

2003 SENATE BILL 124

April 29, 2003 – Introduced by Senators ERPENBACH, CARPENTER, SCHULTZ and HARSDORF, cosponsored by Representatives JESKEWITZ, BERCEAU, MILLER, HAHN, M. LEHMAN, VAN ROY, CULLEN, MUSSER, LADWIG, OLSEN, SINICKI, HUBER, SERATTI, OTT, J. WOOD, J. LEHMAN, GIELOW, AINSWORTH, PLOUFF, BIES, TOWNSEND, HINES, GRONEMUS, BALOW, HUNDERTMARK, ALBERS and GUNDERSON. Referred to Committee on Labor, Small Business Development 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:** 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 Billing a consumer for consumer goods under an agreement that is no longer in effect.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.

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The bill defines consumer goods and services to exclude various goods and services that include cable and satellite television and other telecommunications services and health care.

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 service under the bill consist of mowing service, trimming service, and the application of fertilizer, pesticides, or other additives. Under the bill, a contract for lawn care service may not be in effect for more than one year unless, in the subsequent years, the person selling the lawn care service makes a written disclosure to the consumer as to the type of service provided, the price and frequency of the service, 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 service 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 prosecuted as unfair methods of competition, unfair trade practices, or fraudulent representations under existing laws. The bill 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.

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1 (b) “Consumer” means an individual to whom a seller sells or leases, or offers
2 to sell or lease, consumer goods or services at retail.

3 (c) “Consumer goods or services” means goods or services that are used or
4 intended for use for personal, family, or household purposes. “Consumer goods or
5 services” does not include any of the following:

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

8 2. Telecommunications services or cable television services.

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

11 4. The sale or lease of a motor vehicle by a licensed motor vehicle dealer, as
12 defined in s. 218.0101 (23) (a).

13 (d) “Delivery” means transferring to a consumer’s custody or making available
14 for use by a consumer.

15 (e) “Disclosure” means a clear and conspicuous statement that is designed to
16 be readily noticed and understood by the consumer and, if made in writing, to be
17 retained by the customer.

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

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

21 (h) “Television service” means all of the following:

22 1. Cable television service, as defined in s. 196.01 (1p).

23 2. Services billed to consumers by a multichannel video programming
24 distributor as defined under 47 USC 522 (13).

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

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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 under a sale or lease
7 agreement of indefinite duration, if the seller gives the consumer advance reasonable
8 disclosure of the proposed increase and the opportunity to cancel the agreement
9 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 or 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 the delivery of consumer goods or services occurs before the
3 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:

11 1. One or more persons who are consumers in this state.

12 2. One or more persons who are employed in this state by a direct marketing
13 employer.

14 3. One or more persons who represent 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 service.

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
22 future reference. “In writing” does not include presentation on a medium, such as
23 a billboard, that cannot be conveniently retained by a consumer.

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

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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 service 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 service 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 service 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 service included in the contract and the price and frequency
15 of the lawn care service.

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

17 (c) A contract for lawn care service 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 service; 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. If the person prevails, the person shall recover twice the amount of
4 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, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50

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1 and, 100.51, 100.95, and 100.97 and chs. 126, 136, 344, 704, 707, and 779, together
2 with any other services as 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 (6) (i), and (6m) (a), 115.80 (9), 281.36 (2) (b) 1., 767.33 (4) (d),
6 769.313, 814.025, 814.245, 895.035 (4), 895.10 (3), 895.75 (3), 895.77 (2), 895.79 (3),
7 895.80 (3), 943.212 (2) (b), 943.245 (2) (d), and 943.51 (2) (b), when allowed costs shall
8 be as follows:

9 **SECTION 6. 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) 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)