

2005 ASSEMBLY BILL 574

1 **AN ACT** *to amend* 165.25 (4) (ar) and 814.04 (intro.); and *to create* 100.195 of
2 the statutes; **relating to:** the prohibition of certain billing practices for
3 consumer goods or services and providing penalties.

Analysis by the Legislative Reference Bureau

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

4 **SECTION 1.** 100.195 of the statutes is created to read:

5 **100.195 Unfair billing for consumer goods or services. (1) DEFINITIONS.**

6 In this section:

7 (a) “Bill” means to represent to any consumer, directly or by implication, that
8 the consumer is obligated to pay a stated amount for consumer goods or services.
9 “Bill” includes to refer a payment to a collection agency or to make a statement
10 representing that a payment obligation has been or may be referred to a collection
11 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 the 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 5. Services provided pursuant to an attorney–client relationship.

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

16 (e) “Disclosure” means a clear and conspicuous statement that is designed to
17 be readily noticed and understood by the consumer.

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 seller bills the consumer. This paragraph does
6 not 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 reasonable
8 disclosure of the proposed increase and the opportunity to cancel the agreement
9 without penalty at or before the time of a delivery at the increased price. If a seller
10 proposes an increased price at the time of a delivery of goods or services and the
11 consumer elects to cancel the agreement, the seller shall pay the costs of returning
12 the goods or services.

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14 initiates under an agreement that is no longer in effect when the seller initiates the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

16 (d) Offer a consumer a prize or prize opportunity or free or reduced-price goods
17 or services, the acceptance of which commits the consumer to receive or pay for other
18 consumer goods or services, unless the seller makes a disclosure of that commitment
19 at or before the time the consumer agrees to purchase the goods or services.

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

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1 **(3) EXCEPTIONS.** (a) Subsection (2) does not apply to the conduct of an agent
2 or representative of a seller when providing billing services if the agent or
3 representative did not know or have reason to know that its conduct violates sub. (2).

4 (b) Subsection (2) (a) and (b) do not apply to any of the following:

5 1. A negative option plan, as defined in 16 CFR 425.1, if the negative option
6 plan meets the requirements of 16 CFR 425.1.

7 2. A contractual plan or arrangement under which a seller, on a periodic basis,
8 ships a similar type of goods to a consumer who has consented in advance to receive
9 the goods on a periodic basis, if the plan or arrangement does not impose a binding
10 commitment period or require a minimum purchase amount.

11 **(4) ACCEPTANCE OF FREE GOODS OR SERVICES.** For purposes of sub. (2), the
12 acceptance of free goods or services does not, of itself, constitute an agreement to
13 purchase or lease the goods or services.

14 **(5m) PENALTIES AND REMEDIES.** (a) The department may exercise its authority
15 under ss. 93.14 and 93.15 to investigate violations of this section.

16 (b) Any person suffering pecuniary loss because of a violation of this section
17 may commence an action to recover the pecuniary loss. If the person prevails, the
18 person shall recover twice the amount of the pecuniary loss, or \$200 for each
19 violation, whichever is greater, together with costs, including reasonable attorney
20 fees.

21 (c) The department may commence an action in the name of the state to restrain
22 by temporary or permanent injunction a violation of this section. Before entry of final
23 judgment, the court may make any necessary orders to restore to a person any
24 pecuniary loss suffered by the person because of the violation.

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1 (d) The department or a district attorney may commence an action in the name
2 of the state to recover a forfeiture to the state of not less than \$100 nor more than
3 \$10,000 for each violation of this section.

4 (e) A person who violates this section is subject to a fine of not less than \$25 nor
5 more than \$5,000 or imprisonment not to exceed one year or both for each violation.

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

7 165.25 (4) (ar) The department of justice shall furnish all legal services
8 required by the department of agriculture, trade and consumer protection relating
9 to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,
10 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50
11 and, 100.51, and 100.195 and chs. 126, 136, 344, 704, 707, and 779, together with any
12 other services as are necessarily connected to the legal services.

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

14 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.195 (5m)
15 (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 115.80 (9), 281.36 (2) (b) 1., 767.33 (4) (d),
16 769.313, 814.025, 814.245, 895.035 (4), 895.10 (3), 895.75 (3), 895.77 (2), 895.79 (3),
17 895.80 (3), 943.212 (2) (b), 943.245 (2) (d), and 943.51 (2) (b), when allowed costs shall
18 be as follows:

19 **SECTION 6. Initial applicability.**

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

22 **SECTION 7. Effective date.**

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

25 (END)