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Chapter ATCP 127

DIRECT MARKETING

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Note: This chapter is adopted under authority of s. 100.20 (2), Stats., and is administered by the Wisconsin department of agriculture, trade and consumer protection. Violations of this chapter may be prosecuted under s. 100.20 (6) and s. 100.26 (3) or (6), Stats. A person who suffers a monetary loss because of a violation of this chapter may sue the violator directly under s. 100.20 (5), Stats., and may recover twice the amount of the loss, together with costs and reasonable attorneys' fees. Subchapter V is also adopted under authority of s. 100.52, Stats. A telephone solicitation to a residential telephone customer included on the "no−call" list under subch. V does not, by itself, result in a monetary loss for which the customer may seek recovery under s. 100.20(5), Stats., unless the residential telephone customer sustains an actual monetary loss as a result of another violation of this chapter.

Note: Chapter Ag 127 was renumbered ch. ATCP 127 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448. Chapter ATCP 127 as it existed on July 31, 1999 was repealed and a new chapter ATCP 127 was created effective August 1, 1999.

Subchapter I — Definitions

ATCP 127.01 Definitions. In this chapter:

(1) "Acquirer" means a financial institution or other person who, under a license or authorization granted by a credit card system operator, authorizes merchants to honor credit cards and submit credit card sales drafts for payment through the credit card system.

(2) "Consumer" means an individual to whom a seller advertises, offers to sell, sells or promotes the sale of consumer goods or services. "Consumer" does not include an individual who purchases consumer goods or services in a business capacity, or for resale to others.

(3) "Consumer goods or services" means goods or services typically used for personal, family or household purposes. "Consumer goods or services" includes personal investment opportunities, personal business opportunities and personal training courses but does not include any of the following:

(a) Investment opportunities, business opportunities and training courses when offered to a business, rather than a consumer.

(b) Real estate, other than cemetery lots or timeshares as defined in s. 707.02 (24), Stats.

(c) Pay−per−call services sold in compliance with s. 196.208, Stats.

(d) A newspaper subscription that the consumer may cancel at any time without penalty.

(4) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(5) "Credit card" means any card or other device which entitles an authorized holder to obtain goods, services or other things of value on credit.

(6) "Credit card sales draft" means any record or evidence of a credit card transaction.

(7) "Credit card system" means the system through which credit card transactions, using credit cards issued or licensed by the credit card system operator, are processed for payment.

(8) "Credit card system operator" means a person who operates a credit card system, or who licenses others to operate a credit card system.

(9) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection.

(10) "Disclose" means to make a clear and conspicuous statement which is reasonably designed to be noticed and readily understood by the consumer.

(11) "Individual" means a natural person.

(12) "Investment opportunity" means anything, tangible or intangible, that is offered, sold or traded based wholly or in part on representations, either express or implied, about past, present or future income, profit or appreciation. "Investment opportunity" does not include a security sold in compliance with ch. 551, Stats., or a franchise investment sold in compliance with ch. 553, Stats.

(13) "Mass advertisement" means a solicitation which a seller publishes or makes accessible to an unrestricted mass audience. "Mass advertisement" includes a solicitation published in a newspaper, magazine, radio broadcast, television broadcast or internet home page. "Mass advertisement" does not include a solicitation which a seller addresses to an individual consumer, to a consumer's residence, or to a gathering of consumers invited by means of telephone, mail or face−to−face solicitations under this chapter.

(14) "Merchant" means a person who is authorized, under a written agreement with an acquirer, to honor credit cards and submit credit card sales drafts to the acquirer for payment and processing through the credit card system.

(15) "Person" means an individual, corporation, partnership, cooperative, limited liability company, trust or other legal entity.

(16) "Prize promotion" means any of the following:

(a) A sweepstakes or other game of chance.

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(b) A seller's express or implied representation that a consumer has won, has been selected to receive, may be eligible to receive, or may have a chance to receive a prize.

(c) Any communication from a seller to a consumer in which the seller is required to give the consumer a prize notice under s. 100.171, Stats.

(17) "Purchase" means to buy or lease consumer goods or services.

(18) "Purchase contract" means an agreement to purchase consumer goods or services, regardless of whether that agreement is subject to a later right of cancellation. "Purchase contract" does not include the following agreements, but does include a purchase commitment which arises under any of those agreements as a result of the consumer's subsequent action or omission:

(a) An agreement authorizing the trial delivery of consumer goods or services which the consumer has not yet agreed to purchase, provided that the agreement includes no minimum purchase requirement.

(b) A negative option plan that is covered by and complies with 16 CFR 425.

Note: Some direct marketers offer trial delivery plans in which the consumer agrees to receive trial deliveries of goods which the consumer has not yet agreed to purchase. Under these agreements, a consumer is typically free to reject or return any trial delivery without purchasing that delivery. But under the trial delivery agreement, the seller may bill the consumer for the delivered goods if the consumer fails to reject or return the delivery within a specified time. Although the consumer's initial agreement to receive trial deliveries is not itself a "purchase contract" (unless it includes a minimum purchase commitment), the consumer effectively enters into a "purchase contract" for a particular delivery when the consumer fails to return or reject that delivery according to the trial delivery agreement.

(19) "Sale" means the passing of an ownership or leasehold interest in consumer goods or services to a consumer for a price.

(20) "Sell" means to engage in the sale of consumer goods or services, or to accept payment pursuant to a purported sale of consumer goods or services.

(21) "Seller" means a person, other than a bank, savings bank, savings and loan association, credit union, insurance company, public utility or telecommunications carrier engaged in exempt activities under s. 93.01 (1m), Stats., who is engaged in the business of selling, offering to sell, or promoting the sale of consumer goods or services to consumers. "Seller" includes all of the following:

(a) A person who accepts payment for a purported sale of consumer goods or services to a consumer.

(b) An employee or agent of a seller.

(c) A person who makes solicitations under arrangement with a seller.

Note: For example, a telemarketing firm that makes telephone solicitations on behalf of a "seller" is also a "seller" for purposes of this chapter. Individual employees of the telemarketing firm are also "sellers," for purposes of this chapter, when making telephone solicitations to consumers.

(22) "Solicitation" means a communication received by a consumer at a place other than the seller's regular place of business, in which a seller offers or promotes the sale of consumer goods or services to a consumer, or which is part of a seller's plan or scheme to sell consumer goods or services to a consumer. "Solicitation" does not include any of the following:

(a) A mass advertisement.

(b) A telephone, mail or electronic communication initiated by the consumer, unless prompted by the seller's prior solicitation to the consumer.

Note: Paragraph (b) does not except a face–to–face communication.

(c) A written communication that invites a consumer to the seller's regular place of business.

(d) A communication initiated by a consumer at an established public market, unless that communication was prompted by the seller's prior solicitation to the consumer.

Note: For example, a routine transaction at a farmers market is not a "solicitation" under this chapter, even though it occurs at a place other than the seller's "regular place of business."

(e) The delivery, to a consumer, of goods or services sold to the consumer in a transaction other than a telephone, mail or face–to–face transaction under this chapter.

Note: A "solicitation" under sub. (22) is covered by this rule even though it is not the first communication between the seller and the consumer.

(23) "Written" or "in writing," as applied to a seller's disclosure to a consumer, means legibly printed on paper or another tangible nonelectronic medium that is delivered to the consumer, or legibly printed in an electronic form that the consumer can electronically retrieve, store or print for future reference.

History: Cr. Register, July, 1999, No. 523, eff. 8–1–99; CR 02–036: am. (15), Register November 2002 No. 563, eff. 12–1–02; CR 04–005: am. (21) (c) Register October 2004 No. 586, eff. 11–1–04.

Subchapter II — Telephone Solicitations

ATCP 127.02 Definitions. In this subchapter:

(1) "Caller identification information" means information provided by a caller identification service regarding the telephone number, name, or other information regarding the seller originating a telephone solicitation.

(2) "Caller identification service" means any service or device designed to provide the user of the service or device with the telephone number, name, or other information regarding the origination of a telephone solicitation.

(3) "Telephone solicitation" means a solicitation, under s. ATCP 127.01 (22), that a seller makes to a consumer by telephone, videoconferencing, or other interactive electronic voice communications.

(4) "Telephone transaction" means any of the following:

(a) A telephone solicitation.

(b) Purchase contracts and other dealings that result from a telephone solicitation.

History: Cr. Register, July, 1999, No. 523, eff. 8–1–99; CR 12–036: renum. (1), (2) to be (3), (4), cr. (1), (2) Register May 2013 No. 689, eff. 6–1–13.

ATCP 127.04 Opening disclosures. (1) DISCLOSURES REQUIRED. A seller making a telephone solicitation shall disclose all of the following to the consumer before asking any questions or making any statements other than an initial greeting:

(a) The name of the principal seller.

Note: For example, a telemarketing firm making solicitations on behalf of another company must disclose the name of the company for which it is acting as agent. The telemarketing firm may also disclose its own identity, but is not required to do so.

(b) The name of the individual making the telephone solicitation.

Note: For example, if Mary Smith makes telephone solicitations for the ABC Company, Smith must disclose her individual name. Under sub. (3) (b), Smith may use a fictitious name which uniquely identifies her if the ABC Company keeps a record of that uniquely identifying fictitious name.

(c) That the seller is offering or promoting the sale of consumer goods or services.

(d) The nature of the goods or services which the seller is offering or promoting.

(2) FICTITIOUS NAMES. (a) A seller may not use any fictitious name under sub. (1) (a) or s. ATCP 127.06 (1) (d), except that a seller may use a trade name if all of the following apply:

1. The seller is widely known by and consistently does business under that name.

2. The name does not have the tendency or capacity to confuse or mislead the consumer as to the seller's true identity.

(b) An individual making a telephone solicitation as an employee or agent of a seller may disclose a fictitious individual name under sub. (1) (b) if all of the following apply:

1. No other individual making telephone solicitations for the same seller uses the same fictitious name.

2. The seller for whom the individual is making the telephone solicitation keeps records under s. ATCP 127.18 (1) (d) which correlate the fictitious name with the actual name and address of the individual seller.

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Note: Subsection (2) (b) balances the needs of consumers against the privacy interests of individuals employed to make solicitations on behalf of a seller.

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

ATCP 127.06 Disclosures prior to sale. (1) DISCLOSURES REQUIRED. In a telephone transaction, a seller shall disclose all of the following to a consumer before the consumer enters into any purchase contract, and before the seller takes the consumer's credit card number or accepts any payment from the consumer:

(a) The nature and quantity of consumer goods or services included in the sale.

(b) The total cost to purchase and receive the consumer goods or services.

(c) All material terms and conditions affecting the sale, receipt or use of the consumer goods or services, including credit terms if any.

Note: Consumer credit disclosures under par. (c) must comply with applicable requirements under ch. 422, Stats., and federal law.

(d) The name of the principal seller.

Note: For example, a telemarketing firm making solicitations on behalf of another company must disclose the name of the company for which it is acting as agent.

(e) At least one of the following:

1. The principal seller's mailing address.

2. A local or toll–free telephone number, answered during normal business hours, at which the consumer may contact the principal seller and obtain the principal seller's address.

(f) The seller's policy related to refunds, cancellations, exchanges or repurchases if any of the following apply:

1. The seller has a policy that prevents or substantially limits refunds, cancellations, exchanges or repurchases.

2. The seller makes any claim or representation regarding refunds, cancellations, exchanges or repurchases.

(2) FORM OF DISCLOSURE. A seller shall make the disclosures under sub. (1) in writing, except that a seller may make the disclosures orally if at least one of the following applies:

(a) The seller confirms the disclosures in writing at or before the time the seller first delivers the consumer goods or services to the consumer, and before the seller submits any credit card sales draft for payment or takes any other payment from the consumer.

(b) The seller does both of the following in writing at or before the time the seller first delivers consumer goods or services to the customer:

1. Confirms the oral disclosures.

2. Discloses, in substance, that the consumer may cancel the sale after the first delivery and obtain a full refund. The seller may specify a cancellation deadline, provided that the deadline is at least 7 days after the first delivery.

(3) LANGUAGE OTHER THAN ENGLISH. (a) If the primary language used in a telephone solicitation is not English, the seller shall make the disclosures under sub. (1) in the language primarily used.

(b) If the primary language used in a telephone transaction is not English, every written agreement signed by the consumer shall be in English and the language primarily used.

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

ATCP 127.08 Prize promotions. (1) ILLEGAL LOTTERIES. In a telephone transaction, no seller may use a prize promotion that violates s. 945.02 (3), Stats.

(2) PRIZE NOTICE; REQUIREMENTS. In a telephone transaction, no seller may use a prize promotion that violates s. 100.171, Stats.

(3) PRIZE PROMOTIONS; MISREPRESENTATIONS. No seller may misrepresent the material terms of a prize promotion used in a telephone transaction.

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

ATCP 127.10 Unauthorized payment. No seller in a telephone transaction may obtain or submit for payment any check, draft or other negotiable instrument drawn on a consumer's account without that consumer's express, verifiable authorization. The following authorizations are considered verifiable:

(1) An express written authorization. Express written authorization may include the consumer's signature on the check, draft or negotiable instrument.

(2) An express oral authorization if all of the following apply:

(a) The oral authorization is tape recorded and made available upon request to the consumer's bank.

(b) The oral authorization clearly authorizes payment for the goods and services offered to the consumer.

(c) The oral authorization clearly indicates that the consumer received information specifying all of the following:

1. The date and amount of the check, draft or instrument.

2. The payor's name.

3. The number of payments, if more than one.

4. A telephone number for consumer inquiries that is answered during normal business hours.

5. The date of the consumer's oral authorization.

(3) An authorization which the seller confirms in writing, provided that all of the following apply:

(a) The seller sends the written confirmation to the consumer before the seller submits the check, draft or other negotiable instrument for payment.

(b) The written confirmation includes all of the following information:

1. The date and amount of the check, draft or instrument.

2. The payor's name.

3. The number of payments, if more than one.

4. A telephone number for consumer inquiries that is answered during normal business hours.

5. The date of the consumer's authorization.

6. A procedure by which the consumer can obtain a refund from the seller if the written confirmation is inaccurate.

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

ATCP 127.12 Credit card laundering. (1) No merchant may present to or deposit into a credit card system for payment, or cause another person to present to or deposit into a credit card system for payment, any credit card sales draft generated by a telephone transaction that is not a sale by that merchant to the holder of that credit card.

(2) No person may employ, solicit or cause a merchant to violate sub. (1).

(3) No seller engaged in a telephone transaction may, by means of a business relationship or affiliation with a merchant, obtain access to a credit card system unless that access is authorized by that merchant's written agreement with the credit card system operator, or with an acquirer licensed or authorized by the credit card system operator.

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

ATCP 127.14 Misrepresentations. No seller may do any of the following, directly or by implication, in a telephone transaction:

(1) Misrepresent a seller's identity, affiliation, location or characteristics.

(2) Misrepresent the nature, purpose or intended length of a solicitation.

(3) Misrepresent the nature or terms of a telephone transaction, or any document related to that transaction.

(4) Misrepresent the cost of goods or services offered or promoted by a seller, or fail to disclose material costs payable by the consumer.

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(5) Misrepresent the nature, quantity, material characteristics, performance or efficacy of the goods or services offered or promoted by a seller.

(6) Misrepresent or fail to disclose material restrictions, limitations or conditions on the purchase, receipt, use or return of goods or services offered or promoted by a seller.

(7) Misrepresent the material terms of a seller's refund, cancellation, exchange, repurchase or warranty policies.

(8) Misrepresent that a seller is offering consumer goods or services free of charge or at a reduced price.

(9) Misrepresent that a seller is affiliated with, or endorsed by, any government or 3rd–party organization.

(10) Represent that the seller has specially selected the consumer unless the representation is true and the seller concurrently discloses to the consumer the specific basis on which the seller makes the representation. The seller may not misrepresent that basis.

(11) Represent that the seller is conducting a special sales promotion, is making a special offer limited to a few persons, is making a special offer for a limited period of time, or is authorized to place the offered goods or services in a limited number of homes, unless the representation is true and the seller concurrently discloses to the consumer the specific basis on which the representation is made. The seller may not misrepresent that basis.

(12) Represent that the seller is participating in a contest or conducting a survey unless the representation is true and all of the following apply:

(a) The seller first makes all of the opening disclosures under s. ATCP 127.04.

(b) The seller concurrently discloses the name of the contest or survey sponsor, and the specific terms of the contest or survey.

(c) The seller concurrently discloses that the seller is attempting to sell goods or services, or to obtain information to identify sales prospects, if that is the case.

(13) Misrepresent any material aspect of a personal investment opportunity offered to the consumer, including any aspect such as risk, liquidity, earnings potential or profitability.

(14) Fail to disclose, in connection with every purported offer of free goods or services in a telephone transaction, any costs 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.

(16) Cause, either directly or indirectly, any caller identification service to transmit or display misleading or inaccurate caller identification information.

History: Cr. Register, July, 1999, No. 523, eff. 8–1–99; CR 12–036: cr. (16) Register May 2013 No. 689, eff. 6–1–13.

ATCP 127.16 Prohibited practices. No seller may do any of the following in a telephone transaction:

(1) Threaten, intimidate or harass a consumer.

(2) Repeatedly or continuously cause a consumer's telephone to ring, or repeatedly or continuously engage a consumer in telephone conversation, if the seller knows or reasonably should know that those actions will have the effect of annoying, abusing or harassing the consumer.

(3) Initiate a telephone solicitation to a consumer before 8:00 AM or after 9:00 PM without the prior consent of the consumer. Time, for purposes of this section, is the local time at the place where the consumer resides.

(4) Initiate a telephone solicitation to a consumer who has previously stated that he or she does not wish to receive telephone solicitations from the seller for whom the solicitation is being made. A seller does not violate this subsection if all of the following apply:

(a) The seller has established and implemented clear written procedures that are reasonably designed to prevent violations.

(b) The seller has trained its personnel in the procedures under par. (a).

(c) The seller maintains a recorded list of persons who have stated that they do not wish to be called by the seller for whom solicitations are being made.

(d) The repeat call is the result of a good faith error, and is not the result of an intentional or systematic disregard of the prohibition under this subsection.

(5) 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.

(6) 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 127.18 Recordkeeping. (1) RECORDS REQUIRED. A seller engaged in telephone transactions shall keep all of the following records related to those transactions:

(a) Copies of all telephone solicitation scripts, and all sales and promotional materials used in telephone 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 telephone 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 telephone 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 telephone 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 verifiable authorizations required under s. ATCP 127.10.

(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.

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(c) An agent engaged in telephone 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 127.20 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 III — Mail Solicitations

ATCP 127.30 Definitions. In this subchapter:

(1) "Catalog" means a multi–page written publication which a seller publishes at least annually, and which contains all of the following:

(a) The seller's name and address.

(b) Written or graphic descriptions of goods or services which the seller offers for sale.

(c) The prices at which the goods or services under par. (b) are offered for sale.

(2) "Mail solicitation" means a written or graphic solicitation, under s. ATCP 127.01 (22), that a seller delivers by mail or other means to a consumer's residence or to a consumer who is individually identified in the solicitation. "Mail solicitation" includes a telefax or electronic mail solicitation. "Mail solicitation" does not include a catalog, a radio or television broadcast, an internet home page, a telephone solicitation under subch. II or a face–to–face solicitation under subch. IV.

(3) "Mail transaction" means any of the following:

(a) A mail solicitation.

(b) Purchase contracts and other dealings that result from a mail solicitation.

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

ATCP 127.32 Opening disclosures. (1) DISCLOSURES REQUIRED. A mail solicitation shall disclose all of the following in writing:

(a) The name of the principal seller.

Note: For example, a firm making mail solicitations on behalf of another company must disclose the name of the company for which it is acting as agent. The firm may also disclose its own identity, but is not required to do so.

(b) That the seller is offering or promoting the sale of consumer goods or services.

(c) The nature of the goods or services which the seller is offering or promoting.

(2) FICTITIOUS NAMES. A seller may not use any fictitious name under sub. (1) (a) or s. ATCP 127.34 (1) (d), except that a seller may use a trade name if all of the following apply:

(a) The seller is widely known by and consistently does business under that name.

(b) The name does not have the tendency or capacity to confuse or mislead the consumer as to the seller's true identity.

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

ATCP 127.34 Disclosures prior to sale. (1) DISCLOSURES REQUIRED. In a mail transaction, a seller shall disclose all of the following to a consumer, in writing, before the consumer enters into a purchase contract and before the seller takes the consumer's credit card number or accepts any payment from the consumer:

(a) The nature and quantity of consumer goods or services included in the sale.

(b) The total cost to purchase and receive the consumer goods or services.

(c) All material terms and conditions affecting the sale, receipt or use of the consumer goods or services, including credit terms if any.

Note: Consumer credit disclosures under par. (c) must comply with applicable requirements under ch. 422, Stats., and federal law.

(d) The name and mailing address of the principal seller.

(e) The seller's policy related to refunds, cancellations, exchanges or repurchases if any of the following apply:

1. The seller has a policy that prevents or substantially limits refunds, cancellations, exchanges or repurchases.

2. The seller makes any claim or representation regarding refunds, cancellations, exchanges or repurchases.

(2) LANGUAGE OTHER THAN ENGLISH. If the primary language used in a mail solicitation is not English, the seller shall make the disclosures under sub. (1) in the language primarily used.

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

ATCP 127.36 Prize promotions. (1) ILLEGAL LOTTERIES. In a mail transaction, no seller may use a prize promotion that violates s. 945.02 (3), Stats.

(2) PRIZE NOTICE; REQUIREMENTS. In a mail transaction, no seller may use a prize promotion that violates s. 100.171, Stats.

(3) PRIZE PROMOTIONS; MISREPRESENTATIONS. No seller may misrepresent the material terms of a prize promotion used in a mail transaction.

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

ATCP 127.38 Unauthorized payment. No seller in a mail transaction may obtain or submit for payment any check, draft or other negotiable instrument drawn on a consumer's account without that consumer's express, verifiable authorization. The authorization shall comply with s. ATCP 127.10.

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

ATCP 127.40 Delivering ordered goods. A seller in a mail transaction shall comply with s. 100.174, Stats.

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

ATCP 127.42 Credit card laundering. (1) No merchant may present to or deposit into a credit card system for payment, or cause another person to present to or deposit into a credit card system for payment, any credit card sales draft generated by a mail transaction that is not a sale by that merchant to the holder of that credit card.

(2) No person may employ, solicit or cause a merchant to violate sub. (1).

(3) No seller engaged in a mail transaction may, by means of a business relationship or affiliation with a merchant, obtain access to a credit card system unless that access is authorized by that merchant's written agreement with the credit card system operator, or with an acquirer licensed or authorized by the credit card system operator.

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

ATCP 127.44 Misrepresentations. No seller may do any of the following, directly or by implication, in a mail transaction:

(1) Misrepresent a seller's identity, affiliation, location or characteristics.

(2) Misrepresent the nature or purpose of a mail solicitation.

(3) Misrepresent the nature or terms of a mail transaction, or any document related to that transaction.

(4) Misrepresent the cost of goods or services offered or promoted by a seller, or fail to disclose material costs payable by the consumer.

(5) Misrepresent the nature, quantity, material characteristics, performance or efficacy of the goods or services offered or promoted by a seller.

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(6) Misrepresent or fail to disclose material restrictions, limitations or conditions on the purchase, receipt, use or return of goods or services offered or promoted by a seller.

(7) Misrepresent the material terms of a seller's refund, cancellation, exchange, repurchase or warranty policies.

(8) Misrepresent that a seller is offering consumer goods or services free of charge or at a reduced price.

(9) Misrepresent that a seller is affiliated with, or endorsed by, any government or 3rd–party organization.

(10) Misrepresent that the seller has specially selected the consumer.

(11) Misrepresent that the seller is conducting a special sales promotion, is making a special offer limited to a few persons, is making a special offer for a limited period of time, or is authorized to place the offered goods or services in a limited number of homes.

(12) Represent that the seller is participating in a contest or conducting a survey unless the representation is true and all of the following apply:

(a) The seller first makes all of the opening disclosures under s. ATCP 127.32.

(b) The seller concurrently discloses the name of the contest or survey sponsor, and the specific terms of the contest or survey.

(c) The seller concurrently discloses that the seller is attempting to sell goods or services, or to obtain information to identify sales prospects, if that is the case.

(13) Misrepresent any material aspect of a personal investment opportunity offered to the consumer, including any aspect such as risk, liquidity, earnings potential or profitability.

(14) Fail to disclose, in connection with every purported offer of free goods or services in a mail transaction, any costs 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 127.46 Prohibited practices. No seller may do any of the following in a mail transaction:

(1) Threaten, intimidate or harass a consumer.

(2) 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.

(3) 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 127.48 Recordkeeping. (1) RECORDS REQUIRED. A seller engaged in mail transactions shall keep all of the following records related to those transactions:

(a) Copies of all mail solicitations and other documents provided to consumers in mail 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 mail 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) Documentation that the seller has systems and procedures which assure compliance, in the ordinary course of business, with s. 100.174, Stats.

(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 mail 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 127.50 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 IV — Face–to–Face Solicitations

ATCP 127.60 Definitions. In this subchapter:

(1) "Face–to–face solicitation" means a solicitation, under s. ATCP 127.01 (22), that a seller makes in a face–to–face encounter with a consumer.

Note: For example, a door–to–door seller is engaged in "face–to–face solicitations."

(2) "Face–to–face transaction" means any of the following:

(a) A face–to–face solicitation.

(b) Purchase contracts and other dealings that result from a face–to–face solicitation.

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

ATCP 127.62 Opening disclosures. (1) DISCLOSURES REQUIRED. In a face–to–face solicitation, a seller shall disclose all of the following to the consumer:

(a) The name of the principal seller.

Note: For example, if Mary Smith makes door–to–door solicitations as an employee or agent of the ABC Company, Smith must disclose the name of the ABC Company.

(b) The name of the individual making the face–to–face solicitation.

Note: For example, if Mary Smith makes door–to–door solicitations for the ABC Company, she must also disclose her individual name. Under sub. (3) (b), Smith may use a fictitious name which uniquely identifies her if the ABC Company keeps a record of that uniquely identifying fictitious name.

(c) That the seller is offering or promoting the sale of consumer goods or services.

(d) The nature of the goods or services which the seller is offering or promoting.

(2) MAKING THE DISCLOSURES. A seller shall make the disclosures under sub. (1) before asking any questions or making any

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statements to a consumer, other than an initial greeting. The seller shall make the disclosures orally and in writing.

(3) FICTITIOUS NAMES. (a) A seller may not use any fictitious name under sub. (1) (a) or s. ATCP 127.64 (1) (d), except that a seller may use a trade name if all of the following apply:

1. The seller is widely known by and consistently does business under that name.

2. The name does not have the tendency or capacity to confuse or mislead the consumer as to the seller's true identity.

(b) An individual making face–to–face solicitations as an employee or agent of another seller may disclose a fictitious individual name under sub. (1) (b) if all of the following apply:

1. No other individual making face–to–face solicitations for the same seller uses the same fictitious name.

2. The seller for whom the individual is making the face–to–face solicitation keeps records under s. ATCP 127.76 (1) (d) that correlate the fictitious name with the actual name and address of the individual seller.

Note: Subsection (3) (b) balances the needs of consumers against the privacy interests of individuals employed to make face–to–face solicitations on behalf of a seller.

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

ATCP 127.64 Disclosures prior to sale. (1) DISCLOSURES REQUIRED. In a face–to–face transaction, a seller shall disclose all of the following to a consumer, in writing, before the consumer enters into any purchase contract and before the seller takes the consumer's credit card number or accepts any payment from the consumer:

(a) The nature and quantity of consumer goods or services included in the sale.

(b) The total cost to purchase and receive the consumer goods or services.

(c) All material terms and conditions affecting the sale, receipt or use of the consumer goods or services, including credit terms if any.

Note: Consumer credit disclosures under par. (c) must comply with applicable requirements under ch. 422, Stats., and federal law.

(d) The name, mailing address and telephone number of the principal seller.

Note: For example, an individual making face–to–face solicitations on behalf of the ABC company must disclose the name, address and telephone number of that company.

(e) The seller's policy related to refunds, cancellations, exchanges or repurchases if any of the following apply:

1. The seller has a policy that prevents or substantially limits refunds, cancellations, exchanges or repurchases.

2. The seller makes any claim or representation regarding refunds, cancellations, exchanges or repurchases.

(2) COPIES OF SALES AGREEMENTS. Whenever a consumer signs any written agreement in a face–to–face transaction, the seller shall provide the consumer with a true copy of that agreement.

(3) LANGUAGE OTHER THAN ENGLISH. (a) If the primary language used in a face–to–face solicitation is not English, the seller shall make the disclosures under sub. (1) in the language primarily used.

(b) If the primary language used in a face–to–face transaction is not English, every written agreement signed by the consumer shall be in English and the language primarily used.

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

ATCP 127.66 Prize promotions. (1) ILLEGAL LOTTERIES. In a face–to–face transaction, no seller may use a prize promotion that violates s. 945.02 (3), Stats.

(2) PRIZE NOTICE; REQUIREMENTS. In a face–to–face transaction, no seller may use a prize promotion that violates s. 100.171, Stats.

(3) PRIZE PROMOTIONS; MISREPRESENTATIONS. No seller may misrepresent the material terms of a prize promotion used in a face–to–face transaction.

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

ATCP 127.68 Unauthorized payment. No seller in a face–to–face transaction may obtain or submit for payment any check, draft or other negotiable instrument drawn on a consumer's account without that consumer's express, written authorization. Express written authorization may include the customer's signature on the check, draft or negotiable instrument.

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

ATCP 127.70 Credit card laundering. (1) No merchant may present to or deposit into a credit card system for payment, or cause another person to present to or deposit into a credit card system for payment, any credit card sales draft generated by a face–to–face transaction that is not a sale by that merchant to the holder of that credit card.

(2) No person may employ, solicit or cause a merchant to violate sub. (1).

(3) No seller engaged in a face–to–face transaction may, by means of a business relationship or affiliation with a merchant, obtain access to a credit card system unless that access is authorized by that merchant's written agreement with the credit card system operator, or with an acquirer licensed or authorized by the credit card system operator.

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

ATCP 127.72 Misrepresentations. No seller may do any of the following, directly or by implication, in a face–to–face transaction:

(1) Misrepresent a seller's identity, affiliation, location or characteristics.

(2) Misrepresent the nature, purpose or intended length of a face–to–face solicitation.

(3) Misrepresent the nature or terms of a face–to–face transaction, or any document related to that transaction.

(4) Misrepresent the cost of goods or services offered or promoted by a seller, or fail to disclose material costs payable by the consumer.

(5) Misrepresent the nature, quantity, material characteristics, performance or efficacy of the goods or services offered or promoted by a seller.

(6) Misrepresent or fail to disclose material restrictions, limitations or conditions on the purchase, receipt, use or return of goods or services offered or promoted by a seller.

(7) Misrepresent the material terms of a seller's refund, cancellation, exchange, repurchase or warranty policies.

(8) Misrepresent that a seller is offering consumer goods or services free of charge or at a reduced price.

(9) Misrepresent that a seller is affiliated with, or endorsed by, any government or 3rd–party organization.

(10) Represent that the seller has specially selected the consumer unless the representation is true and the seller concurrently discloses to the consumer the specific basis on which the seller makes the representation. The seller may not misrepresent that basis.

(11) Represent that the seller is conducting a special sales promotion, is making a special offer limited to a few persons, is making a special offer for a limited period of time, or is authorized to place the offered goods or services in a limited number of homes, unless the representation is true and the seller concurrently discloses to the consumer the specific basis on which the representation is made. The seller may not misrepresent that basis.

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(12) Represent that the seller is participating in a contest or conducting a survey unless the representation is true and all of the following apply:

(a) The seller first makes all of the opening disclosures under s. ATCP 127.62.

(b) The seller concurrently discloses the name of the contest or survey sponsor, and the specific terms of the contest or survey.

(c) The seller concurrently discloses that the seller is attempting to sell goods or services, or to obtain information to identify sales prospects, if that is the case.

(13) Misrepresent any material aspect of a personal investment opportunity offered to the consumer, including any aspect such as risk, liquidity, earnings potential or profitability.

(14) Fail to disclose, in connection with every purported offer of free goods or services in a face–to–face transaction, any costs 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.

Note: Under s. 196.01 (1g), Stats., a "basic local exchange service" only includes service provided to residential customers.

(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) "Commercial mobile service" has the meaning given in s. 196.01 (2i), Stats.

(4) "Covered telephone customer" means an individual in this state who receives basic local exchange service or commercial mobile service from a telecommunications utility.

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

(6) "Noncovered telephone customer" means a person, other than a covered customer, who receives telecommunications service from a telecommunications utility.

(6m) "Short Message Service (SMS)" means a commonly used system for transmitting data over cellular telephone networks.

(7) "Telephone call" means a voice communication over any part of the electromagnetic spectrum to customer premises equipment or through the use of commercial mobile service.

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.

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(8) "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 or send a text message.

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

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

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

1. The nonprofit organization complies with subch. II of ch. 202, 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 of a plan or scheme to sell property, goods, or services. Subchapter II of ch. 202, 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 or text message 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 person that calls or sends a text message 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 person who calls or sends a text message buys from another person who controls or limits the sales methods of the person who calls or sends a text message.

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

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 or text message made to a current client.

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

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

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

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

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

(11) "Telecommunications utility" has the meaning given in s. 196.01 (10), Stats. "Telecommunications utility" includes an "alternative telecommunication utility" as defined in s. 196.01 (1d), Stats., and a commercial mobile radio service provider as defined in s. 196.01 (2g), Stats.

(12) "Text message" means an electronic text or graphic message sent to a cellular telephone, pager, or similar wireless device that is equipped with SMS or similar capability. "Text message" includes messages originated using SMS, e−mail, or similar electronic communication.

History: CR 02−036: cr. Register November 2002 No. 563, eff. 12−1−02; CR 10−045: renum. (3), (5), (6), (9) to be (6), (4), (7), (10) and am., cr. (3), renum. (4), (7), (8) to be (5), (8), (9) Register December 2010 No. 660, eff. 1−1−11; (10), as renumbered, is renumbered (11) under s. 13.92 (4) (b) 1., Stats., Register December 2010 No. 660; CR: 12−036: cr. (6m), am. (8), (10) (intro.), (a) (intro.), (b) (intro.), 2., (c) to (i), cr. (12) Register May 2013 No. 689, eff. 6−1−13; correction in (10) (a) 1. made under s. 13.92 (4) (b) 7., Stats., Register May 2013 No. 689; **correction in (10) (a) 1. made under s. 13.92 (4) (b) 7., Stats., Register December 2013 No. 696.**

ATCP 127.81 Telephone solicitors; registration. (1) REGISTRATION REQUIRED. (a) No person may employ or contract with any individual to make telephone solicitations to covered 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 covered 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,

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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.

(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; CR 10–045: am. (1) (a), (c) Register December 2010 No. 660, eff. 1–1–11.

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 covered 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 covered 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 current 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 covered telephone customer or the customer's caregiver may contact the department to have the customer included on the no–call list. The covered 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 covered 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 covered 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 covered 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; CR 10–045: am. (1), (2), (3) (a), (b), (6) Register December 2010 No. 660, eff. 1–1–11.

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

Removed by Register April 2015 No. 712. For current adm. code see: http://docs.legis.wisconsin.gov/code/admin_code.

(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 covered or noncovered 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 noncovered telephone customer if the noncovered telephone customer has notified the person by mail that the noncovered 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 covered 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 noncovered telephone customer shall give the call recipient, at the call recipient's request, a mailing address to which the noncovered 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; CR 10–045: am. (2) (b), (c), (3), (4) Register December 2010 No. 660, eff. 1–1–11.

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.

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