

2001 DRAFTING REQUEST

Bill

Received: 04/09/2001

Received By: **gibsom**

Wanted: **As time permits**

Identical to LRB:

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

By/Representing: **Erin**

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

Drafter: **gibsom**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies:

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Negative billing practices and lawn care service contracts

Instructions:

Same as 1991 AB 306 LRB 0711

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>
/?	gibsom 04/19/2001	wjackson 04/23/2001		_____			State
/1			jfrantze 04/23/2001	_____	lrb_docadmin 04/23/2001	lrb_docadmin 03/01/2002	

FE Sent For:

At intro.

<END>

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1?	gibsom	11 WJ 4/23	To 4/23	To KM 4/23			

FE Sent For:

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1999 ASSEMBLY BILL 306

April 22, 1999—Introduced by Representatives JESKEWITZ, OLSEN, RHOADES, M. LEHMAN, MILLER, MUSSER, GOETSCH, BRANDEMUEHL, J. LEHMAN, URBAN, OWENS, HUTCHISON, HASENOHRL, LADWIG, KELSO, PLALE, YOUNG, HAHN, AINSWORTH, HUNDERTMARK, NASS, SERATTI, BLACK and BOCK, cosponsored by Senators CLAUSING, LAZICH, ROBSON and BAUMGART. Referred to Committee on Consumer Affairs.

REGEN

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: the prohibition of certain
3 billing practices for consumer goods or services, lawn care service contracts,
4 granting rule-making authority, 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 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 Billing a consumer for consumer goods under an agreement that is no longer in effect.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.

ASSEMBLY BILL 306*that include*

The bill defines consumer goods and services to exclude various goods and services ~~including~~ cable television and other telecommunication services and health care. *and satellite*

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 the application of fertilizer, pesticides, or other additives. 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 bill ~~also~~ allows an individual to bring a civil action for violation of these laws.

For further information see the *state* 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. 100.195[✓] of the statutes is created to read:

2 **100.195 Unfair billing for consumer goods or services. (1) DEFINITIONS.**

3 In this section:

4 (a) "Bill" means to represent to any consumer, directly or by implication, that
5 the consumer is obligated to pay a stated amount for consumer goods or services.
6 "Bill" includes to refer a payment to a collection agency or to make a statement
7 representing that a payment obligation has been or may be referred to a collection
8 agency or credit reporting agency.

ASSEMBLY BILL 306

means all of the following:

(13) 1. Cable television service as defined in

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(h) ~~(a)~~ (b) "Cable television service" has the meaning given in s. 196.01 (1p) and includes ^{2.} services billed to consumers by a multichannel video programming distributor as defined under 47 USC 522 ~~(13)~~

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

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

1. The treatment of disease, as defined in s. 448.01 (2), by a health care provider, as defined in s. 155.01 (7), or any provision of emergency medical care.
2. Telecommunications ^{Telecommunications services} or cable television services.
3. Goods or services whose delivery is required by law even though the consumer has not agreed to purchase or lease those goods or services.
4. The sale or lease of a motor vehicle by a licensed motor vehicle dealer, as defined in s. ~~218.0101 (a)~~ ^{218.0101 (23) (a)}

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

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

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

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

(2) PROHIBITIONS. No seller may:

ASSEMBLY BILL 306

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 ^{SET} 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.

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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 consumer 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:

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1. One or more persons who ~~is~~^{are} a consumer^s in this state.

2. One or more persons who ~~is~~^{are} employed in this state by a direct marketing employer.

3. One or more persons who represent~~s~~ senior citizens.

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Subds
1, 2, 3.

SECTION 2. 100.197[✓] of the statutes is created to read:

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

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

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

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

ASSEMBLY BILL 306

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 3. 100.198 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 and 93.15
24 to investigate violations of s. 100.195 or 100.197. ✓

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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[✓].

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. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,
25 100.182, 100.95, 100.97, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.50[✓]

ASSEMBLY BILL 306

1 and 100.51 and chs. 136, 344, 704, 707 and 779, together with any other services as
2 are necessarily connected to the legal services.

3 SECTION 5. 814.04 (intro.) of the statutes is amended to read:

4 814.04 Items of costs. (intro.) Except as provided in ss. 93.20, 100.198 (2),
5 100.30 (5m), ^{106.50} ~~106.94~~ (6) (i) and (6m) (a), 115.80 (9), 769.313, 814.025, 814.245, 895.035
6 (4), 895.75 (3), 895.77 (2), 895.79 (3), 895.80 (3), 943.212 (2) (b), 943.245 (2) (d) and
7 943.51 (2) (b), when allowed costs shall be as follows: 895.10 (3),

8 SECTION 6. Initial applicability.

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

11 (2) LAWN CARE SERVICE CONTRACTS. The treatment of section 100.197[✓] of the
12 statutes first applies to contracts entered into on the effective date of this subsection[✓].

13 SECTION 7. Effective date.

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

16 (END)

Barman, Mike

From: Bilot, Erin
Sent: Monday, August 06, 2001 11:04 AM
To: Barman, Mike
Subject: LRB Request

Mike,
Thank you for sending the earlier LRB I requested. I would also like to ask for LRB 3055 to be e-mailed to me.
Thanks!
Erin Bilot
Office of Suzanne Jeskewitz
State Representative
24th Assembly District

Barman, Mike

From: Barman, Mike

Sent: Monday, August 06, 2001 12:36 PM

To: Rep.Jeskewitz

Subject: LRB-3055/1 (attached) (requested by Erin)

08/06/2001

Emery, Lynn

From: Emery, Lynn
Sent: Monday, February 18, 2002 10:06 AM
To: Rep.Jeskewitz
Subject: LRB-3055/1 (attached as requested)

~~LRB-3055/1 - If you have any questions, please contact me via email saying that I am
LRB-3055/1 - If you have any questions, please contact me via email saying that I am~~

Lynn Emery

Program Asst. (PH. 608-266-3561)
(E-Mail: lynn.emery@legis.state.wi.us)

Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703



State of Wisconsin

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MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

April 23, 2001

MEMORANDUM

To: Representative Jeskewitz

From: Mary Gibson-Glass, Senior Legislative Attorney

Re: LRB-3055/1 Negative billing practices and lawn care service contracts

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

 JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 267-3215 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.