



State of Wisconsin
2003 - 2004 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2003 ASSEMBLY BILL 308**

October 22, 2003 - Offered by COMMITTEE ON SMALL BUSINESS.

1 **AN ACT to amend** 165.25 (4) (ar) and 814.04 (intro.); and **to create** 100.195,
2 100.197 and 100.198 of the statutes; **relating to:** the prohibition of certain
3 billing practices for consumer goods or services, lawn care service contracts,
4 granting rule-making authority, and providing penalties.

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

5 **SECTION 1.** 100.195 of the statutes is created to read:

6 **100.195 Unfair billing for consumer goods or services. (1) DEFINITIONS.**

7 In this section:

8 (a) "Bill" means to represent to any consumer, directly or by implication, that
9 the consumer is obligated to pay a stated amount for consumer goods or services.
10 "Bill" includes to refer a payment to a collection agency or to make a statement
11 representing that a payment obligation has been or may be referred to a collection
12 agency or credit reporting agency.

1 (b) “Consumer” means an individual to whom a seller sells or leases, or offers
2 to sell or lease, consumer goods or services at retail.

3 (c) “Consumer goods or services” means goods or services that are used or
4 intended for use for personal, family, or household purposes. “Consumer goods or
5 services” does not include any of the following:

6 1. The treatment of disease, as defined in s. 448.01 (2), by a health care provider,
7 as defined in s. 155.01 (7), or any provision of emergency medical care.

8 2. Telecommunications services or cable television services.

9 3. Goods or services whose delivery is required by law even though the
10 consumer has not agreed to purchase or lease those goods or services.

11 4. The sale or lease of a motor vehicle by a licensed motor vehicle dealer, as
12 defined in s. 218.0101 (23) (a).

13 (d) “Delivery” means transferring to a consumer’s custody or making available
14 for use by a consumer.

15 (e) “Disclosure” means a clear and conspicuous statement that is designed to
16 be readily noticed and understood by the consumer and, if made in writing, to be
17 retained by the customer.

18 (f) “Seller” means a seller or lessor of consumer goods or services, and includes
19 any employee, agent, or representative acting on behalf of the seller.

20 (g) “Telecommunications service” has the meaning given in s. 196.01 (9m).

21 (h) “Television service” means all of the following:

22 1. Cable television service, as defined in s. 196.01 (1p).

23 2. Services billed to consumers by a multichannel video programming
24 distributor as defined under 47 USC 522 (13).

25 **(2) PROHIBITIONS.** No seller may:

1 (a) Bill a consumer for consumer goods or services that the consumer has not
2 agreed to purchase or lease.

3 (b) Bill a consumer for consumer goods or services at a price that is higher than
4 a price previously agreed upon between the seller and consumer unless the consumer
5 agrees to the higher price before the consumer is billed. This paragraph does not
6 prohibit a seller from increasing the price of goods or services under a sale or lease
7 agreement of indefinite duration, if the seller gives the consumer advance reasonable
8 disclosure of the proposed increase and the opportunity to cancel the agreement
9 without penalty prior to any delivery at the increased price.

10 (c) Bill a consumer for a delivery of consumer goods or services that the seller
11 initiates under an agreement that is no longer in effect when the seller initiates the
12 delivery.

13 (d) Offer a consumer any prize or prize opportunity or free or reduced-price
14 goods or services, the acceptance of which commits the consumer to receive or pay
15 for other consumer goods or services, unless the seller makes a disclosure of that
16 commitment in connection with every announcement or advertisement of the prize
17 or prize opportunity or free or reduced-price goods or services.

18 (e) Misrepresent to a consumer, directly or by implication, that the consumer's
19 failure to reject or return a delivery of consumer goods or services that was not
20 authorized by the consumer constitutes an acceptance that obligates the consumer
21 to pay for those goods or services.

22 **(2m)** EXCEPTION. Subsection (2) does not apply to the conduct of an agent or
23 representative of a seller when providing billing services if the agent or
24 representative did not know or have reason to know that its conduct violates sub. (2).

1 **(3) ACCEPTANCE OF FREE GOODS OR SERVICES.** For purposes of sub. (2), the
2 acceptance of free goods or services does not, of itself, constitute an agreement to
3 purchase or lease the goods or services.

4 **(4) RULES.** (a) The department shall promulgate rules for the regulation of
5 sales plans in which the delivery of consumer goods or services occurs before the
6 consumer agrees to purchase or lease the consumer goods or services.

7 (b) The secretary shall appoint an advisory committee to make
8 recommendations regarding the content and scope of any rule promulgated under
9 par. (a). The recommendations of the advisory committee, if any, shall be submitted
10 to the board of agriculture, trade and consumer protection and to the presiding officer
11 of each house of the legislature as part of the report required under s. 227.19 (2). The
12 advisory committee shall consist of the attorney general or his or her designee and
13 the following persons appointed by the secretary:

14 1. One or more persons who are consumers in this state.

15 2. One or more persons who are employed in this state by a direct marketing
16 employer.

17 3. One or more persons who represent senior citizens.

18 **SECTION 2.** 100.197 of the statutes is created to read:

19 **100.197 Lawn care service contracts. (1) DEFINITIONS.** In this section:

20 (a) “Consumer” means an individual to whom a provider sells or leases, or offers
21 to sell or lease, lawn care service.

22 (c) “Lawn care service” means any of the following services provided in or
23 around a consumer’s personal residence for nonagricultural purposes:

24 1. Application of a fertilizer, a pesticide, or a soil or plant additive intended to
25 promote plant growth or health.

1 2. A plant mowing or trimming service.

2 (cm) "Oral disclosure" means a clear statement that is designed to be readily
3 understood by the consumer.

4 (d) "Provider" means a person who sells or leases, or offers to sell or lease, lawn
5 care service to consumers.

6 (e) "Written disclosure" means a clear written statement that may be retained
7 by the consumer and that is designed to be readily noticed and understood by the
8 consumer.

9 **(2) CONTINUING CONTRACT; REQUIRED TERMS; ANNUAL DISCLOSURE.** (a) No contract
10 for lawn care service may be in effect for more than one year unless, in the 2nd and
11 any subsequent year, the provider makes a written disclosure or an oral disclosure
12 at least 30 days before providing lawn care service under the contract in that year.

13 (b) A written disclosure or an oral disclosure under this subsection shall include
14 all of the following information:

15 1. The lawn care service included in the contract and the price and frequency
16 of the lawn care service.

17 2. The right of the consumer to cancel the contract as provided in par. (c).

18 (c) A contract for lawn care service that may be in effect for more than one year
19 shall allow the consumer the right to cancel the contract, at no cost to the consumer,
20 if the consumer cancels within 30 days after receiving a written disclosure or an oral
21 disclosure from the provider.

22 (d) The provider shall keep a copy of all written disclosures and a record of all
23 oral disclosures that are made in accordance with this subsection.

24 **SECTION 3.** 100.198 of the statutes is created to read:

1 **100.198 Unfair billing; lawn care service; penalties and remedies. (1)**

2 INVESTIGATION. The department may exercise its authority under ss. 93.14 and 93.15
3 to investigate violations of s. 100.195 or 100.197.

4 **(2) CIVIL ACTIONS BY PRIVATE PERSONS.** Any person suffering pecuniary loss
5 because of a violation of s. 100.195 or 100.197 may commence an action for the
6 pecuniary loss. If the person prevails, the person shall recover twice the amount of
7 the pecuniary loss, or \$200 for each violation, whichever is greater, together with
8 costs, including reasonable attorney fees.

9 **(3) INJUNCTION AND RESTITUTION.** The department may commence an action in
10 the name of the state to restrain by temporary or permanent injunction a violation
11 of s. 100.195 or 100.197. Before entry of final judgment, the court may make any
12 necessary orders to restore to any person any pecuniary loss suffered by the person
13 because of the violation.

14 **(4) CIVIL FORFEITURE.** The department or any district attorney may commence
15 an action in the name of the state to recover a forfeiture to the state of not less than
16 \$100 nor more than \$10,000 for each violation of s. 100.195 or 100.197.

17 **(5) CRIMINAL PENALTIES.** A person who violates s. 100.195 or 100.197 is subject
18 to a fine of not less than \$25 nor more than \$5,000 or imprisonment not to exceed one
19 year or both for each violation.

20 **(6) ADDITIONAL REMEDIES.** Sections 100.195 and 100.197 do not preempt the
21 administration or enforcement of s. 100.18 or 100.20. Practices in violation of s.
22 100.195 or 100.197 may also constitute unfair methods of competition or unfair trade
23 practices under s. 100.20 or fraudulent representations under s. 100.18.

24 **SECTION 4.** 165.25 (4) (ar) of the statutes is amended to read:

