



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1997 ASSEMBLY BILL 169**

October 23, 1997 – Offered by COMMITTEE ON CONSUMER AFFAIRS.

1 **AN ACT to amend** 165.25 (4) (ar) and 814.04 (intro.); and **to create** 100.195,
2 100.196, 100.197 and 100.198 of the statutes; **relating to:** unfair billing for
3 consumer goods or services, trial delivery sales plans, lawn care service
4 contracts 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) "Cable television service" has the meaning given in s. 196.01 (1p) and
2 includes services billed to consumers by a multichannel video programming
3 distributor as defined under 47 USC 522 (12).

4 (c) "Consumer" means an individual to whom a seller sells or leases, or offers
5 to sell or lease, consumer goods or services at retail.

6 (d) "Consumer goods or services" means goods or services that are used or
7 intended for use for personal, family or household purposes. "Consumer goods or
8 services" does not include any of the following:

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

11 2. Telecommunications or cable television services.

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

14 4. The sale or lease of a motor vehicle by a licensed motor vehicle dealer, as
15 defined in s. 218.01 (1) (n).

16 (e) "Delivery" means a transfer to a consumer's custody or making available for
17 use by a consumer.

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

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

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

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

1 (b) Bill a consumer for consumer goods or services at a price that is higher than
2 a price previously agreed upon between the seller and consumer unless the consumer
3 agrees to the higher price before the consumer is billed.

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5 initiates under an agreement that is no longer in effect when the seller initiates the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

7 (d) Offer a consumer any prize or prize opportunity or free or reduced-price
8 goods or services, the acceptance of which commits the consumer to receive or pay
9 for other consumer goods or services, unless the seller clearly and conspicuously
10 discloses that commitment in connection with every announcement or
11 advertisement of the prize, prize opportunity or free or reduced-price goods or
12 services.

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

17 **SECTION 2.** 100.196 of the statutes is created to read:

18 **100.196 Trial delivery sales plans. (1) DEFINITIONS.** In this section:

19 (a) "Bill" has the meaning given in s. 100.195 (1) (a).

20 (b) "Consumer" has the meaning given in s. 100.195 (1) (c).

21 (c) "Consumer goods or services" has the meaning given in s. 100.195 (1) (d).

22 (d) "Delivery" has the meaning given in s. 100.195 (1) (e).

23 (e) "Disclosure" means a clear and conspicuous statement that is designed to
24 be readily noticed and understood by the consumer and, if made in writing, to be
25 retained by the consumer.

1 (f) "In writing" means legibly printed on paper or another tangible
2 nonelectronic medium that is delivered to the consumer, or legibly printed in an
3 electronic form that the consumer can electronically retrieve, store or print for future
4 reference. "In writing" does not include presentation on a medium, such as a
5 billboard, that cannot be conveniently retained by a consumer.

6 (g) "Prepaid return mailer" means an envelope, box or other container in which
7 a consumer is able to safely return a trial delivery to the seller, at the seller's expense,
8 without having to leave home and without having to incur postage, shipping,
9 handling, repackaging or other costs.

10 (h) "Seller" has the meaning given in s. 100.195 (1) (f).

11 (i) "Trial delivery" means a delivery to a consumer of consumer goods or services
12 that the consumer has not yet agreed to purchase or lease.

13 (j) "Trial delivery sales plan" means an agreement between a seller and a
14 consumer in which the consumer authorizes the seller to make one or more trial
15 deliveries to the consumer, and to bill the consumer for a trial delivery if the
16 consumer does not reject or return it in conformance with the terms of the agreement.
17 "Trial delivery sales plan" does not include any of the following:

- 18 1. A negative option plan that is subject to and that complies with 16 CFR 425.
- 19 2. An agreement to purchase or lease goods or services without any trial
20 delivery, but subject to a right of cancellation or return.
- 21 3. Consumer goods or services delivered to a consumer in person at the seller's
22 regular place of business.

23 **(2) DISCLOSURE OF TRIAL DELIVERY SALES PLAN TERMS.** (a) Before a consumer
24 enters into any trial delivery sales plan, the seller shall make a disclosure to the
25 consumer of all of the material terms of the trial delivery sales plan, including all

1 terms required under sub. (3). The terms of the trial delivery sales plan made in the
2 disclosure shall be in meaningful sequence and shall not be separated by
3 promotional information.

4 (b) If a seller solicits a consumer by mail to enter into a trial delivery sales plan,
5 the seller shall make the disclosure under par. (a) in writing as part of that mail
6 solicitation.

7 (c) If a seller makes the disclosure under par. (a) other than in writing, the seller
8 shall repeat the disclosure in writing at or before the time that the seller first makes
9 a trial delivery to the consumer.

10 **(3) TRIAL DELIVERY SALES PLANS; TERMS REQUIRED.** The terms of the trial delivery
11 sales plan shall include all of the following:

12 (a) The nature of the consumer goods or services offered.

13 (b) The consumer's obligations, including all of the following:

14 1. Any minimum purchase or minimum lease requirements.

15 2. The maximum price of the consumer goods or services included in any trial
16 delivery. The maximum price shall include all postage, shipping, handling or other
17 costs charged to the consumer, except as provided in sub. (4) (c).

18 3. Any obligation incurred by the consumer if the consumer fails to reject or
19 return any trial delivery under the trial delivery sales plan.

20 4. Any obligation by the consumer to pay return shipping or other costs
21 associated with the rejection or return of a trial delivery.

22 (c) All of the following information if the trial delivery sales plan may result in
23 more than one trial delivery:

24 1. The duration of the trial delivery sales plan.

1 2. Whether the trial delivery sales plan remains in effect until canceled by the
2 seller or consumer.

3 3. The frequency of trial deliveries under the trial delivery sales plan.

4 (d) Clear and conspicuous instructions stating a reasonable method by which
5 the consumer may reject or return a trial delivery to avoid being billed for that trial
6 delivery and to avoid any other consequences that may result from a failure to reject
7 or return the trial delivery. The instructions shall include the 10-day requirement
8 under sub. (6) (a) and any applicable restrictions on the manner in which the trial
9 delivery may be rejected or returned.

10 (e) The right of the consumer to cancel the trial delivery sales plan at any time,
11 subject to any minimum purchase or lease requirements under par. (b) 1.

12 (f) Clear and conspicuous instructions stating a reasonable method by which
13 the consumer may exercise his or her right to cancel the trial delivery sales plan
14 without charge to the consumer.

15 **(4) TRIAL DELIVERY SALES PLANS; RESTRICTIONS.** (a) If a trial delivery sales plan
16 is for a definite period of time, neither the seller nor the consumer may extend the
17 period by means of an automatic renewal or automatic extension provision.

18 (b) The information under sub. (3) (c) shall be stated in a manner so that the
19 consumer can easily determine the maximum number of trial deliveries that may
20 occur in any 12-month period.

21 (c) The maximum price stated under sub. (3) (b) 2. need not include postage or
22 shipping costs if all of the following apply:

23 1. The seller makes a disclosure that the consumer must pay postage or
24 shipping costs.

1 2. The postage or shipping costs do not exceed those that are charged or would
2 be charged by the U.S. postal service or common carrier for the same trial delivery.

3 **(5) DISCLOSURE TO ACCOMPANY EACH TRIAL DELIVERY.** With each trial delivery
4 under a trial delivery sales plan, the seller shall include a written disclosure that
5 states all of the following:

6 (a) The total price that the consumer must pay for the trial delivery if the
7 consumer accepts the trial delivery.

8 (b) Every other obligation that the consumer incurs by accepting the trial
9 delivery.

10 (c) Clear and conspicuous instructions stating a reasonable method by which
11 the consumer may reject or return a trial delivery to avoid being billed for that trial
12 delivery and to avoid any other consequences that may result from a failure to reject
13 or return the trial delivery. The instructions shall include the 10-day requirement
14 under sub. (6) (a) and any applicable restrictions on the manner in which the trial
15 delivery may be rejected or returned.

16 (d) Clear and conspicuous instructions stating a reasonable method by which
17 the consumer may avoid receiving the next trial delivery. The instructions shall
18 include the 10-day requirement under sub. (6) (a).

19 **(6) TRIAL DELIVERY SALES PLANS; REJECTIONS AND RETURNS.** (a) A seller shall allow
20 the consumer at least 10 days after the consumer receives a trial delivery to initiate
21 the rejection or return of that trial delivery or to avoid receiving the next trial
22 delivery.

23 (b) A seller may not represent that the consumer may return a trial delivery
24 at the seller's expense unless the seller includes with the trial delivery a prepaid
25 return mailer that includes all of the following:

1 1. The address to which the consumer shall return the goods or services under
2 the trial delivery.

3 2. Adequate prepayment of any postage, shipping, handling, repackaging or
4 other costs that are necessary to accomplish the return of the trial delivery.

5 3. Clear and conspicuous instructions on how the consumer may use the
6 prepaid return mailer to accomplish the return of the goods or services included in
7 a trial delivery.

8 **(7) PROHIBITIONS.** No seller may do any of the following:

9 (a) Misrepresent the terms of a trial delivery sales plan.

10 (b) Misrepresent to any consumer that the consumer has agreed to a trial
11 delivery sales plan.

12 (c) Make any false, deceptive or misleading representation in the solicitation
13 or implementation of a trial delivery sales plan.

14 (d) Make any trial delivery, or bill any consumer for a trial delivery, contrary
15 to the terms of the trial delivery sales plan.

16 (e) Initiate a trial delivery under a trial delivery sales plan that is no longer in
17 effect.

18 **SECTION 3.** 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 services.

22 (b) “In writing” has the meaning given in s. 100.196 (1) (f).

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

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

3 2. A plant mowing or trimming service.

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

6 (e) "Written disclosure" means a clear and conspicuous statement in writing
7 that is designed to be readily noticed and understood by the consumer.

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

12 (b) A written disclosure under this subsection shall include all of the following
13 information:

14 1. The lawn care services included in the contract, and the price and frequency
15 of those lawn care services.

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

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

21 **SECTION 4.** 100.198 of the statutes is created to read:

22 **100.198 Unfair billing; trial deliveries; lawn care services; penalties**
23 **and remedies.** (1) INVESTIGATION. The department may exercise its authority
24 under ss. 93.14 and 93.15 to investigate violations of s. 100.195, 100.196 or 100.197.

1 **(2) CIVIL ACTIONS BY PRIVATE PERSONS.** Any person suffering pecuniary loss
2 because of a violation of s. 100.195, 100.196 or 100.197 may commence an action for
3 the pecuniary loss and if the person prevails, the person shall recover twice the
4 amount of the pecuniary loss or \$200 for each violation, whichever is greater,
5 together with costs, including reasonable attorney fees.

6 **(3) INJUNCTION AND RESTITUTION.** The department may commence an action in
7 the name of the state to restrain by temporary or permanent injunction a violation
8 of s. 100.195, 100.196 or 100.197. Before entry of final judgment, the court may make
9 any necessary orders to restore to any person any pecuniary loss suffered by the
10 person because of the violation.

11 **(4) CIVIL FORFEITURE.** The department or any district attorney may commence
12 an action in the name of the state to recover a forfeiture to the state of not less than
13 \$100 nor more than \$10,000 for each violation of s. 100.195, 100.196 or 100.197.

14 **(5) CRIMINAL PENALTIES.** A person who violates s. 100.195, 100.196 or 100.197
15 is subject to a fine of not less than \$25 nor more than \$5,000 or imprisonment not to
16 exceed one year or both for each violation.

17 **(6) ADDITIONAL REMEDIES.** Sections 100.195, 100.196 and 100.197 do not
18 preempt the administration or enforcement of s. 100.18 or 100.20. Practices in
19 violation of s. 100.195, 100.196 or 100.197 may also constitute unfair methods of
20 competition or unfair trade practices under s. 100.20 or fraudulent representations
21 under s. 100.18.

22 **SECTION 5.** 165.25 (4) (ar) of the statutes is amended to read:

23 165.25 (4) (ar) The department of justice shall furnish all legal services
24 required by the department of agriculture, trade and consumer protection relating
25 to the enforcement of ss. 100.18, 100.182, 100.195, 100.196, 100.197, 100.20, 100.205,

1 100.207, 100.21, 100.28, 100.50, 134.22, 134.42, 134.68, 134.70, 134.74, 134.83 and
2 134.85 and chs. 136, 344, 704, 707 and 779, together with any other services as are
3 necessarily connected to the legal services.

4 **SECTION 6.** 814.04 (intro.) of the statutes is amended to read:

5 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.198 (2),
6 106.04 (6) (i) and (6m) (a), 769.313, 814.025, 814.245, 895.035 (4), 895.75 (3), 895.77
7 (2), 895.79 (3), 895.80 (3), 943.212 (2) (b), 943.245 (2) (d) and 943.51 (2) (b), when
8 allowed costs shall be as follows:

9 **SECTION 7. Initial applicability.**

10 (1) UNFAIR BILLING. The treatment of section 100.195 of the statutes first applies
11 to violations committed on the effective date of this subsection.

12 (2) TRIAL DELIVERY SALES PLANS. The treatment of section 100.196 of the statutes
13 first applies to trial delivery sales plans entered into on the effective date of this
14 subsection.

15 (3) LAWN CARE SERVICE CONTRACTS. The treatment of section 100.197 of the
16 statutes first applies to contracts entered into on the effective date of this subsection.

17 **SECTION 8. Effective date.**

18 (1) This act takes effect on first day of the 10th month beginning after
19 publication.

20 (END)