



2005 ASSEMBLY BILL 488

June 14, 2005 - Introduced by Representatives BERCEAU, BLACK, SHERIDAN, ALBERS and OTT, cosponsored by Senators HANSEN and RISSER. Referred to Committee on Judiciary.

1 **AN ACT to amend** 100.26 (4), 100.26 (4m) and 426.301 (1) of the statutes;
2 **relating to:** civil forfeitures for certain fraudulent representations, deceptive
3 advertising, and violations of the Wisconsin Consumer Act and providing a
4 penalty.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Agriculture, Trade and Consumer Protection enforces certain prohibitions against fraudulent representations and deceptive advertising. A person who violates such a prohibition may be subject to a civil forfeiture. The amount of the civil forfeiture depends on the prohibition violated. In general, the civil forfeiture is not less than \$50 nor more than \$200 for each violation. However, for a violation of a prohibition regarding business location misrepresentations, the civil forfeiture is not less than \$100 nor more than \$10,000 for each violation. This bill provides that the civil forfeiture for any of the foregoing violations is not less than \$100 nor more than \$10,000 for each violation. (The bill does not affect a criminal penalty under current law that applies to violations of a prohibition regarding schemes not to sell, purchase, hire, use, or lease merchandise, real estate, securities, service, or employment as advertised.)

Also under current law, the Wisconsin Consumer Act (WCA) regulates credit transactions that are entered into for personal, family, or household purposes and in which the amount financed is \$25,000 or less. A person who violates the WCA may be subject to a civil forfeiture of not less than \$100 nor more than \$1,000 for each violation. This bill allows a court, in addition to imposing a civil forfeiture, to award

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restitution to any person suffering loss because of such a violation. If a court orders restitution under the bill, the court must require that the defendant pay the restitution before paying any forfeiture that is imposed.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 100.26 (4) of the statutes is amended to read:

2 100.26 (4) Any person who violates s. 100.18 (1) to ~~(8)~~ or ~~(10)~~ or 100.182 is
3 subject to a civil forfeiture of not less than \$50 nor more than \$200 for each violation.

4 **SECTION 2.** 100.26 (4m) of the statutes is amended to read:

5 100.26 (4m) Any Except as provided in sub. (5), any person who violates s.
6 100.18 ~~(10)~~ is subject to a civil forfeiture of not less than \$100 nor more than \$10,000
7 for each violation.

8 **SECTION 3.** 426.301 (1) of the statutes is amended to read:

9 426.301 (1) The administrator may recover in a civil action from a person who
10 violates chs. 421 to 427 and 429 or any rule made pursuant to any authority granted
11 in chs. 421 to 427 and 429, a civil penalty of not less than \$100 and not more than
12 \$1,000 for each violation. The court may award restitution when appropriate to any
13 person suffering loss because of such violations if proof of such loss is submitted to
14 the satisfaction of the court. If the court orders restitution, the court shall require
15 the defendant to pay the restitution before the defendant pays any forfeiture imposed
16 under this subsection.

17 **SECTION 4. Initial applicability.**

