

FRIDAY

ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2003 ASSEMBLY BILL 308

2005 Bill

Lps: Please PWF

h: 1/29/05
Droter

October 22, 2003 - Offered by COMMITTEE ON SMALL BUSINESS.

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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.

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

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

6 100.195 Unfair billing for consumer goods or services. (1) DEFINITIONS.

7 In this section:

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

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} 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:

seller bills the consumer

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 (b) (2)(m) EXCEPTION. Subsection (2) does not apply to the conduct of an agent or
23 representative of a seller when providing billing services if the agent or
24 representative did not know or have reason to know that its conduct violates sub. (2).

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

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RULES. (a) The department shall promulgate rules for the regulation of sales plans in which the delivery of consumer goods or services occurs before the consumer agrees to purchase or lease the consumer goods or services.

(b) The secretary shall appoint an advisory committee to make recommendations regarding the content and scope of any rule promulgated under par. (a). The recommendations of the advisory committee, if any, shall be submitted to the board of agriculture, trade and consumer protection and to the presiding officer of each house of the legislature as part of the report required under s. 227.19 (2). The advisory committee shall consist of the attorney general or his or her designee and the following persons appointed by the secretary:

1. One or more persons who are consumers in this state.
2. One or more persons who are employed in this state by a direct marketing employer.
3. One or more persons who represent senior citizens.

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 service.

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

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

1 2. A plant mowing or trimming service.

2 (cm) "Oral disclosure" means a clear statement that is designed to be readily
3 understood by the consumer.

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 written statement that may be retained
7 by the consumer and that is designed to be readily noticed and understood by the
8 consumer.

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

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

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

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

18 (c) A contract for lawn care service that may be in effect for more than one year
19 shall ~~allow~~ ^{permit} the consumer ~~the right~~ to cancel the contract, at no cost to the consumer,
20 if the consumer cancels within 30 days after receiving a written disclosure or an oral
21 disclosure from the provider.

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

24 SECTION 3. 100.198 of the statutes is created to read:

100.198 Unfair billing; lawn care service; penalties and remedies. (1)

INVESTIGATION. The department may exercise its authority under ss. 93.14 and 93.15 to investigate violations of s. 100.195 or 100.197.

(2) CIVIL ACTIONS BY PRIVATE PERSONS. Any person suffering pecuniary loss because of a violation of s. 100.195 or 100.197 may commence an action for the pecuniary loss. If the person prevails, the person shall recover twice the amount of the pecuniary loss, or \$200 for each violation, whichever is greater, together with costs, including reasonable attorney fees.

(3) INJUNCTION AND RESTITUTION. The department may commence an action in the name of the state to restrain by temporary or permanent injunction a violation of s. 100.195 or 100.197. Before entry of final judgment, the court may make any necessary orders to restore to any person any pecuniary loss suffered by the person because of the violation.

(4) CIVIL FORFEITURE. The department or any district attorney may commence an action in the name of the state to recover a forfeiture to the state of not less than \$100 nor more than \$10,000 for each violation of s. 100.195 or 100.197.

(5) CRIMINAL PENALTIES. A person who violates s. 100.195 or 100.197 is subject to a fine of not less than \$25 nor more than \$5,000 or imprisonment not to exceed one year or both for each violation.

(6) ADDITIONAL REMEDIES. Sections 100.195 and 100.197 do not preempt the administration or enforcement of s. 100.18 or 100.20. Practices in violation of s. 100.195 or 100.197 may also constitute unfair methods of competition or unfair trade practices under s. 100.20 or fraudulent representations under s. 100.18.

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

to recover

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Insert A:

Analysis by the Legislative Reference Bureau

or services This bill prohibits certain billing practices by sellers and lessors of consumer goods. 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 *or return* a delivery of consumer goods or services obligates the consumer to pay for the goods or services. ✓

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's definition of consumer goods *or* services excludes health care, motor vehicles, and cable and satellite television service. ✓

*** The bill requires *that* the Department of Agriculture, Trade and Consumer Protection (DATCP) *to* promulgate rules for the regulation of sale plans under which a seller delivers consumer goods or services before the consumer agrees to purchase or lease the goods or services. The bill requires *that* the secretary of DATCP *to* appoint an advisory committee to make recommendations for these rules. ✓

The bill specifically regulates lawn care service contracts. Lawn care service under the bill *s* 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 disclosure. ✓

or oral 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.

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.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1402/?dn
CTS:.....

WLJ

Representative Jeskewitz:

This is a redraft of the substitute amendment to 2003 AB^o 308. Please review it carefully to ensure it is consistent with your intent. Per your request, I have prepared the following comparison of the differences between this draft and 2003 AB^o 308 (as introduced):

1. Like AB^o 308, this draft prohibits a number of billing practices, including billing a consumer for goods or services the consumer has not agreed to purchase or lease; billing a consumer for goods or services at a price that is higher than previously agreed; and misrepresenting to a consumer that the failure to reject or return goods or services obligates the consumer to pay for those goods or services. Under this draft, the 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. AB^o 308 did not contain such an exception.

2. Like AB^o 308, this draft provides that a contract for lawn care services may not remain in effect for more than one year unless the service provider discloses, at least 30 days before providing services in the second and any subsequent years, (1) the services to be provided, (2) the price and frequency of those services, and (3) the consumer's right to cancel the contract within 30 days after receiving the disclosure. AB 308 required a service provider to make the disclosure on paper or in an electronic format that a consumer can retrieve, store, or print for future reference. Under this bill draft, the disclosure may be in written or oral. This draft also requires a service provider to keep a copy of all written disclosures and a record of all oral disclosures.

Please contact me if you have any questions or if you like to make any changes to the draft.

Christopher T. Sundberg
Legislative Attorney
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1402/1dn
CTS:wlj:jf

February 4, 2005

Representative Jeskewitz:

This is a redraft of the substitute amendment to 2003 AB-308. Please review it carefully to ensure it is consistent with your intent. Per your request, I have prepared the following comparison of the differences between this draft and 2003 AB-308 (as introduced):

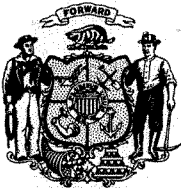
1. Like AB-308, this draft prohibits a number of billing practices, including billing a consumer for goods or services the consumer has not agreed to purchase or lease; billing a consumer for goods or services at a price that is higher than previously agreed; and misrepresenting to a consumer that the failure to reject or return goods or services obligates the consumer to pay for those goods or services. Under this draft, the 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. AB-308 did not contain such an exception.
2. Like AB-308, this draft provides that a contract for lawn care service may not remain in effect for more than one year unless the service provider discloses, at least 30 days before providing services in the second and any subsequent years, (1) the services to be provided, (2) the price and frequency of those services, and (3) the consumer's right to cancel the contract within 30 days after receiving the disclosure. AB-308 required a service provider to make the disclosure on paper or in an electronic format that a consumer can retrieve, store, or print for future reference. Under this bill, the disclosure may be written or oral. This bill also requires a service provider to keep a copy of all written disclosures and a record of all oral disclosures.

Please contact me if you have any questions or if you like to make any changes to the draft.

Christopher T. Sundberg
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3/1/05 1402 (Lesbiewitz)

Redraft (per Pam): remove provisions granting R/m authority + establishing advisory committee



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1402/4
CTS:wlj:jt
2 RMR

2005 BILL

ln: 3/2/05

D-note

Other

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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 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 with every advertisement of the free or reduced-price 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.

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

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representative did not know or have reason to know that its conduct violates the prohibitions. The bill's definition of consumer goods or services excludes health care, motor vehicles, and cable and satellite television service.

The bill requires the Department of Agriculture, Trade and Consumer Protection (DATCP) to promulgate rules for the regulation of sale plans under which a seller delivers consumer goods or services before the consumer agrees to purchase or lease the goods or services. The bill requires the secretary of DATCP to appoint an advisory committee to make recommendations for these rules.

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. 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.

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

BILL

1 representing that a payment obligation has been or may be referred to a collection
2 agency or credit reporting agency.

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

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

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

10 2. Telecommunications services or cable television services.

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

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

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

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

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

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

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

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

BILL**SECTION 1**

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

3 (2) PROHIBITIONS. No seller may:

4 (a) Bill a consumer for consumer goods or services that the consumer has not
5 agreed to purchase or lease.

6 (b) Bill a consumer for consumer goods or services at a price that is higher than
7 a price previously agreed upon between the seller and consumer unless the consumer
8 agrees to the higher price before the seller bills the consumer. This paragraph does
9 not prohibit a seller from increasing the price of goods or services under a sale or lease
10 agreement of indefinite duration if the seller gives the consumer advance reasonable
11 disclosure of the proposed increase and the opportunity to cancel the agreement
12 without penalty prior to a delivery at the increased price.

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 in connection with every announcement or advertisement of the prize or prize
20 opportunity or free or reduced-price goods or services.

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

BILL

1 (3) EXCEPTION. Subsection (2) does not apply to the conduct of an agent or
2 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 (4) ACCEPTANCE OF FREE GOODS OR SERVICES. For purposes of sub. (2), the
5 acceptance of free goods or services does not, of itself, constitute an agreement to
6 purchase or lease the goods or services.

7 (5) RULES. (a) The department shall promulgate rules for the regulation of
8 sales plans in which the delivery of consumer goods or services occurs before the
9 consumer agrees to purchase or lease the consumer goods or services.

10 (b) The secretary shall appoint an advisory committee to make
11 recommendations regarding the content and scope of any rule promulgated under
12 par. (a). The recommendations of the advisory committee, if any, shall be submitted
13 to the board of agriculture, trade and consumer protection and to the presiding officer
14 of each house of the legislature as part of the report required under s. 227.19 (2). The
15 advisory committee shall consist of the attorney general or his or her designee and
16 the following persons appointed by the secretary:

- 17 1. One or more persons who are consumers in this state.
- 18 2. One or more persons who are employed in this state by a direct marketing
19 employer.
- 20 3. One or more persons who represent senior citizens.

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

22 **100.197 Lawn care service contracts. (1) DEFINITIONS.** In this section:

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

BILL

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

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

5 2. A plant mowing or trimming service.

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

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

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

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

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

19 1. The lawn care service included in the contract and the price and frequency
20 of the lawn care service.

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

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

BILL

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

3 **SECTION 3.** 100.198 of the statutes is created to read:

4 **100.198 Unfair billing; lawn care service; penalties and remedies. (1)**

5 INVESTIGATION. The department may exercise its authority under ss. 93.14 and 93.15
6 to investigate violations of s. 100.195 or 100.197.

7 **(2) CIVIL ACTIONS BY PRIVATE PERSONS.** Any person suffering pecuniary loss
8 because of a violation of s. 100.195 or 100.197 may commence an action to recover the
9 pecuniary loss. If the person prevails, the person shall recover twice the amount of
10 the pecuniary loss, or \$200 for each violation, whichever is greater, together with
11 costs, including reasonable attorney fees.

12 **(3) INJUNCTION AND RESTITUTION.** The department may commence an action in
13 the name of the state to restrain by temporary or permanent injunction a violation
14 of s. 100.195 or 100.197. Before entry of final judgment, the court may make any
15 necessary orders to restore to a person any pecuniary loss suffered by the person
16 because of the violation.

17 **(4) CIVIL FORFEITURE.** The department or a district attorney may commence an
18 action in the name of the state to recover a forfeiture to the state of not less than \$100
19 nor more than \$10,000 for each violation of s. 100.195 or 100.197.

20 **(5) CRIMINAL PENALTIES.** A person who violates s. 100.195 or 100.197 is subject
21 to a fine of not less than \$25 nor more than \$5,000 or imprisonment not to exceed one
22 year or both for each violation.

23 **(6) ADDITIONAL REMEDIES.** Sections 100.195 and 100.197 do not preempt the
24 administration or enforcement of s. 100.18 or 100.20. Practices in violation of s.

BILL

1 100.195 or 100.197 may also constitute unfair methods of competition or unfair trade
2 practices under s. 100.20 or fraudulent representations under s. 100.18.

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

4 165.25 (4) (ar) The department of justice shall furnish all legal services
5 required by the department of agriculture, trade and consumer protection relating
6 to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,
7 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50
8 and, 100.51, 100.95, and 100.97 and chs. 126, 136, 344, 704, 707, and 779, together
9 with any other services as are necessarily connected to the legal services.

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

11 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.198 (2),
12 100.30 (5m), 106.50 (6) (i) and (6m) (a), 115.80 (9), 281.36 (2) (b) 1., 767.33 (4) (d),
13 769.313, 814.025, 814.245, 895.035 (4), 895.10 (3), 895.75 (3), 895.77 (2), 895.79 (3),
14 895.80 (3), 943.212 (2) (b), 943.245 (2) (d), and 943.51 (2) (b), when allowed costs shall
15 be as follows:

16 **SECTION 6. Initial applicability.**

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

19 (2) LAWN CARE SERVICE CONTRACTS. The treatment of section 100.197 of the
20 statutes first applies to contracts entered into on the effective date of this subsection.

21 **SECTION 7. Effective date.**

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

24 (END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1402/2dn
CTS:wlj:jf

Representative Jeskewitz:

This is a redraft of LRB-1402/1. This version eliminates the requirement that DATCP promulgate rules regulating sale plans involving delivery of goods or services before a consumer has agreed to lease or purchase the goods or services. Please contact me if you have any questions or if you would like to make further changes to the draft.

Christopher T. Sundberg
Legislative Attorney
Phone: (608) 266-9739
E-mail: christopher.sundberg@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1402/2dn
CTS:wlj:rs

March 2, 2005

Representative Jeskewitz:

This is a redraft of LRB-1402/1. This version eliminates the requirement that DATCP promulgate rules regulating sales plans involving delivery of goods or services before a consumer has agreed to lease or purchase the goods or services. Please contact me if you have any questions or if you would like to make further changes to the draft.

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Sundberg, Christopher

From: Matthews, Pam
Sent: Tuesday, May 31, 2005 3:58 PM
To: Sundberg, Christopher
Subject: LRB 1402

Hi Chris,

Sue wants to make the following changes to LRB 1402:

p. 3, lines 16-17: (1)(e) "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.~~ ✓

4, line 16: (2)(d) Offer a consumer a prize or prize opportunity or free or reduced-price goods or services, if the acceptance of which commits the consumer to receive or pay for other consumer goods or services, unless the seller makes a disclosure of that commitment at the time or before the consumer agrees to purchase the goods or services. ✓

p. 4, line 9: (2)(b) Bill a consumer for consumer goods or services at a price that is higher than a price previously agreed upon between the seller and consumer unless the consumer agrees to the higher price before the seller bills the consumer. This paragraph does not prohibit a seller from increasing the price of goods or services under a sale or lease agreement of indefinite duration if the seller gives the consumer ~~advance~~ ✓ reasonable disclosure of the proposed increase and the opportunity to cancel the agreement without penalty prior to ~~or with~~ a delivery at the increased price. In the event that the proposed increase in price is provided with a delivery and the consumer decides to cancel the agreement, the seller must pay for the cost of returning any goods or services. ✓

p. 4, line 24: (b) Subsections 100.195 (2)(a) and (b) do not apply to a negative option plan regulated by and in compliance with 16 CFR 425; and do not apply to other contractual plans or arrangements such as continuity plans, subscription arrangements, standing order arrangements, supplements, and series arrangements under which the seller ships similar special interest goods or services to a consumer who has consented in advance to receive the goods or services on a periodic basis with no binding commitment period and no minimum purchase amount. ?

p. 7, lines 7-10: ~~(6) Additional remedies. Sections 100.195 and 100.197 do not preempt the administration or enforcement of s. 100.18 or 100.20. Practices in violation of s. 100.195 or 100.197 may also constitute unfair methods of competition or unfair trade practices under s. 100.20 or fraudulent representations under s. 100.18.~~ ✓

If any of these changes are unclear, please give me a call.

Thanks,

Pam

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quantities sufficient to meet reasonably anticipated demand;

(b) The food retailer offers a "raincheck" for the advertised products;

(c) The food retailer offers at the advertised price or at a comparable price reduction a similar product that is at least comparable in value to the advertised product; or

(d) The food retailer offers other compensation at least equal to the advertised value.

DISSENTING STATEMENT OF COMMISSIONER
CALVANI

I dissent from the Commission's decision today to amend the Retail Food Store Advertising and Marketing Practices Trade Regulation Rule (the Unavailability Rule). The Commission has acknowledged today that the original Unavailability Rule is not justified, and approved amendments designed to lower its costs to grocers. However, in my view, common sense tells us that in the highly competitive grocery store business, where consumers return week after week to the same store, any supermarket that frustrates its customers through unavailability of advertised items will not long keep those customers. In other words, it is clear to me that existing market forces adequately police unavailability, and that, therefore, no Federal Trade Commission rule is necessary, amended or otherwise. The Commission's action today to retain even an amended Unavailability Rule does not conform to common sense.

STATEMENT OF COMMISSIONER ANDREW J.
STRENIO, JR., RETAIL FOOD STORE ADVERTISING AND MARKETING PRACTICES RULE

Although revising the "Unavailability Rule" has a certain intuitive appeal, there is insufficient evidence on the record to conclude that these changes will result in net consumer benefits. Accordingly, I could not support amending the Rule in this manner. However, now that the step has been taken, it is to be hoped that experience will bear out the optimistic expectations of the Commission majority.

[54 FR 35467, Aug. 28, 1989]

PART 425—USE OF PRENOTIFICATION NEGATIVE OPTION PLANS

§ 425.1 The rule.

(a) In connection with the sale, offering for sale, or distribution of goods and merchandise in or affecting com-

merce, as "commerce" is defined in the Federal Trade Commission Act, it is an unfair or deceptive act or practice, for a seller in connection with the use of any negative option plan to fail to comply with the following requirements:

(1) Promotional material shall clearly and conspicuously disclose the material terms of the plan, including:

(i) That aspect of the plan under which the subscriber must notify the seller, in the manner provided for by the seller, if he does not wish to purchase the selection;

(ii) Any obligation assumed by the subscriber to purchase a minimum quantity of merchandise;

(iii) The right of a contract-complete subscriber to cancel his membership at any time;

(iv) Whether billing charges will include an amount for postage and handling;

(v) A disclosure indicating that the subscriber will be provided with at least ten (10) days in which to mail any form, contained in or accompanying an announcement identifying the selection, to the seller;

(vi) A disclosure that the seller will credit the return of any selections sent to a subscriber, and guarantee to the Postal Service or the subscriber postage to return such selections to the seller when the announcement and form are not received by the subscriber in time to afford him at least ten (10) days in which to mail his form to the seller;

(vii) The frequency with which the announcements and forms will be sent to the subscriber and the maximum number of announcements and forms which will be sent to him during a 12-month period.

(2) Prior to sending any selection, the seller shall mail to its subscribers, within the time specified by paragraph (a)(3) of this section:

(i) An announcement identifying the selection;

(ii) A form, contained in or accompanying the announcement, clearly and conspicuously disclosing that the subscriber will receive the selection identified in the announcement unless he instructs the seller that he does not

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§ 425.1

want the selection, designating a procedure by which the form may be used for the purpose of enabling the subscriber so to instruct the seller, and specifying either the return date or the mailing date.

(3) The seller shall mail the announcement and form either at least twenty (20) days prior to the return date or at least fifteen (15) days prior to the mailing date, or provide a mailing date at least ten (10) days after receipt by the subscriber, provided, however, that whichever system the seller chooses for mailing the announcement and form, such system must provide the subscriber with at least ten (10) days in which to mail his form.

(b) In connection with the sale or distribution of goods and merchandise in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, it shall constitute an unfair or deceptive act or practice for a seller in connection with the use of any negative option plan to:

(1) Refuse to credit, for the full invoiced amount thereof, the return of any selection sent to a subscriber, and to guarantee to the Postal Service or the subscriber postage adequate to return such selection to the seller, when:

(i) The selection is sent to a subscriber whose form indicating that he does not want to receive the selection was received by the seller by the return date or was mailed by the subscriber by the mailing date;

(ii) Such form is received by the seller after the return date, but has been mailed by the subscriber and post-marked at least 3 days prior to the return date;

(iii) Prior to the date of shipment of such selection, the seller has received from a contract-complete subscriber, a written notice of cancellation of membership adequately identifying the subscriber; however, this provision is applicable only to the first selection sent to a canceling contract-complete subscriber after the seller has received written notice of cancellation. After the first selection shipment, all selection shipments thereafter are deemed to be unordered merchandise pursuant to section 3009 of the Postal Reorganization Act of 1970, as adopted by the

Federal Trade Commission in its public notice, dated September 11, 1970;

(iv) The announcement and form are not received by the subscriber in time to afford him at least ten (10) days in which to mail his form.

(2) Fail to notify a subscriber known by the seller to be within any of the circumstances set forth in paragraphs (b)(1)(i) through (iv) of this section, that if the subscriber elects, the subscriber may return the selection with return postage guaranteed and receive a credit to his account.

(3) Refuse to ship within 4 weeks after receipt of an order merchandise due subscribers as introductory and bonus merchandise, unless the seller is unable to deliver the merchandise originally offered due to unanticipated circumstances beyond the seller's control and promptly makes a reasonably equivalent alternative offer. However, where the subscriber refuses to accept alternatively offered introductory merchandise, but instead insists upon termination of his membership due to the seller's failure to provide the subscriber with his originally requested introductory merchandise, or any portion thereof, the seller must comply with the subscriber's request for cancellation of membership, provided the subscriber returns to the seller any introductory merchandise which already may have been sent him.

(4) Fail to terminate promptly the membership of a properly identified contract-complete subscriber upon his written request.

(5) Ship, without the express consent of the subscriber, substituted merchandise for that ordered by the subscriber.

(c) For the purposes of this part:

(1) *Negative option plan* refers to a contractual plan or arrangement under which a seller periodically sends to subscribers an announcement which identifies merchandise (other than annual supplements to previously acquired merchandise) it proposes to send to subscribers to such plan, and the subscribers thereafter receive and are billed for the merchandise identified in each such announcement, unless by a date or within a time specified by the seller with respect to each such announcement the subscribers, in conformity with the provisions of such

plan, instruct the seller not to send the identified merchandise.

(2) *Subscriber* means any person who has agreed to receive the benefits of, and assume the obligations entailed in, membership in any negative option plan and whose membership in such negative option plan has been approved and accepted by the seller.

(3) *Contract-complete subscriber* refers to a subscriber who has purchased the minimum quantity of merchandise required by the terms of membership in a negative option plan.

(4) *Promotional material* refers to an advertisement containing or accompanying any device or material which a prospective subscriber sends to the seller to request acceptance or enrollment in a negative option plan.

(5) *Selection* refers to the merchandise identified by a seller under any negative option plan as the merchandise which the subscriber will receive and be billed for, unless by the date, or within the period specified by the seller, the subscriber instructs the seller not to send such merchandise.

(6) *Announcement* refers to any material sent by a seller using a negative option plan in which the selection is identified and offered to subscribers.

(7) *Form* refers to any form which the subscriber returns to the seller to instruct the seller not to send the selection.

(8) *Return date* refers to a date specified by a seller using a negative option plan as the date by which a form must be received by the seller to prevent shipment of the selection.

(9) *Mailing date* refers to the time specified by a seller using a negative option plan as the time by or within which a form must be mailed by a subscriber to prevent shipment of the selection.

(38 Stat. 717, as amended; 15 U.S.C. 41-58)

[38 FR 4896; Feb. 22, 1973; 38 FR 6991, Mar. 15, 1973, as amended at 63 FR 44562, Aug. 20, 1998]

**PART 429—RULE CONCERNING
COOLING-OFF PERIOD FOR
SALES MADE AT HOMES OR AT
CERTAIN OTHER LOCATIONS**

Sec.
429.0 Definitions.

429.1 The Rule.

429.2 Effect on State laws and municipal ordinances.

429.3 Exemptions.

AUTHORITY: Sections 1-23, FTC Act, 15 U.S.C. 41-58.

§ 429.0 Definitions.

For the purposes of this part the following definitions shall apply:

(a) *Door-to-Door Sale*—A sale, lease, or rental of consumer goods or services with a purchase price of \$25 or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller (e.g., sales at the buyer's residence or at facilities rented on a temporary or short-term basis, such as hotel or motel rooms, convention centers, fairgrounds and restaurants, or sales at the buyer's workplace or in dormitory lounges). The term *door-to-door sale* does not include a transaction:

(1) Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis; or

(2) In which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act (15 U.S.C. 1635) or regulations issued pursuant thereto; or

(3) In which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within 3 business days; or

(4) Conducted and consummated entirely by mail or telephone; and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services; or