

1999 DRAFTING REQUEST

Bill

Received: 11/12/1999

Received By: rkite

Wanted: As time permits

Identical to LRB:

For: Brian Burke (608) 266-8535

By/Representing: Deb Sybell

This file may be shown to any legislator: NO

Drafter: rkite

May Contact:

Alt. Drafters:

Subject: Trade Regulation

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Remedies for unfair trade practice violations

Instructions:

Create a private right of action for violations of s. 100.20.

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	rkite 11/12/1999	ygeller 11/15/1999	jfrantze 11/17/1999	_____	lrb_docadmin 11/17/1999		
/2	rkite 12/10/1999	ygeller 12/10/1999	jfrantze 12/13/1999	_____	lrb_docadmin 12/13/1999		
/3	rkite 12/17/1999	ygeller 12/20/1999	jfrantze 12/20/1999	_____	lrb_docadmin 12/20/1999	lrb_docadmin 02/28/2000	

FE Sent For:

<END>

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13 12/20 jg
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1/2 12/10 jg
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1?	rkite	4 11/15 JLG	7 11/16	6/11/14			

FE Sent For:

<END>



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3948/1
RNK...:A...

1999 BILL

gen cat

1 AN ACT ...; relating to: a private right of action against persons who engage in
2 unfair methods of competition in business and unfair trade practices in
3 business.

Analysis by the Legislative Reference Bureau

Current law prohibits persons from engaging in unfair methods of competition in business or unfair trade practices in business (unfair trade practice). The department of agriculture, trade and consumer protection (DATCP), after public hearing, may issue general and special orders prohibiting certain unfair trade practices.

Under current law, the department of justice, DOJ, may file a complaint with DATCP against a person that DOJ alleges is ^{parenthesis ()} ~~employing~~ engaging in an unfair trade practice. DATCP must then proceed with a hearing and adjudication of the matter. DATCP may also bring a court action to enjoin the violation of any order that it issues concerning an unfair trade practice. The court may, before entry of a final judgment, award a person certain damages suffered because of the violation of the order. Finally, a person who suffers certain damages because of the violation of an order issued by DATCP may bring his or her own court action to recover those damages.

This bill creates a separate private right of action that entitles a person to bring a court action for damages suffered as the result of the commission of an unfair trade practice, regardless of whether DATCP has issued an order concerning that unfair trade practice. The bill provides for increased damages if the court or jury finds that the person committing the unfair trade practice did so intentionally. The bill also

BILL

provides that if a judgment is entered against a person for committing an unfair trade practice and the person fails to pay the judgment within 3 months of the date on which the judgment was entered, the court may revoke any of that person's licenses to conduct business in this state.

three
engaged in

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

Insert 2-1

SECTION 1. Initial applicability.

(1) This act first applies to unfair methods of competition and unfair trade practices that are committed on the effective date of this subsection.

(END)

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Insert 2-1

1 ~~AN ACT to amend 100.207 (6) (f); and to create 100.20 (1u) and 100.20 (7) of the~~
2 ~~statutes; relating to: a private right of action against persons who engage in~~
3 ~~certain unfair trade practices and providing a penalty.~~

Analysis by the Legislative Reference Bureau

This is an preliminary draft. An analysis will be provided in a subsequent version of the draft.

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

4 ~~SECTION 1. 100.20 (1u) of the statutes is created to read:~~
5 ~~100.20 (1u) (a) It is an unfair trade practice for a seller or lessor of goods or for~~
6 ~~a seller of services to enter into a contract or agreement with another person for the~~
7 ~~sale or lease of goods or for the sale of services if the seller or lessor has superior~~
8 ~~bargaining power to the purchaser or lessee and if the contract or agreement does~~
9 ~~any of the following:~~



INS 2-1
cont

1 1. Fails to set forth all of the terms of the contract or agreement in a manner
2 that is clear and conspicuous.

3 2. Limits the purchaser's or lessee's remedies if the seller or lessor breaches the
4 contract or agreement.

5 3. Requires the purchaser or lessee to pay a price for the purchase or lease of
6 the goods or for the purchase of the services that is so excessive when compared to
7 the value of the goods or services as to be unconscionable.

8 (b) This subsection does not apply to a seller or lessor who enters into a contract
9 or agreement with a purchaser or lessee if the purchaser or lessee is engaged in a
10 business enterprise for profit that has assets of \$25 million or more or that is owned
11 or controlled by a business enterprise that has assets of \$25 million or more.

12 SECTION 2. 100.20 (7) of the statutes is created to read:

13 100.20 (7) (a) 1. Any person who suffers damages as the result of the violation
14 of sub. (10) may bring an action against the violator to recover damages in the
15 amount of twice his or her pecuniary loss, together with reasonable attorney fees and
16 costs, notwithstanding s. 814.04.

17 2. If the trier of fact finds that the violator's conduct was intentional, a person
18 who suffers damages as the result of the violator's conduct may recover, in addition
19 to the damages under subd. 1, damages for mental anguish.

20 (b) In addition to bringing an action under par. (a), any person who suffers
21 damages for a violation of sub. (10) may bring an action for an injunction prohibiting
22 the violation of the person from engaging in the unfair act

23 (c) If a seller or lessor fails to satisfy any judgment entered against him or her
24 under par. (a) within 3 months of the date on which the judgment was entered, the

a person engaging in an
unfair method of
competition in business or an
unfair trade practice in business

person who engaged in
the unfair act

of the person who engaged
in the unfair act

unfair act

X

INS 2-1 cont

that person's

1 court may enter an order revoking any of the ~~seller's or lessor's~~ licenses to conduct
2 business in this state.

3 (d) In addition to entering any order under par. (a), (b) or (c), the court may
4 award any other appropriate relief including ordering restitution or specific
5 performance.

6 ~~SECTION 3. 100.207 (6) (f) of the statutes is amended to read:~~
7 ~~100.207 (6) (f) This section does not preempt the administration or enforcement~~
8 ~~of this chapter or ch. 133 or 196. Practices in violation of this section may also~~
9 ~~constitute unfair methods of competition or unfair trade practices under s. 100.20 (1)~~
10 ~~or, (1t) or (1u) or fraudulent representations under s. 100.18 (1) or violate ch. 133 or~~
11 ~~196.~~

12 ~~END~~
(end ins)

100.18(1)(b)2.

Redraft LRB-3948
per Reblie

leave sub. (5) as in current law
proposed sub. (7) ; replace -

model after 100.18(11)(b)2.

but add double damages for intentional
conduct



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3948/5 2
RNK:jlj:f

1999 BILL

Regen

twice the amount of

1 AN ACT to create 100.20 (7) of the statutes; relating to: a private right of action
2 against persons who engage in unfair methods of competition in business and
3 unfair trade practices in business.

Analysis by the Legislative Reference Bureau

Current law prohibits persons from engaging in unfair methods of competition in business or unfair trade practices in business (unfair trade practices). The department of agriculture, trade and consumer protection (DATCP), after public hearing, may issue general and special orders prohibiting certain unfair trade practices.

Under current law, the department of justice, (DOJ), may file a complaint with DATCP against a person that DOJ alleges is engaging in an unfair trade practice. DATCP must then proceed with a hearing and adjudication of the matter. DATCP may also bring a court action to enjoin the violation of any order that it issues concerning an unfair trade practice. The court may, before entry of a final judgment, award a person certain damages suffered because of the violation of the order. Finally, a person who suffers ~~certain~~ damages because of the violation of an order issued by DATCP may bring his or her own court action to recover those damages.

This bill creates a separate private right of action that entitles a person to bring a court action for damages suffered as the result of the commission of an unfair trade practice, regardless of whether DATCP has issued an order concerning that unfair trade practice. ~~The bill provides for increased damages if the court or jury finds that the person committing the unfair trade practice did so intentionally. The bill also~~

Insert Analysis

BILL

provides that, if a judgment is entered against a person for engaging in an unfair trade practice and the person fails to pay the judgment within three months of the date on which the judgment was entered, the court may revoke any of that person's licenses to conduct business in this state.

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

par. (b) and

sub. (5) add

1 SECTION 1. 100.20 (7) of the statutes is created to read:

another

2

100.20 (7) (a) ~~1. Any~~ ^{Except as provided in ~~sub. (5)~~, any} person who suffers damages as the result of ^{another} person engaging in an unfair method of competition in business or an unfair trade practice in business may bring an action against the person who engaged in the unfair act to recover ^{the amount of those} damages ~~in the amount of twice his or her pecuniary loss~~, together with reasonable attorney fees and costs, notwithstanding s. 814.04.

insert 1-6

7
8
9
10

2. If the trier of fact finds that the conduct of the person who engaged in the unfair act was intentional, a person who suffers damages as the result of the unfair act may recover ^{twice the amount of the person's damages, together with} ~~in addition to the damages under subd. 1., damages for mental~~ ^{reasonable attorney fees and costs,} ~~anguish.~~

11
12
13
14
15
16
17
18

(b) In addition to bringing an action under par. (a), any person who suffers damages as a result of a person engaging in an unfair method of competition in business or an unfair trade practice in business may bring an action for an injunction prohibiting the person from engaging in the unfair act.

(c) If a person fails to satisfy any judgment entered against him or her under par. (a) within 3 months of the date on which the judgment was entered, the court may enter an order revoking any of that person's licenses to conduct business in this state.

BILL

1 ~~(d) In addition to entering any order under par. (a), (b) or (c), the court may~~
2 ~~award any other appropriate relief including ordering restitution or specific~~
3 ~~performance.~~

4 **SECTION 2. Initial applicability.**

5 (1) This act first applies to unfair methods of competition and unfair trade
6 practices that are engaged in on the effective date of this subsection.

7 (END)

(b)

Insert 16

If a trier of fact finds that the
conduct of the person against whom an action
is brought under ^{par. (a)} ~~subd. 4~~ was intentional,
the person bringing the action may
recover twice the amount of his or her
damages, together with reasonable
attorney fees and costs, notwithstanding
s. 814.04.

Insert Analysis

NO
\$ The bill ^{also} provides that ² ~~1~~ ^{OK} a court or jury finds that ~~the~~ the person against whom a court action is brought acted intentionally, the person bringing the action may recover twice the amount of damages suffered as a result of the ^{COMMISSION} ~~commission~~ of the unfair trade practice.

12-17-99

Debbie from Sen. Burke's office called
re: redrafting LRB 3948

take out double damages provision



State of Wisconsin
1999 - 2000 LEGISLATURE

RMR
LRB-3948/3
RNK:jljgjf

1999 BILL

- Regen
- 1 AN ACT *to create* 100.20 (7) of the statutes; **relating to:** a private right of action
2 against persons who engage in unfair methods of competition in business and
3 unfair trade practices in business.

Analysis by the Legislative Reference Bureau

Current law prohibits persons from engaging in unfair methods of competition in business or unfair trade practices in business (unfair trade practices). The department of agriculture, trade and consumer protection (DATCP), after public hearing, may issue general and special orders prohibiting certain unfair trade practices.

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This bill creates a separate private right of action that entitles a person to bring a court action for damages suffered as the result of the commission of an unfair trade practice, regardless of whether DATCP has issued an order concerning that unfair trade practice. ~~The bill also provides that, if a court or jury finds that the person~~

**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: 12/20/1999

To: Senator Burke

Relating to LRB drafting number: LRB-3948

Topic

Remedies for unfair trade practice violations

Subject(s)

Trade Regulation

1. **JACKET** the draft for introduction B Burke
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.

Robin N. Kite, Legislative Attorney
Telephone: (608) 266-7291