

2005 ASSEMBLY BILL 574

July 21, 2005 – Introduced by Representatives JESKEWITZ, BALLWEG, BLACK, GRIGSBY, HINES, KERKMAN, KESTELL, LEHMAN, LEMAHIEU, MOLEPSKE, MUSSER, NASS, OTT, POPE-ROBERTS, TOWNSEND, TURNER, VAN ROY and VRAKAS, cosponsored by Senators OLSEN, RISSER and WIRCH. Referred to Committee on Small Business.

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 and providing penalties.

Analysis by the Legislative Reference Bureau

This bill prohibits certain billing practices by sellers and lessors of consumer goods or services. 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 Billing a consumer for consumer goods under an agreement that is no longer in effect.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 at or before the time the consumer agrees to purchase the goods or services.
5. Misrepresenting to a consumer that the consumer's failure to reject or return a delivery of consumer goods or services obligates the consumer to pay for the goods or services.

ASSEMBLY BILL 574

Under the bill, these prohibitions do not apply to the conduct of an agent or representative of a seller when providing billing services if the agent or representative did not know or have reason to know that its conduct violates the prohibitions. The bill also exempts certain contracts that are regulated under federal law. The bill's definition of consumer goods or services excludes health care, motor vehicles, and cable and satellite television service.

The bill specifically regulates lawn care service contracts. Lawn care services under the bill, consists 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 or oral 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 or oral 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. The bill allows an individual to bring a civil action for violation of these laws.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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 574

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 (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.

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

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

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

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

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

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

ASSEMBLY BILL 574

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.

ASSEMBLY BILL 574

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

15 **100.197 Lawn care service contracts. (1) DEFINITIONS.** In this section:

16 (a) “Consumer” means an individual to whom a provider sells or leases, or offers
17 to sell or lease, lawn care service.

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

20 1. Application of a fertilizer, a pesticide, or a soil or plant additive intended to
21 promote plant growth or health.

22 2. A plant mowing or trimming service.

23 (cm) “Oral disclosure” means a clear oral statement that is designed to be
24 readily understood by the consumer.

ASSEMBLY BILL 574

1 (d) “Provider” means a person who sells or leases, or offers to sell or lease, lawn
2 care service to consumers.

3 (e) “Written disclosure” means a clear written statement that may be retained
4 by the consumer and that is designed to be readily noticed and understood by the
5 consumer.

6 **(2) CONTINUING CONTRACT; REQUIRED TERMS; ANNUAL DISCLOSURE.** (a) No contract
7 for lawn care service may be in effect for more than one year unless, in the 2nd and
8 any subsequent year, the provider makes a written disclosure or an oral disclosure
9 at least 30 days before providing lawn care service under the contract in that year.

10 (b) A written disclosure or an oral disclosure under this subsection shall include
11 all of the following information:

12 1. The lawn care service included in the contract and the price and frequency
13 of the lawn care service.

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

15 (c) A contract for lawn care service that may be in effect for more than one year
16 shall permit the consumer to cancel the contract, at no cost to the consumer, if the
17 consumer cancels within 30 days after receiving a written disclosure or an oral
18 disclosure from the provider.

19 (d) The provider shall keep a copy of all written disclosures and a record of all
20 oral disclosures that are made in accordance with this subsection.

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.

ASSEMBLY BILL 574

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 to recover 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 a person any pecuniary loss suffered by the person
10 because of the violation.

11 **(4) CIVIL FORFEITURE.** The department or a district attorney may commence an
12 action in the name of the state to recover a forfeiture to the state of not less than \$100
13 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 **SECTION 4.** 165.25 (4) (ar) of the statutes is amended to read:

18 165.25 **(4)** (ar) The department of justice shall furnish all legal services
19 required by the department of agriculture, trade and consumer protection relating
20 to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,
21 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50
22 ~~and, 100.51, 100.95, and 100.97~~ and chs. 126, 136, 344, 704, 707, and 779, together
23 with any other services as are necessarily connected to the legal services.

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

