannot receive interstate telemarketing calls from CBA's member institutions if their numbers appear on the do-not-call registry. To prohibit interstate calls to persons that fit within any element of the Commission's EBR exception, however, subjects telemarketers to "multiple, conflicting regulation" and is inconsistent with the Commission's determination that calls from any entity fitting its EBR definition are reasonably expected by consumers and in the public interest.[14]

3. Wisconsin's "Current Client" Category Does Not Include Calls To Existing Customers For The Purpose Of Offering Different Or Additional Services

Under this Commission's rules, a telemarketing call to a person with whom the calling entity has an EBR may include an offer of any of the entity's products or services.[15] Wisconsin's more restrictive "current client" category, however, includes only "a person who has a current agreement to receive, from the telephone caller or the person on whose behalf the call is made, *property, goods or services of the type promoted by the telephone call.*"[16] Although the application of this restriction to specific cases is uncertain, CBA members wishing to avoid

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[13] Wis. Dept. of Agriculture, Trade and Consumer Protection, *Frequently Asked Questions for Consumers*, *available at* http://nocall.wisconsin-gov/web/includes/help/consumerfaq.asp (last visited 11/2/04).

[14] *TCPA Order*, 18 FCC Rcd at 14064 ¶ 83, 14078-79 ¶ 112.

[15] 47 C.F.R. § 64.1200(f)(3).

[16] Wis. Admin. Code, Agriculture, Trade and Consumer Protection, § 127.80(2) (emphasis added).

possible enforcement action in Wisconsin are not making interstate calls to their Wisconsin customers for the purpose of offering new services.[17] For example, some CBA member institutions that wish to offer auto loans and other services to their checking account customers maintain separate lists of Wisconsin and non-Wisconsin customers and call only those customers on the second list. Wisconsin's restriction on interstate telemarketing calls that offer new or additional services to existing customers, therefore, imposes substantial costs and legal risk on the CBA's members and should be preempted.

4. Wisconsin Does Not Permit Calls From Affiliates Of Entities With Whom The Residential Customer Has An EBR

The Wisconsin statute expressly states that its exception for "current client[s]" of a caller "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."[18] This provision of Wisconsin law directly contradicts the Commission's rules, which define the EBR category to include any affiliate that a customer would reasonably expect to come within the exception.[19] Accordingly, in order to comply with both Wisconsin and federal telemarketing law, CBA members and their affiliates will be required to maintain separate lists of subscribers to whom calls may be placed, in order to avoid making interstate calls to Wisconsin subscribers that are entirely lawful under the Commission's rules.

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[17] One of the comments to the Wisconsin rule suggests that state enforcement agencies might take a highly restrictive view of this provision. Specifically, the comment states that, "[f]or example, if a local telephone service provider encourages a current customer to purchase other local telephone services, the customer is a current 'client' under this definition." But the comment goes on to say that "a local telephone service customer is not a current 'client' when the local telephone service provider encourages that customer to purchase long distance telephone services." *Id.,* Annotation to ATCP 127.80.

[18] Wis. Stat. § 100.52(6)(b).

[19] *TCPA Order*, 18 FCC Rcd at 14078-78 ¶ 112.

CONCLUSION

The provisions of Wisconsin law described in this petition are contrary to Congress's intention to create a single, uniform regime of interstate telemarketing regulation.[20] Accordingly, and in accordance with this Commission's express invitation to interested parties to "seek a declaratory ruling" as to any state law that is "inconsistent with [the TCPA] or our rules," CBA requests a declaratory ruling that those provisions of Wisconsin's telemarketing statute and implementing regulations are preempted.[21]

Respectfully submitted,

Charles H. Kennedy
Morrison & Foerster LLP
2000 Pennsylvania Avenue, NW
Washington, DC 20006-1888
(202) 887-1500

Counsel for Consumer Bankers Association

Dated: November 19, 2004

[20] *Id.* at 14064 ¶ 83.

[21] *Id.* at 14064 ¶ 84.

CERTIFICATE OF SERVICE

I, Theresa Rollins, do hereby certify that I have on this 19th day of November, 2004, had copies of the foregoing delivered to the following, via First Class U.S. mail and electronic mail, as indicated:

Wisconsin Department of Agriculture,
Trade & Consumer Protection
2811 Agriculture Drive
Madison, WI 53718

Jay Keithley, Deputy Chief
Consumer & Governmental Affairs Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Via Email: Jay.Keithley@fcc.gov

Best Copy and Printing, Inc.
Portals II
445 12th Street, SW, Room CY-B402
Washington, DC 20554

Via Email: FCC@BCPIWEB.COM

Theresa Rollins

Theresa Rollins

dc-395563

(b) Paragraph (a) applies to a motor fuel dealer after he or she renews or extends a motor fuel dealership agreement with a motor fuel grantor on or after May 17, 1988.

(5) MOTOR VEHICLES USED BY DISABLED; SERVICE. (a) In this subsection:

1. "Motor vehicle" has the meaning given in s. 340.01 (35).

2. "Pump" means a device used to dispense motor fuel for sale at retail.

(b) A motor fuel dealer shall have an employee dispense motor fuel into a motor vehicle from a full–service pump at the same price as the motor fuel dealer charges the general public for the same grade of motor fuel dispensed from a self–service pump, if all of the following apply:

1. The motor vehicle displays special registration plates issued under s. 341.14 (1), (1a), (1m), (1q) or (1r) (a) or a special identification card issued under s. 343.51 or is a motor vehicle registered in another jurisdiction and displays a registration plate, card or emblem issued by the other jurisdiction that designates that the vehicle is used by a physically disabled person.

2. The driver of the motor vehicle asks for the same price as charged for motor fuel dispensed from a self–service pump.

3. The motor fuel dealer sells motor fuel at retail from both full–service and self–service pumps.

(c) An employee of a motor fuel dealer who dispenses motor fuel under par. (b) need not provide any other services that are not provided to a customer who uses a self–service pump.

(d) A motor fuel dealer that violates par. (b) may be required to forfeit not more than $100 for each violation.

History: 1987 a. 95, 399; 1989 a. 31; 1995 a. 27; 1997 a. 35; 1997 a. 111 s. 30; Stats. 1997 s. 100.51.

100.52 Telephone solicitations. (1) DEFINITIONS. (b) "Basic local exchange service" has the meaning in s. 196.01 (1g).

(d) "Nonresidential customer" means a person, other than a residential customer, who is furnished with telecommunications service by a telecommunications utility.

(e) "Nonsolicitation directory" means the directory established in rules promulgated by the department under sub. (2) (b).

(f) "Residential customer" means an individual who is furnished with basic local exchange service by a telecommunications utility, but does not include an individual who operates a business at his or her residence.

(g) "Telecommunications service" has the meaning given in s. 196.01 (9m).

(h) "Telecommunications utility" has the meaning given in s. 196.01 (10).

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

(j) "Telephone solicitor" means a person, other than a nonprofit organization or an employee or contractor of a nonprofit organization, that employs or contracts with an individual to make a telephone solicitation.

(2) NONSOLICITATION DIRECTORY LISTING. (a) Upon a request by a residential customer, the department shall include in the nonsolicitation directory a listing indicating that the residential customer does not want to receive any telephone solicitation made on behalf of a telephone solicitor.

(b) The department shall promulgate rules for establishing, maintaining, and semiannually updating a directory that includes listings of residential customers who do not wish to receive telephone solicitations made on behalf of telephone solicitors. The rules promulgated under this paragraph shall establish requirements and procedures for a residential customer to request a listing in the directory. The rules shall also require a residential customer who requests a listing in the directory to notify the department on a biennial basis if the residential customer wishes to continue to be included in the directory. The department shall eliminate a residential customer from the directory if the customer does not make the biennial notification.

(c) Except for copies of the nonsolicitation directory that are provided to registered telephone solicitors under par. (d), the nonsolicitation directory is not subject to inspection, copying, or receipt under s. 19.35 (1) and may not be released by the department.

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

(3) REGISTRATION OF TELEPHONE SOLICITORS. (a) The department shall promulgate rules that require any telephone solicitor who requires an employee or contractor to make a telephone solicitation to a residential customer in this state to register with the department, obtain a registration number from the department, and pay a registration fee to the department. The amount of the registration fee shall be based on the cost of establishing the nonsolicitation directory, and the amount that an individual telephone solicitor is required to pay shall be based on the number of telephone lines used by the telephone solicitor to make telephone solicitations. The rules shall also require a telephone solicitor that registers with the department to pay an annual registration renewal fee to the department. The amount of the registration renewal fee shall be based on the cost of maintaining the nonsolicitation directory.

(b) The department shall promulgate rules that require an individual who makes a telephone solicitation on behalf of a telephone solicitor to identify at the beginning of the telephone conversation each of the following:

1. The telephone solicitor.

2. If different than the telephone solicitor, the person selling the property, goods, or services, or receiving the contribution, donation, grant, or pledge of money, credit, property, or other thing of any kind, that is the reason for the telephone solicitation.

(4) TELEPHONE SOLICITOR REQUIREMENTS. (a) A telephone solicitor or an employee or contractor of a telephone solicitor may not do any of the following:

1. Use an electronically prerecorded message in telephone solicitation without the consent of the recipient of the telephone call.

2. Make a telephone solicitation to a residential customer if the nonsolicitation directory that is provided or made available to the telephone solicitor under sub. (2) (d) includes a listing for the residential customer.

3. Make a telephone solicitation to a nonresidential customer if the nonresidential customer has provided notice by mail to the telephone solicitor that the nonresidential customer does not wish to receive telephone solicitations.

(b) A telephone solicitor may not do any of the following:

1. Require an employee or contractor to make a telephone solicitation to a person in this state unless the telephone solicitor is registered with the department under the rules promulgated under sub. (3) (a).

2. Require an employee or contractor to make a telephone solicitation that violates par. (a).

(c) A telephone solicitor or employee or contractor of a telephone solicitor that makes a telephone solicitation to a nonresidential customer shall, upon the request of the nonresidential customer, provide the mailing address for notifying the telephone

solicitor that the nonresidential customer does not wish to receive telephone solicitations.

(6) EXCEPTIONS. Subsections (4) (a) 2. and 3. do not apply to a telephone solicitation that satisfies any of the following:

(a) The telephone solicitation is made to a recipient in response to the recipient's request for the telephone solicitation.

(b) The telephone solicitation 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.

(7) TERRITORIAL APPLICATION. This section applies to any interstate telephone solicitation received by a person in this state and to any intrastate telephone solicitation.

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

(10) PENALTIES. (a) Except as provided in par. (b), a person who violates this section may be required to forfeit $100 for each violation.

(b) A telephone solicitor that violates sub. (4) may be required to forfeit not more than $100 for each violation.

History: 2001 a. 16 ss. 2435 to 2446f, 2819b, 2821b.

Cross Reference: See also ch. ATCP 127, Wis. adm. code.

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which the consumer must incur and any conditions which the consumer must meet in order to receive those free goods or services. This does not prohibit a combination offer that is covered by, and complies with, s. 100.18 (2), Stats.

(15) Make any false, deceptive or misleading representation to a consumer.

History: Cr. Register, July, 1999, No. 523, eff. 8–1–99.

ATCP 127.74 Prohibited practices. No seller may do any of the following in a face–to–face transaction:

(1) Threaten, intimidate or harass a consumer.

(2) Fail to leave a consumer's premises upon request.

(3) Request or receive payment for seeking or arranging a loan or extension of credit until the consumer actually receives that loan or extension of credit, if the seller has represented that efforts to obtain a loan or extension of credit would likely be successful.

(4) Fail to do either of the following if the transaction qualifies as a consumer approval transaction under s. 423.201, Stats., and is not subject to s. 423.202 (4), Stats.:

(a) Provide a notice under s. 423.203, Stats., of the consumer's right to cancel.

(b) Honor the consumer's right to cancel under s. 423.202, Stats.

Note: Under s. 423.202, Stats., a consumer may cancel a consumer approval transaction until midnight of the 3rd business day after the seller gives the consumer a required written notice of cancellation rights under s. 423.203, Stats. The consumer's cancellation rights under s. 423.202, Stats., are in addition to any other cancellation rights which the consumer may have under contract law.

History: Cr. Register, July, 1999, No. 523, eff. 8–1–99.

ATCP 127.76 Recordkeeping. (1) RECORDS REQUIRED. A seller engaged in face–to–face transactions shall keep all of the following records related to those transactions:

(a) Copies of all advertising, brochures, sales scripts, seller training materials, sales and promotional materials, and documents provided to consumers in face–to–face transactions. This paragraph does not require a seller to keep duplicate copies of substantially identical documents.

(b) The following records related to each prize which the seller offers or awards to consumers if the seller represents to any consumer, directly or by implication, that the prize has a value of $25 or more:

1. An identification of the prize.

2. The name and last known address of every consumer who received the prize.

(c) The name and last known address of every consumer who purchased goods or services in a face–to–face transaction with the seller, the date on which the consumer purchased those goods or services, the date on which the seller provided those goods or services to the consumer, and the amount which the consumer paid for those goods or services.

(d) The following information related to every individual who has made face–to–face solicitations as the seller's employee or agent:

1. The individual's name, last known address and telephone number.

2. Every fictitious name which the individual has used when making face–to–face solicitations. No seller may permit more than one employee or contract agent to use the same fictitious name.

3. The individual's job title or titles.

(e) All written authorizations required under s. ATCP 127.68.

(2) KEEPING RECORDS. (a) A seller shall keep each record required under sub. (1) for at least 2 years after the seller creates that record.

Note: A seller may keep records required under sub. (1) in the form, manner, format and place in which the seller would normally keep those records in the ordinary course of business.

(b) The department, pursuant to an investigation of possible violations of this subchapter, may ask a seller to provide copies of records under sub. (1) that are reasonably relevant to that investigation. The seller shall provide the requested copies within a reasonable time specified by the department.

Note: See ss. 93.15 and 93.16, Stats.

(c) An agent engaged in face–to–face transactions on behalf of a principal seller need not keep duplicate copies of records which that principal seller keeps according to this section. A principal seller who contracts to have an agent keep records for the principal seller need not keep duplicate copies of records which that agent keeps according to that contract and this section. An employee need not keep duplicate copies of records that his or her employer keeps according to this section.

History: Cr. Register, July, 1999, No. 523, eff. 8–1–99.

ATCP 127.78 Assisting violations. No person may knowingly assist any seller to engage in any activity or practice in violation of this subchapter.

History: Cr. Register, July, 1999, No. 523, eff. 8–1–99.

Subchapter V — Telephone Solicitations; No–Call List

ATCP 127.80 Definitions. In this subchapter:

(1) "Basic local exchange service" has the meaning given in s. 196.01 (1g), Stats.

(2) "Client" means a person who has a current agreement to receive, from the telephone caller or the person on whose behalf the call is made, property, goods or services of the type promoted by the telephone call.

Note: For example, if a local telephone service provider encourages a current customer to purchase other local telephone services, the customer is a current "client" under this definition. But a local telephone service customer is not a current "client" when the local telephone service provider encourages that customer to purchase long distance telephone services.

(3) "Nonresidential telephone customer" means a person, other than a residential customer, who receives telecommunications service from a telecommunications utility.

(4) "No–call list" means a list compiled and distributed according to s. ATCP 127.82.

(5) "Residential telephone customer" means an individual in this state who receives basic local exchange service from a telecommunications utility.

(6) "Telephone call" means a voice communication over any part of the electromagnetic spectrum to customer premises equipment.

Note: If a telecommunications provider initiates a voice communication with a customer during a telephone conversation between the customer and a third party, the telecommunications provider has initiated a "telephone call" as that term is used in this subchapter.

(7) "Telephone line" means a circuit or channel, including a voice grade equivalent channel, that is derived from a line, cable or digital facility, and that may be used to make a telephone call.

(8) "Telecommunications service" has the meaning given in s. 196.01 (9m), Stats.

(9) "Telecommunications utility" has the meaning given in s. 196.01 (10), Stats., and includes an "alternative telecommunication utility" as defined in s. 196.01 (1d), Stats.

(10) "Telephone solicitation" means an unsolicited telephone call for the purpose of encouraging the call recipient to buy property, goods or services, or that is part of a plan or scheme to encourage the call recipient to buy property, goods or services. "Telephone solicitation" does not include any of the following:

(a) A telephone call encouraging the call recipient to buy property, goods or services from a nonprofit organization if all the following apply:

1. The nonprofit organization complies with subch. III of ch. 440, Stats., if applicable.

2. Sale proceeds, if any, are exempt from Wisconsin sales tax and federal income tax.

Note: The definition of "telephone solicitation" applies to phone calls promoting sales, not charity donations. But it may cover charity solicitations that are really part

Attachment 2

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of a plan or scheme to sell property, goods or services. Subchapter III of ch. 440, Stats., regulates charitable solicitations.

Telephone calls promoting sales by nonprofit organizations are exempt *if* the sale proceeds are exempt from Wisconsin sales tax and federal income tax. Section 77.54(7m), Stats., defines the scope of the Wisconsin sales tax exemption for sales by nonprofit organizations. Federal income tax laws require an otherwise exempt nonprofit organization to pay income tax on "unrelated business taxable income" as defined in 26 CFR 1.512(a)–1.

(b) A telephone call made by an individual acting on his or her own behalf, and not as an employee or agent for any other person. This exemption does not apply to a caller who does any of the following:

1. Sells or promotes the sale of property, goods or services for another person.

Note: For example, self–employed insurance agents are not exempt from this subchapter when they or their employees make telephone calls to promote the sale of insurance policies offered by insurance companies. But an insurance company may register under s. ATCP 127.81(1)(b) on behalf of self–employed insurance agents and their employees who telemarket the company's insurance.

2. Sells or promotes the sale of goods that the caller buys from another person who controls or limits the caller's sales methods.

(c) A telephone call made in response to the call recipient's affirmative request for that call.

Note: A failure to respond to a negative option ("we will call unless you say no") is not an "affirmative request" under par. (c).

(d) A telephone call made to a current client.

Note: See definition of "client" under sub. (2).

(e) A telephone call made to a number listed in the current local business telephone directory.

(f) One telephone call to determine whether a former client mistakenly allowed a contractual relationship to lapse.

(g) A telephone call made to determine a former client's level of satisfaction, unless the call is part of a plan or scheme to encourage the former client to purchase property, goods or services.

(i) A telephone call, made to a party to an existing contract, that is necessary to complete that contract.

History: CR 02–036: cr. Register November 2002 No. 563, eff. 12–1–02.

ATCP 127.81 Telephone solicitors; registration. (1) REGISTRATION REQUIRED. (a) No person may employ or contract with any individual to make telephone solicitations to residential telephone customers unless one of the following applies:

1. That person is currently registered with the department under this section. This registration covers telephone solicitations made by individuals acting as employees or agents of the registrant.

2. The telephone solicitations are covered by a registration under par. (b).

(b) A person who sells property, goods or services may register under this section on behalf of a person who employs or contracts with individuals to make telephone solicitations promoting the purchase of property, goods or services from the registrant. This registration covers telephone solicitations that those individuals make for that purpose. It does not cover telephone solicitations promoting the purchase of property, goods or services from persons other than the registrant.

Note: For example, an insurance company may register under par. (b) on behalf of a self–employed insurance agent whose employees telemarket that company's insurance. But that registration does not cover the agent's employees when they telemarket another company's insurance.

(c) No individual may make a telephone solicitation to a residential telephone customer unless the telephone solicitation is covered by a registration under this section.

(2) ANNUAL REGISTRATION. To register under this section, a person shall complete an annual registration form provided by the department. The registrant shall file, with the registration form, all quarterly fee installments required under sub. (3m). The registration form shall include all the following:

(a) The registrant's correct legal name, and all trade names under which the registrant does business.

(b) The registrant's principal business address and telephone number. The business address shall include street address, zip code, state or province, and nation.

(c) The registrant's federal tax identification (FEIN) number.

(d) The name and address of the registrant's registered agent in this state, if any.

(e) The name and address of a person who will accept service of process on behalf of the registrant, if other than a registered agent under par. (d).

(f) The name, address and telephone number of a person who may respond, on behalf of the registrant, to department notices and inquiries.

(g) The number of telephone lines that will be used to make telephone solicitations under the registration.

(h) The telephone number assigned to each telephone line counted under par. (g).

(i) The number of individuals who will make telephone solicitations under the registration. The registrant shall provide the names of the individuals if the department requests those names. A person who registers under sub. (1) (b) on behalf of another person shall identify that other person.

(j) A statement indicating the form in which the registrant wishes to receive no–call lists. A registrant may receive no–call lists in one or more of the following forms:

1. By e–mail transmission to one or more e–mail addresses provided by the registrant. Each e–mail address shall be that of the registrant, or a person covered by the registration.

2. As a compact disc, mailed to one or more addresses provided by the registrant. Each address shall be that of the registrant, or a person covered by the registration. The registrant shall specify the number of compact discs to be included in each mailing.

3. In hard–copy printed form, mailed to one or more addresses provided by the registrant. Each address shall be that of the registrant, or a person covered by the registration. The registrant shall specify the number of hard–copy lists to be included in each mailing.

(3) FEES. A person registering under sub. (2) shall pay the following annual fees, or an annual fee of $20,000, whichever is less:

(a) A basic annual registration fee of $700 for the first year of registration, and $500 for each subsequent year.

(b) A supplementary annual fee of $75 for each telephone line identified under sub. (2) (g). This fee does not apply if the registrant identifies fewer than 4 telephone lines under sub. (2) (g).

(c) A supplementary annual fee of $25 for each e–mail address identified under sub. (2) (j) 1. This fee does not apply if the registrant identifies only one e–mail address under sub. (2) (j) 1.

(d) A supplementary annual fee of $25 for each address identified under sub. (2) (j) 2. If the registrant asks the department to send more than one annual set of compact discs to any address, the registrant shall pay an additional fee of $25 for each additional set of discs sent to that address.

(e) A supplementary annual fee of $1,000 for each address identified under sub. (2) (j) 3. If the registrant asks the department to send more than one annual set of hard–copy lists to any address, the registrant shall pay an additional fee of $1,000 for each additional set of hard–copy lists sent to that address.

Note: An "annual set" under pars. (d) and (e) consists of the 4 quarterly list updates under s. ATCP 127.82 (5).

(3m) QUARTERLY INSTALLMENTS. A registrant shall pay the annual fees under sub. (3) in quarterly installments, as follows:

(a) The first quarterly installment is due by the first day of the registration year, or on the date of initial registration, whichever is later.

(b) The second quarterly installment is due on March 1 of the registration year, or on the date of initial registration, whichever is later.

(c) The third quarterly installment is due on June 1 of the registration year, or on the date of initial registration, whichever is later.

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

(d) The fourth quarterly installment is due on September 1 of the registration year, or on the date of initial registration, whichever is later.

(4) REGISTRATION EXPIRES. A registration under this section expires on November 30 of each year.

(5) REDUCTION OR WAIVER OF QUARTERLY INSTALLMENTS. The department may reduce or waive one or more quarterly installments under sub. (3m) if the department's projected fiscal–year–end cash balance in the appropriation under s. 20.115 (8) (jm), Stats., exceeds the department's projected fiscal year expenditures from that appropriation during that fiscal year by at least 15%. A reduction or waiver, if any, shall apply to all registrants. A reduction, if any, shall be a uniform percentage reduction in the quarterly installment that a registrant would otherwise pay. A reduction or waiver of a quarterly installment reduces, by the amount of that reduction or waiver, the annual fee required under sub. (3).

(6) UPDATED INFORMATION. A registrant shall do all the following whenever there is a material change in the information provided under sub. (2) during a registration year:

(a) Notify the department of the change.

(b) Pay any additional fees owed for that registration year as a result of the change.

History: CR 02–036: cr. Register November 2002 No. 563, eff. 12–1–02.

ATCP 127.82 No–call list. (1) COMPILING THE LIST. The department shall compile a no–call list containing the telephone numbers and ZIP codes of residential telephone customers who indicate, according to sub. (3), that they do not wish to receive telephone solicitations.

(2) SOLICITATIONS PROHIBITED. No person may make a telephone solicitation, either directly or through an employee or agent, to a residential telephone customer whose telephone number appears on the current no–call list. A telephone solicitation made in violation of this subsection does not, by itself, result in a monetary loss for which a residential telephone customer may seek recovery under s. 100.20 (5), Stats., unless that customer sustains an actual monetary loss as a result of another violation of this chapter.

(3) INDIVIDUALS INCLUDED ON THE LIST. (a) A residential telephone customer or the customer's caregiver may contact the department to have the customer included on the no–call list. The residential telephone customer or caregiver shall give the department all the following information:

1. The customer's telephone number including area code.

2. The customer's postal ZIP code.

3. The customer's name and address, if requested by the department. The department may not include the customer's name or address on the no–call list.

4. The caregiver's name and address, if a caregiver contacts the department on behalf of the customer. The department may not include the caregiver's name or address on the no–call list.

Note: The department will publish a telephone number and website address that residential telephone customers may contact to sign up for the no–call list. The no–call list will include only the customer's telephone number and ZIP code.

(b) No person, other than a residential telephone customer or the customer's caregiver, may ask the department to include the customer on the no–call list.

(4) DISTRIBUTING THE LIST. The department shall distribute the no–call list to each person who is currently registered with the department under s. ATCP 127.81. The department shall distribute the no–call list to the addresses, and in the manner, specified by the registrant under s. ATCP 127.81 (2) (j). A no–call list takes effect on the date specified by the department. The effective date shall be not sooner than 10 business days after the department distributes the list.

(5) UPDATING THE LIST. The department shall compile and distribute an updated no–call list every 3 months. The department shall distribute each updated list in the manner provided under sub. (4). An updated list takes effect on the date specified by the department. The effective date shall be not sooner than 10 business days after the department distributes the list.

(6) LIST DELETIONS AND RENEWALS. The department shall delete a residential telephone customer from the no–call list 2 years after that customer last applied for listing. The customer or the customer's caregiver may renew the customer's listing at any time, in the manner provided for an original listing under sub. (3).

(7) NO RE–DISTRIBUTION BY LIST RECIPIENTS. A person who receives a no–call list may not distribute any part of that list to another person, except that a current registrant under s. ATCP 127.81 may redistribute the list to persons covered by that registration.

(8) LIST NOT OPEN TO PUBLIC INSPECTION. (a) The department may not release a no–call list, or any information collected under sub. (3), except that:

1. The department may release a no–call list to a person currently registered under s. ATCP 127.81, or to persons covered by that registration, as provided in this section.

2. The department may release a no–call list as necessary to enforce this subchapter, or to comply with a subpoena or judicial process, subject to any protective orders that may be necessary to ensure the confidentiality of the list.

3. The department may release a no–call list to the federal trade commission or other federal agency maintaining a national no–call list.

Note: See s. 100.52 (2) (c), Stats.

History: CR 02–036: cr. Register November 2002 No. 563, eff. 12–1–02.

ATCP 127.83 Telephone solicitation practices. (1) Persons making telephone solicitations shall comply with applicable requirements in subchapter II.

(2) No person may do any of the following:

(a) Make a telephone solicitation in violation of s. ATCP 127.81 or 127.82.

(b) Use an electronically prerecorded message in a telephone call for the purpose of encouraging a residential or nonresidential telephone customer to purchase property, goods or services, without the prior consent of that telephone customer. This paragraph does not apply if the person meets the provisions of s. ATCP 127.80 (10) (a) or (b).

(c) Make a telephone solicitation to a nonresidential telephone customer if the nonresidential telephone customer has notified the person by mail that the nonresidential telephone customer does not wish to receive telephone solicitations.

(d) Require, instruct or authorize any person to violate this subchapter, or knowingly facilitate any person's violation of this subchapter.

(e) Use caller–ID blocking when making a telephone solicitation.

(f) Falsify any information required under this subchapter.

(3) A person making a telephone solicitation to a residential telephone customer shall give the call recipient, at the call recipient's request, the number of the registration under s. ATCP 127.81 that covers the telephone solicitation.

(4) A person making a telephone solicitation to a nonresidential telephone customer shall give the call recipient, at the call recipient's request, a mailing address to which the nonresidential telephone customer may mail a notice under sub. (2) (c). The person shall provide the mailing address within 10 days after the call recipient requests it.

History: CR 02–036: cr. Register November 2002 No. 563, eff. 12–1–02.

ATCP 127.84 Record keeping. Persons who employ or contract individuals to make telephone solicitations shall comply with record keeping and record production requirements applicable to sellers under s. ATCP 127.18.

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