



1997 ASSEMBLY BILL 169

March 11, 1997 - Introduced by Representatives OTTE, HASENOHRL, SKINDRUD, NOTESTEIN, GOETSCH, MUSSER, LORGE, HAHN, OWENS and AINSWORTH, cosponsored by Senator CLAUSING. Referred to Committee on Consumer Affairs.

1 **AN ACT to amend** 134.95 (2), 134.95 (3) and 165.25 (4) (ar); and **to create** 134.75
2 of the statutes; **relating to:** the prohibition of certain billing practices for goods
3 and certain services and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill specifically prohibits certain billing practices. The prohibited practices include:

1. Billing a person for goods or services that the person did not order, unless the billing complies with federal law that regulates negative option plans. A negative option plan is one in which the buyer did not affirmatively order the product or service by name.

2. Failing to provide a buyer with whom a seller has made an auxiliary agreement for additional goods and services by oral solicitation with the right to cancel the auxiliary agreement without charge or penalty.

3. Failing to provide a buyer with whom a seller has made an auxiliary agreement for additional goods and services by oral solicitation with written confirmation of the terms and conditions of the auxiliary agreement.

4. Billing a person for postage and handling or similar charges without stating in the agreement that the person will pay for such charges.

The provisions of this bill do not apply to cable television or other telecommunications services. Billing practices for these services are regulated by the department of agriculture, trade and consumer protection (DATCP) by administrative rule.

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The bill subjects a seller who engages in these practices to a forfeiture and authorizes DATCP and district attorneys to file suit to enforce these prohibitions. The bill also imposes an additional forfeiture on a seller if the buyer is elderly or disabled.

For further information see the *state and local* 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.** 134.75 of the statutes is created to read:

2 **134.75 Prohibited billing practices. (1) DEFINITIONS.** In this section:

3 (a) "Auxiliary purchase agreement" means an agreement made in conjunction
4 with an initial agreement in which the seller agrees to provide a person with goods
5 or services in addition to those provided under the initial agreement without the
6 person affirmatively ordering the additional goods or services.

7 (b) "Department" means the department of agriculture, trade and consumer
8 protection.

9 (c) "Goods" means any property.

10 (d) "Initial agreement" means an agreement in which a seller agrees to provide
11 a person with specific goods or services, at specific prices and for a specific period of
12 time.

13 (e) "Periodic order" means a type of initial agreement in which the seller agrees
14 to submit to a person a request for renewal of the initial agreement in the form of a
15 bill before the expiration of the initial agreement.

16 (f) "Seller" means a person who solicits for sale, offers to sell or sells any goods
17 or services in this state or to a person in this state.

18 (g) "Services" do not include cable television services, as defined under s. 196.01
19 (1p), or telecommunications services, as defined under s. 196.01 (9m).

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1 **(2) PROHIBITIONS.** No seller may do any of the following:

2 (a) Bill a person for goods or services that the person did not affirmatively order
3 by name, unless the goods or services are sold or offered for sale in a manner that
4 strictly conforms with 16 CFR Part 425.

5 (b) Bill a person for goods or services after the person has canceled, in writing
6 or orally, the order for the goods or services, if the person has canceled the order
7 according to any terms or conditions of the initial agreement or auxiliary purchase
8 agreement relating to cancellation.

9 (c) Fail to state all terms and conditions of an initial agreement or an auxiliary
10 purchase agreement in a clear and conspicuous manner.

11 (d) Fail to place all terms and conditions of an auxiliary purchase agreement
12 in close proximity to the terms and conditions of an initial agreement.

13 (e) Fail to provide a person, with whom the seller has secured an auxiliary
14 purchase agreement through an oral solicitation, with written confirmation of all
15 terms and conditions of the initial agreement and the auxiliary purchase agreement
16 within 30 days after the date on which the auxiliary purchase agreement was
17 secured by the seller and not less than 10 days before billing the person for any goods
18 or services under the auxiliary purchase agreement.

19 (f) Fail to provide a person, with whom the seller has secured an auxiliary
20 purchase agreement through an oral solicitation, the right to cancel the auxiliary
21 purchase agreement without charge or penalty.

22 (g) Bill a person for goods or services that the person affirmatively ordered by
23 name, after the expiration of an initial agreement, at a price higher than that stated
24 in the initial agreement, unless the seller notifies the person in writing of the

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1 existence and amount of the price increase at least 30 days before the price increase
2 takes effect and at the time that the person is billed for the goods or services.

3 (h) Bill a person for goods or services under a periodic order at a price higher
4 that the price stated in the periodic order unless the seller has submitted to the
5 person a request for renewal and has notified the person in writing of the existence
6 and the amount of price increase. The seller shall give the written notification at the
7 time that the seller submits the request for renewal and at the time that the seller
8 bills the person for the goods and services.

9 (i) Bill a person for postage and handling or similar charges, unless the
10 agreement states that the buyer shall pay such charges and either of the following
11 applies:

12 1. The specific amount of such charges is clearly stated in the agreement.

13 2. The costs for these charges are verifiable and reflect the actual costs incurred
14 by the seller.

15 (j) Change the terms and conditions of an initial agreement before the
16 expiration of the initial agreement.

17 **(3) ENFORCEMENT.** (a) The department shall investigate violations of and
18 enforce this section. The department or any district attorney may on behalf of the
19 state:

20 1. Bring an action for temporary or permanent injunctive or other relief in any
21 circuit court for any violation of this section. The court may, in its discretion, make
22 any order or judgment necessary to restore to any person any pecuniary loss suffered
23 because of a violation of this section, if proof of the loss is submitted to the satisfaction
24 of the court.

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1 2. Bring an action in any circuit court for the recovery of a forfeiture against
2 any person who violates this section in an amount of not less than \$100 nor more than
3 \$200 for each violation.

4 (b) In addition to any other remedies provided by law, any person suffering a
5 pecuniary loss because of a violation of this section may bring a civil action in any
6 circuit court to recover twice the amount of the pecuniary loss, together with costs
7 and disbursements, including reasonable attorney fees, and for equitable relief as
8 determined by the court.

9 **SECTION 2.** 134.95 (2) of the statutes is amended to read:

10 134.95 (2) SUPPLEMENTAL FORFEITURE. If a fine or a forfeiture is imposed on a
11 person for a violation under s. 134.22, 134.68, 134.70, 134.71, 134.72, 134.74, 134.75,
12 134.83 or 134.87 or ch. 136 or a rule promulgated under these sections or that
13 chapter, the person shall be subject to a supplemental forfeiture not to exceed
14 \$10,000 for that violation if the conduct by the defendant, for which the fine or
15 forfeiture was imposed, was perpetrated against an elderly person or disabled person
16 and if any of the factors under s. 100.264 (2) (a), (b) or (c) is present.

17 **SECTION 3.** 134.95 (3) of the statutes is amended to read:

18 134.95 (3) PRIORITY FOR RESTITUTION. If the court orders restitution under s.
19 134.22 (4) (a), 134.68 (7), 134.70 (15), 134.74 (8), 134.75 (3), 134.83 (7) or 134.87 (6)
20 for a pecuniary or monetary loss suffered by a person, the court shall require that the
21 restitution be paid by the defendant before the defendant pays any forfeiture
22 imposed under this section.

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

24 165.25 (4) (ar) The department of justice shall furnish all legal services
25 required by the department of agriculture, trade and consumer protection relating

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1 to the enforcement of ss. 100.18, 100.182, 100.20, 100.205, 100.207, 100.21, 100.28,
2 100.50, 134.22, 134.42, 134.68, 134.70, 134.74, 134.75, 134.83 and 134.85 and chs.
3 136, 344, 704, 707 and 779, together with any other services as are necessarily
4 connected to the legal services.

5 **SECTION 5. Effective date.**

6 (1) This act takes effect on the first day of the 4th month beginning after
7 publication.

8 (END)