

1979 Assembly Bill 258

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CHAPTER 62, Laws of 1979

AN ACT to amend 134.99 (1); and to create 134.83 of the statutes, relating to delivery of goods sold by mail or telephone or by any other means, other than face-to-face contact, and providing a penalty.

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

SECTION 1. 134.83 of the statutes is created to read:

134.83 Mail-order sales regulated. (1) In this section:

(a) "Buyer" means an individual who:

1. Is a resident of this state; and
2. While located in this state, receives a solicitation and orders goods from a seller for personal, family or household purposes.

(b) "Delivery period" means the time period clearly disclosed to the buyer in the solicitation for a mail order within which the ordered goods are to be shipped or, if there is no such disclosure, 30 days after the date of payment for the ordered goods.

(c) "Extended delivery period" means the extended period authorized under sub. (3).

(d) "Mail order" means an order of goods by a buyer which the seller solicits and receives payment for without any face-to-face contact between the buyer and the seller.

(e) "Payment" means:

1. Receipt by the seller of full or partial payment in the form of cash, check, money order or the like for a mail order; or

2. In a credit sale, the receipt by the seller of the information and authorization necessary to process the credit sale.

(f) "Seller" means a person who engages in mail-order solicitations, and includes representatives, employees or agents of a seller, however designated by the seller.

(g) "Shipped" and "shipping" mean:

1. Delivery to the buyer or the buyer's designee;

2. Delivery to a 3rd party carrier for delivery to the buyer or the buyer's designee; or

3. Delivery to a place clearly disclosed in the solicitation along with notice to the buyer or the buyer's designee of the arrival of the goods.

(2) It is unlawful for a mail-order seller who receives payment from a buyer to permit the delivery period or extended delivery period, if any to elapse without complying with one of the following:

(a) Shipping the ordered goods.

(b) Mailing a full refund to the buyer and nullifying any financial obligation incurred by the buyer for any ordered goods not shipped during the delivery period or extended delivery period, if any. The refund and nullification shall be made within a reasonable time after the seller becomes aware that the goods cannot be shipped within the delivery period or extended delivery period, if any, but not later than the end of the delivery period or extended delivery period, if any.

(c) Mailing the buyer notice as provided by subs. (3) and (4) during the delivery period and shipping the goods or making a full refund to and nullifying any obligation of the buyer for goods not shipped within the extended delivery period. The seller shall promptly make a full refund to and nullify any financial obligation of the buyer for goods not shipped if the seller receives a written cancellation request from the buyer during the extended delivery period.

(3) If the seller mails a notice which complies with sub. (4) to the buyer during the delivery period the delivery period may be extended to:

(a) The date specified by the seller in the notice but not later than 30 days after the expiration of the delivery period; or

(b) A later date authorized by the buyer in a written statement received by the seller within 30 days after the expiration of the delivery period and prior to cancellation under sub. (2).

(4) The notice required by sub. (3) shall clearly and conspicuously inform the buyer:

(a) Of the specific date by which the goods will be shipped or that the shipping date is unknown.

(b) That if the seller, prior to shipping the goods, receives a written statement from the buyer requesting cancellation of the mail order the mail order will be canceled and the seller will promptly make a full refund to and nullify any financial obligation of the buyer for goods not shipped.

(c) That if the goods are not shipped by the date specified in the notice the mail order will be canceled and the seller will make a full refund to and nullify any financial obligation of the buyer for goods not shipped.

(d) That the delivery period may not be extended beyond 30 days unless, within 30 days after the expiration of the delivery period and prior to the cancellation of the mail order under sub. (2), the seller receives written authorization from the buyer extending the delivery period to a specific later date.

(5) The department of justice or any district attorney may on behalf of the state:

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

(b) Bring an action in any circuit court for the recovery of a civil forfeiture against any person who violates this section in an amount of not less than \$100 nor more than \$1,000 for each violation.

(6) The department of justice and the department of agriculture, trade and consumer protection shall cooperate in the investigation of violations of and the enforcement of this section.

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

(8) Any waiver by a buyer of the rights provided by this section is void.

SECTION 2. 134.99 (1) of the statutes is amended to read:

134.99 (1) Whoever is concerned in the commission of a violation of this chapter, except s. 134.83, for which a forfeiture is imposed is a principal and may be charged with and convicted of the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.

SECTION 3. **Program citations.** (1) In the list of program citations for the department of justice under section 15.251 (intro.) of the statutes, insert reference to section "134.83".

(2) In the list of program citations for the department of agriculture, trade and consumer protection under section 15.131 (intro.) of the statutes, insert reference to section "134.83".

SECTION 4. **Applicability.** This act applies to mail orders received by sellers on or after the effective date of this act.

SECTION 5. **Effective date.** This act takes effect on the first day of the 4th month commencing after its publication.
