

## A “Small Business” Do-Not-Call Law?

One of the most popular pieces of National and State legislation has been the consumer do-not-call (DNC) law. The DNC laws were enacted to assure an “individual consumer’s” right to privacy.

The Wisconsin Legislature is proposing to expand the DNC regulations. They propose several attractive provisions that will strengthen the “consumer” regulations such as including cell phones, banning unsolicited faxes, and increasing fines from \$100 to as much as \$10,000.

Interestingly, one provision of the proposal includes a “small business” DNC registry. This means small businesses will be able to request that their business telephone number be added to the DNC registry.

On the surface, the “small business” DNC provision in the proposed law sounds helpful in stopping unwanted phone solicitations to businesses. What will it do? Most small business owners immediately think of the numerous telemarketing calls we receive on behalf of not-for-profits; the periodic torrents of recorded political campaign calls; and uncompleted or dropped calls we receive from “unknown callers” whose “caller id’s” are often blocked. But, these types of calls will continue to both consumers and to businesses because calls from not-for-profits and political organizations are exempt under the current and proposed legislation. Blocked caller id calls, dropped calls, and calls with long dead times, if for solicitation, are already illegal and will not be stopped by the new provisions.

What can be stopped? The likely target of the “small business” DNC provisions is legitimate telemarketing calls from conglomerates plugging their business services. However, the current State DNC law already provides all businesses, large and small, with “rights” and a simple process to “request to be placed on a telemarketer’s own DNC list.” A written request or if necessary a brief email complaint to the Wisconsin Department of Agriculture Trade and Consumer Protection (DATCP) ([WINoCall@datcp.state.wi.us](mailto:WINoCall@datcp.state.wi.us); 608 224-4999) should terminate the unwanted telemarketing in the unusual circumstance that a telemarketer does not honor a request not to be called again. Many telemarketers honor “verbal requests” to be placed on their DNC lists (*telling the solicitor or seller that you are “not interested” or “hanging up” does not place you on their DNC list. You must explicitly request to be placed on their do not call list.*)

So what will a “Small Business” DNC provision accomplish? It will create a nightmare for some of our small business colleagues who depend on using the telephone to introduce themselves, their services, and their products.

Ninety percent of all businesses have 20 or fewer employees, and these are the businesses that would go on the “small business” DNC registry. Ironically, the proposed law will hurt this same

majority of businesses. Small businesses cannot afford the prohibitive investment of time; annual fees (\$700 to \$20,000); and the additional time and labor to comply with the proposed law and the complex regulations requiring compliance procedures, and record keeping. They cannot afford the additional risk of legal fees (avg. \$185 per hour) and lost work time should they be unfairly accused of violations that result in regulatory inquisitions and penalties (up to \$10,000) under the proposed law.

Many small businesses from “mom-and-pops” to single entrepreneurs provide innovative or highly competitive products and services that can benefit other small businesses, Wisconsin’s economy, and the community. Take for example, a new business venture beginning out of a home that introduces a competitive, environmentally friendly, or socially responsible product or service. The success of many types of small businesses often depends on being able to make an appointment with a business decision maker to share the new product or service.

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There are hundreds of business networking groups active throughout Wisconsin. These groups consist largely of “mom-and-pops,” entrepreneurs, and other small businesses that are connecting each other to small businesses and consumers through what is called “referral marketing.” Complying with the current Wisconsin and National consumer DNC laws is already an expensive and time-consuming proposition for any small business. A small business DNC provision, as proposed, would require businesses to do the same when receiving a business referral or otherwise risk the proposed astronomical state fines.

A “work around” to the DNC laws for “referral marketing” sounds easy. Simply “make” the referral (individual or business consumer) call the business you are referring them to, instead of having the business call the referral. Alternatively, “make” the referral give a written consent form, and pass the consent form on to the business. Today this obtuse process is a necessity to pass a consumer referral to another business without violating the law. Thousands of Wisconsin small businesses unknowingly violate the current state and national DNC laws every day by dialing consumer referrals without affirmative consent and without checking the Federal and State DNC registries before dialing the telephone. A small business DNC provision would require the same “unfriendly” process for business-to-business referrals.

Going into business for oneself takes on a responsibility to be customer, community, and business friendly. Most small businesses support and understand the efforts of fellow small businesses. Most will not support a small business DNC provision that would interfere with the success of other small businesses, especially the startups.

Some business people have suggested that a small business DNC provision could create an oligarchy of established businesses, with which startup businesses could not effectively compete.

The small business DNC provision has many unintentional consequences:

- It pits small business against small business – those who do not want to be bothered taking a call and those who need to make a call to survive. Small businesses are the lifeblood of the economy and the genesis for unique products and services. Other small businesses are often the target market for startups, new ideas, and innovation. Small businesses can often gain a competitive edge over larger companies by being introduced to leading edge and socially responsible products and services. Often, it starts with a phone call.
- The time and cost of registration, the purchase of the registries, the required quarterly “scrubbing” of telephone numbers against DNC registries, and extensive procedures and record keeping to prove compliance with the law are prohibitive and burdensome to small businesses and more so to “mom-and-pops” and entrepreneurial startups, which would be harmed the most by the proposed provision;
- The small business DNC provision proliferates the notion of an “anti-business climate” in Wisconsin;
- The provision can be expected to have a negative impact on economic development and entrepreneurship; and
- The process required by the provision for contacting business referrals impedes the free flow of business-to-business referrals that facilitates small business commerce.

Aside from its deleterious effects on small businesses, the small business DNC provision confuses the intent of the DNC law, which is to protect consumer privacy. The focus of the proposed legislation should be on “beefing up” the consumer DNC law by addressing residential consumer concerns; education, and enforcement of the consumer DNC law.

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Your State Senator and Representative want to hear from businesses concerning this pending legislation. Contact them by phone, by email, or by mail and let them know how you feel about the “small business” DNC provision in Wisconsin Senate Bill 99 and Assembly Bill 217.

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