

**1999 DRAFTING REQUEST**

**Bill**

Received: 11/3/98

Received By: **gibsom**

Wanted: **As time permits**

Identical to LRB:

For: **Suzanne Jeskewitz (608) 266-3796**

By/Representing: **Dan Young**

This file may be shown to any legislator: **NO**

Drafter: **gibsom**

May Contact:

Alt. Drafters:

Subject: **Trade Regulation**

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Negative billing practices

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	gibsom 12/21/98	ptellez 01/4/99	hhagen 01/5/99	_____	lrb_docadmin 01/5/99	lrb_docadminState 03/25/99	

FE Sent For:

4/22/99

<END>

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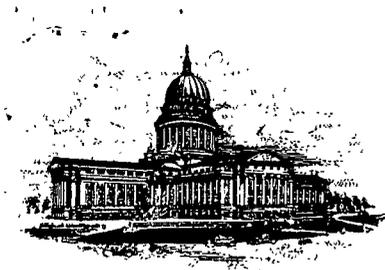
See Attached

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1/?	gibson	/1 pgt 12/21/98	AK/4	AK/15 <u>km</u>			

FE Sent For:

<END>



# Wisconsin State Assembly

P.O. BOX 8952 • MADISON, WI 53708

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October 30, 1998

TO: Attorney Mary Gibson-Glass  
Legislative Reference Bureau

FROM: Daniel A. Young   
on behalf of Representative Suzanne Jeskewitz

RE: Negative Billing Options

Mary,

Would you please redraft Senate Substitute Amendment 1 to 1997 Assembly Bill 169, for introduction as a 1999 bill. A copy is attached. If you have any questions about this request, you can reach me at 6-8530.

Thank you.

Dan



State of Wisconsin  
1999 - 2000 LEGISLATURE

1 RMR  
LRB-0711/S  
MBC:pg:ty  
KSH

5000

1999 BILL

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

1 AN ACT <sup>gen. cat.</sup> relating to: <sup>of the</sup> prohibition of certain billing practices for consumer  
2 goods or services, lawn care service contracts, granting rule-making authority  
3 and providing penalties.

**Analysis by the Legislative Reference Bureau**

This bill prohibits certain consumer billing practices by sellers and lessors. The prohibited practices are:

1. Billing a person for consumer goods or services that the consumer has not agreed to purchase or lease.
2. Billing a consumer for consumer goods or services at a price that is higher than <sup>than</sup> the price previously agreed upon unless the consumer agrees to the higher price or is given the opportunity to cancel without penalty.
3. Billing a consumer for consumer goods under an agreement that is no longer in effect.
4. Offering a consumer free or reduced-price goods or services that commit the consumer to pay for other consumer goods or services unless the seller discloses the commitment with every advertisement of the free or reduced-price goods or services.
5. Misrepresenting to a consumer that the consumer's failure to reject a delivery of consumer goods or services obligates the consumer to pay for the goods or services.

The bill defines consumer goods and services to exclude cable television and other telecommunication services, <sup>and</sup> health care, motor vehicles <sup>various goods and services including</sup> sold or leased by a dealer, and goods or services whose delivery is required by law even though the consumer has not agreed to purchase or lease those goods or services.

additives  
or other additives

The bill requires that the department of agriculture, trade and consumer protection (DATCP) promulgate rules for the regulation of sale plans under which consumer goods or services are delivered before the consumer agrees to purchase or lease the goods or services. The bill requires that the secretary of DATCP appoint an advisory committee to make recommendations for these rules.

The bill specifically regulates lawn care service contracts. Lawn care services under the bill consist of mowing services, trimming services and application of fertilizer and pesticides. Under the bill, a contract for lawn care services may not be in effect for more than one year unless in the subsequent years, the person selling the lawn care services makes a written disclosure to the consumer as to the type of services provided, the price and frequency of those services and the right of the consumer to cancel the contract. The consumer has the right to cancel the contract at no cost to the consumer if the consumer does so within 30 days after receiving the written disclosure.

The bill authorizes DATCP to bring an action to enjoin persons from violating these laws governing billing practices and lawn care services contracts. Persons who violate these laws are also subject to civil forfeitures and criminal penalties. In addition, the bill does not preclude these violations from being also prosecuted as unfair methods of competition, unfair trade practices or fraudulent representations under existing laws. The law also allows an individual to bring a civil action for violation of these laws.

X  
include  
STET.

the

FE-S

The bill

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

← insert 2-1 ✓

1 SECTION 1. 165.25 (4) (ar) of the statutes is amended to read:  
2 165.25 (4) (ar) The department of justice shall furnish all legal services  
3 required by the department of agriculture, trade and consumer protection relating  
4 to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,  
5 100.182, 100.95, 100.97, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.50  
6 and 100.51 and chs. 136, 344, 704, 707 and 779, together with any other services as  
7 are necessarily connected to the legal services.

History: 1971 c. 125 s. 522 (1); 1971 c. 215; 1973 c. 333; 1975 c. 81, 199; 1977 c. 29 s. 1656 (27); 1977 c. 187, 260, 273, 344; 1981 c. 20, 62, 96; 1983 a. 27; 1983 a. 36 s. 96 (2), (3), (4); 1983 a. 192; 1985 a. 29, 66; 1987 a. 416; 1989 a. 31, 115, 187, 206, 359; 1991 a. 25, 39, 269; 1993 a. 27, 28, 365; 1995 a. 27 ss. 4453 to 4454m, 9126 (19); 1995 a. 201; 1997 a. 27, 111.

8 SECTION 2. 814.04 (intro.) of the statutes is amended to read:  
9 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.198 (2),  
10 100.30 (5m), 106.04 (6) (i) and (6m) (a), 115.80 (9), 769.313, 814.025, 814.245, 895.035

1 (4), 895.75 (3), 895.77 (2), 895.79 (3), 895.80 (3), 943.212 (2) (b), 943.245 (2) (d) and  
2 943.51 (2) (b), when allowed costs shall be as follows:

← INSERT 3-2 ✓

**NOTE: NOTE: Section 814.04 (Intro.) is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2).NOTE:**

**History:** Sup. Ct. Order, 50 W (2d) vii (1971); 1971 c. 141; Sup. Ct. Order, 67 W (2d) 585, 761, 780 (1975); Stats. 1975 s. 814.04; 1977 c. 209; 1979 c. 110 s. 60 (13); 1979 c. 271, 355; 1981 c. 123, 317; 1985 a. 52, 311; 1987 a. 348; 1991 a. 39, 65, 189, 295; 1993 a. 98, 326, 486, 490, 491; 1995 a. 24, 27, 133, 149, 262, 417; 1997 a. 55, 164, 254.

3

**(END)**



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

March 24, 1998 - Offered by COMMITTEE ON JUDICIARY, CAMPAIGN FINANCE REFORM  
AND CONSUMER AFFAIRS.

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:** unfair billing for consumer  
3 goods or services, lawn care service contracts, granting rule-making authority  
4 and providing penalties.

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

5 **SECTION 1.** 100.195<sup>✓</sup> of the statutes is created to read:

*Insert 2\*-1* ✓

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.



*Insert 2-1*

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 (em) "Disclosure" means a clear and conspicuous statement that is designed to  
19 be readily noticed and understood by the consumer and, if made in writing, to be  
20 retained by the customer.

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

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

24 (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.

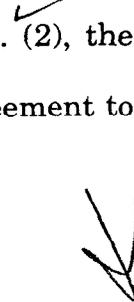
3 (b) Bill a consumer for consumer goods or services at a price that is higher than  
4 a price previously agreed upon between the seller and consumer unless the consumer  
5 agrees to the higher price before the consumer is billed. This paragraph does not  
6 prohibit a seller from increasing the price of goods or services delivered under a sale  
7 or lease agreement of indefinite duration, if the seller gives the consumer advance  
8 reasonable disclosure of the proposed increase and the opportunity to cancel the  
9 agreement 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 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 (3) ACCEPTANCE OF FREE GOODS OR SERVICES. For purposes of sub. (2), the  
23 acceptance of free goods or services does not, of itself, constitute an agreement to  
24 purchase or lease the goods or services.



*Insert 2-1*

*consumer*

1 (4) RULES. (a) The department shall promulgate rules for the regulation of  
2 sales plans in which consumer goods or services are delivered to a consumer before  
3 the consumer agrees to purchase or lease the goods or services.

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

- 11 1. One or more persons who is a consumer in this state.
- 12 2. One or more persons who is employed in this state by a direct marketing  
13 employer.
- 14 3. One or more persons who represents senior citizens.

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

16 **100.197 Lawn care service contracts.** (1) DEFINITIONS. In this section:

17 (a) "Consumer" means an individual to whom a provider sells or leases, or offers  
18 to sell or lease, lawn care services.

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

24 (c) "Lawn care services" means any of the following services provided in or  
25 around a consumer's personal residence for nonagricultural purposes:

*Insert 2-1*

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. <sup>✓</sup>(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 3.** 100.198 <sup>✓</sup>of the statutes is created to read:

22           **100.198 Unfair billing; lawn care services; penalties and remedies. (1)**

23           INVESTIGATION. The department may exercise its authority under ss. 93.14 <sup>✓</sup>and 93.15 <sup>✓</sup>  
24 to investigate violations of s. 100.195 <sup>✓</sup>or 100.197 <sup>✓</sup>.

*✓*

*Insert 2-1*

1 (2) - CIVIL ACTIONS BY PRIVATE PERSONS. Any person suffering pecuniary loss  
2 because of a violation of s. 100.195 or 100.197 may commence an action for the  
3 pecuniary loss and if the person prevails, the person shall recover twice the amount  
4 of the pecuniary loss or \$200 for each violation, whichever is greater, together with  
5 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 or 100.197. Before entry of final judgment, the court may make any  
9 necessary orders to restore to any person any pecuniary loss suffered by the person  
10 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 or 100.197.

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

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

*(end) [END OF INSERT 2-1]*

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

22 ~~165.25 (4) (ar) The department of justice shall furnish all legal services~~  
23 ~~required by the department of agriculture, trade and consumer protection relating~~  
24 ~~to the enforcement of ss. 100.18, 100.182, 100.195, 100.197, 100.20, 100.205, 100.207,~~  
25 ~~100.21, 100.28, 100.50, 134.22, 134.42, 134.68, 134.70, 134.74, 134.83 and 134.85~~

1 and chs. 136, 344, 704, 707 and 779, together with any other services as are  
2 necessarily connected to the legal services.

3 **SECTION 5.** 814.04 (intro.) of the statutes, as affected by 1997 Wisconsin Acts  
4 55 and .... (Senate Bill 384), is amended to read:

5 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.198 (2),  
6 100.30 (5m), 106.04 (6) (i) and (6m) (a), 115.80 (9), 769.313, 814.025, 814.245, 895.035  
7 (4), 895.75 (3), 895.77 (2), 895.79 (3), 895.80 (3), 943.212 (2) (b), 943.245 (2) (d) and  
8 943.51 (2) (b), when allowed costs shall be as follows:

9 **SECTION 6. Initial applicability.**

[Insert 3-2]

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

14 **SECTION 7. Effective date.**

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

17 (END) [End of  
INSERT 3-2]

**SUBMITTAL  
FORM**

**LEGISLATIVE REFERENCE BUREAU  
Legal Section Telephone: 266-3561  
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

**Date:** 1/5/99

**To:** Representative Jeskewitz

**Relating to LRB drafting number:** LRB 0711

**Topic**

Negative billing practices

**Subject(s)**

Trade Regulation

1. **JACKET** the draft for introduction \_\_\_\_\_  
in the **Senate** \_\_\_\_ or the **Assembly**  (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached \_\_\_\_\_.  
A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction \_\_\_\_\_.  
If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Mary Gibson-Glass, Senior Legislative Attorney  
Telephone: (608) 267-3215

