



State of Wisconsin
2005 - 2006 LEGISLATURE

lu: 6/3/05
Due: soon

113
LRB-1402/21
CTS:wlj:rs
↑
stays

2005 BILL

regen

D-N ✓

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 Billing a consumer for consumer goods under an agreement that is no longer in effect.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 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

BILL

- 2 -

1677 The bill also exempts certain contracts that are regulated under federal law

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

BILL

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 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:

BILL

SECTION 1

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 advance reasonable
8 disclosure of the proposed increase and the opportunity to cancel the agreement
9 without penalty prior to a delivery at the increased price.

at or before the time of

INS 4-9

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 a prize or prize opportunity or free or reduced-price goods
14 or services, the acceptance of which commits the consumer to receive or pay for other
15 consumer goods or services, unless the seller makes a disclosure of that commitment
16 in connection with every announcement or advertisement of the prize or prize
17 opportunity or free or reduced-price goods or services.

at or before the time the consumer agrees to purchase the 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) 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).

INS 4-24

BILL

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

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

5 **100.197 Lawn care service contracts. (1) DEFINITIONS.** In this section:

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

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

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

12 2. A plant mowing or trimming service.

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

15 (d) "Provider" means a person who sells or leases, or offers to sell or lease, lawn
16 care service to consumers.

17 (e) "Written disclosure" means a clear written statement that may be retained
18 by the consumer and that is designed to be readily noticed and understood by the
19 consumer.

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

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

BILL**SECTION 2**

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

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

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

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

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

11 **100.198 Unfair billing; lawn care service; penalties and remedies. (1)**

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

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

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

BILL

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

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

7 (6) ADDITIONAL REMEDIES. Sections 100.195 and 100.197 do not preempt the
8 administration or enforcement of s. 100.18 or 100.20. Practices in violation of s.
9 100.195 or 100.197 may also constitute unfair methods of competition or unfair trade
10 practices under s. 100.20 or fraudulent representations under s. 100.18.

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

12 165.25 (4) (ar) The department of justice shall furnish all legal services
13 required by the department of agriculture, trade and consumer protection relating
14 to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,
15 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50
16 and, 100.51, 100.95, and 100.97 and chs. 126, 136, 344, 704, 707, and 779, together
17 with any other services as are necessarily connected to the legal services.

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

19 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.198 (2),
20 100.30 (5m), 106.50 (6) (i) and (6m) (a), 115.80 (9), 281.36 (2) (b) 1., 767.33 (4) (d),
21 769.313, 814.025, 814.245, 895.035 (4), 895.10 (3), 895.75 (3), 895.77 (2), 895.79 (3),
22 895.80 (3), 943.212 (2) (b), 943.245 (2) (d), and 943.51 (2) (b), when allowed costs shall
23 be as follows:

24 **SECTION 6. Initial applicability.**

**2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1402/3ins
CTS:.....

1 **Insert 4-9:**

2 If a seller proposes an increased price at the time of a delivery of goods or services
3 and the consumer elects to cancel the agreement, the seller shall pay the costs of
4 returning the goods or services.

5 **Insert 4-24:**

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

- 7 1. A negative option plan, as defined in 16 CFR 425.1, if the negative option
8 plan meets the requirements of 16 CFR 425.1.
- 9 2. A contractual plan or arrangement under which a seller, on a periodic basis,
10 ships a similar type of goods to a consumer who has consented in advance to receive
11 the goods on a periodic basis, if the plan or arrangement does not impose a binding
12 commitment period or require a minimum purchase amount.

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

LRB-1402/3dn

CTS:.....

Wlj

Representative Jeskewitz:

This is a redraft of LRB-1402/2 based on instructions from Pamela Matthews.

Please note that I have not included in proposed s. 100.195 (3) (b) the enumerated items "continuity plans," "subscription arrangements," "standing order arrangements," "supplements," and "series arrangements." Long-standing LRB policy discourages enumerations, because they may undercut a statute's force by raising a question as to whether the statute applies to examples not enumerated or whether the statute applies only to examples of the same general type enumerated. This is particularly problematic where, as here, the enumerations seem vague. Is proposed s. 100.195 (3) (b) an accurate description of the types of arrangements that you have in mind?

Also, because these excepted arrangements are limited to shipments to a consumer, I have not included services in proposed s. 100.195 (3) (b). Is this okay?

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-1402/3dn
CTS:wlj:rs

June 6, 2005

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Christopher T. Sundberg
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E-mail: christopher.sundberg@legis.state.wi.us



2005 BILL

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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

BILL

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.

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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.

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

BILL

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

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

6 2. Telecommunications services or cable television services.

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

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

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

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

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

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

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

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

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

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

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

BILL**SECTION 1**

1 (b) Bill a consumer for consumer goods or services at a price that is higher than
2 a price previously agreed upon between the seller and consumer unless the consumer
3 agrees to the higher price before the seller bills the consumer. This paragraph does
4 not prohibit a seller from increasing the price of goods or services under a sale or lease
5 agreement of indefinite duration if the seller gives the consumer reasonable
6 disclosure of the proposed increase and the opportunity to cancel the agreement
7 without penalty at or before the time of a delivery at the increased price. If a seller
8 proposes an increased price at the time of a delivery of goods or services and the
9 consumer elects to cancel the agreement, the seller shall pay the costs of returning
10 the goods or services.

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

14 (d) Offer a consumer a prize or prize opportunity or free or reduced-price goods
15 or services, the acceptance of which commits the consumer to receive or pay for other
16 consumer goods or services, unless the seller makes a disclosure of that commitment
17 at or before the time the consumer agrees to purchase the 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) EXCEPTIONS.** (a) Subsection (2) does not apply to the conduct of an agent
23 or 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).

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

BILL

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

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

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

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

11 **100.197 Lawn care service contracts. (1) DEFINITIONS.** In this section:

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

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

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

18 2. A plant mowing or trimming service.

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

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

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

BILL**SECTION 2**

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

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

7 1. The lawn care service included in the contract and the price and frequency
8 of the lawn care service.

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

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

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

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

17 **100.198 Unfair billing; lawn care service; penalties and remedies. (1)**

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

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

BILL

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

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

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

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

13 165.25 (4) (ar) The department of justice shall furnish all legal services
14 required by the department of agriculture, trade and consumer protection relating
15 to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,
16 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50
17 and, 100.51, 100.95, and 100.97 and chs. 126, 136, 344, 704, 707, and 779, together
18 with any other services as are necessarily connected to the legal services.

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

20 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.198 (2),
21 100.30 (5m), 106.50 (6) (i) and (6m) (a), 115.80 (9), 281.36 (2) (b) 1., 767.33 (4) (d),
22 769.313, 814.025, 814.245, 895.035 (4), 895.10 (3), 895.75 (3), 895.77 (2), 895.79 (3),
23 895.80 (3), 943.212 (2) (b), 943.245 (2) (d), and 943.51 (2) (b), when allowed costs shall
24 be as follows:

25 **SECTION 6. Initial applicability.**

Sundberg, Christopher

From: Matthews, Pam
Sent: Tuesday, June 14, 2005 4:40 PM
To: Sundberg, Christopher
Subject: FW: Negative Option Bill - LRB 1402

Hi Chris - I sent out the last bill draft to the people we have been working with and they noticed an error in the LRB analysis. Can you please make the change noted below. Thanks.

*Pamela B. Matthews
Research Assistant
Office of Representative Sue Jeskewitz*

*Madison: 608.266.3796
Toll free: 888.529.0024
pam.matthews@legis.state.wi.us*

From: Eric Petersen [mailto:eric.petersen@capitolconsultants.net]
Sent: Sunday, June 12, 2005 11:54 PM
To: Matthews, Pam
Subject: Negative Option Bill

Pam:

I do not know if you got these comments, but in the event that you did not, here they are:

1. On page 1, in the LRB analysis, need to make #4 consistent with change to statutory language. Should read: 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.

2. Yes, in response to the drafters question, "services" should be included in proposed s. 100.195(3)(b). Such a change will make the paragraph consistent with rest of the statute. Accordingly, should read "goods or services" not merely "goods."

Please let me know your reaction to them. Thank you again for all your help.

Lief, Madelon

From: Kunkel, Mark
Sent: Tuesday, June 14, 2005 4:36 PM
To: Lief, Madelon; Nelson, Robert P.

423.401

423.401 Credit card identification information.

423.401(1)

(1) Limitation. Except as provided in sub. (2), a merchant may not record a customer's address, telephone number or any other identification information as a condition for accepting a credit card as payment for a consumer credit transaction.

423.401(2)

(2) (intro.) Exceptions. A merchant may record a customer's address or telephone number if any of the following conditions exists:

423.401(2)(a)

(a) The credit card issuer does not require the merchant to obtain from the issuer prior authorization as to the availability of credit in order to complete the credit card transaction.

423.401(2)(b)

(b) The merchant requires the information for shipping, delivery, service orders or installation purposes or to notify the customer of a special order.

423.401(3)

(3) Remedies. Whoever violates this section is subject to the remedies and penalties under s. 425.303.

423.401 - ANNOT.

History: 1991 a. 158.

895.505 Disposal of records containing personal information.

895.505(1)

(1) (intro.) Definitions. In this section:

895.505(1)(a)

(a) "Credit card" has the meaning given in s. 421.301 (15).

895.505(1)(am)

(am) "Dispose" does not include a sale of a record or the transfer of a record for value.

895.505(1)(b)

(b) "Financial institution" means any bank, savings bank, savings and loan association or credit union that is authorized to do business under state or federal laws relating to financial institutions, any issuer of a credit card or any investment company.

895.505(1)(c)

(c) "Investment company" has the meaning given in s. 180.0103 (11e).

895.505(1)(d)

(d) "Medical business" means any organization or enterprise operated for profit or not for profit, including a sole proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, limited liability company or association, that possesses information, other than personnel records, relating to a person's physical or mental health, medical history or medical treatment.

895.505(1)(e)

(e) (intro.) "Personal information" means any of the following:

895.505(1)(e)1.

1. Personally identifiable data about an individual's medical condition, if the data are not generally considered to be public knowledge.

895.505(1)(e)2.

2. Personally identifiable data that contain an individual's account or customer number, account balance, balance owing, credit balance or credit limit, if the data relate to an individual's account or transaction with a financial institution.

895.505(1)(e)3.

3. Personally identifiable data provided by an individual to a financial institution upon opening an account or applying for a loan or credit.

895.505(1)(e)4.

4. Personally identifiable data about an individual's federal, state or local tax returns.

895.505(1)(f)

(f) "Personally identifiable" means capable of being associated with a particular individual through one or more identifiers or other information or circumstances.

895.505(1)(g)

(g) "Record" means any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics.

895.505(1)(h)

(h) "Tax preparation business" means any organization or enterprise operated for profit, including a sole proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, limited liability company or association, that for a fee prepares an individual's federal, state or local tax returns or counsels an individual regarding the individual's federal, state or local tax returns.

895.505(2)

(2) (intro.) Disposal of records containing personal information. A financial institution, medical business or tax preparation business may not dispose of a record containing personal information unless the financial institution, medical business, tax preparation business or other person under contract with the financial institution, medical business or tax preparation business does any of the following:

895.505(2)(a)

(a) Shreds the record before the disposal of the record.

895.505(2)(b)

(b) Erases the personal information contained in the record before the disposal of the record.

895.505(2)(c)

(c) Modifies the record to make the personal information unreadable before the disposal of the record.

895.505(2)(d)

(d) Takes actions that it reasonably believes will ensure that no unauthorized person will have access to the personal information contained in the record for the period between the record's disposal and the record's destruction.

895.505(3)

(3) Civil liability; disposal and use.

895.505(3)(a)

(a) A financial institution, medical business or tax preparation business is liable to a person whose personal information is disposed of in violation of sub. (2) for the amount of damages resulting from the violation.

895.505(3)(b)

(b) Any person who, for any purpose, uses personal information contained in a record that was disposed of by a financial institution, medical business or tax preparation business is liable to an individual who is the subject of the information and to the financial institution, medical business or tax preparation business that disposed of the record for the amount of damages resulting from the person's use of the information. This paragraph does not apply to a person who uses personal information with the authorization or consent of the individual who is the subject of the information.

895.505(4)

(4) Penalties; disposal and use.

895.505(4)(a)

(a) A financial institution, medical business or tax preparation business that violates sub. (2) may be required to forfeit not more than \$1,000. Acts arising out of the same incident or occurrence shall be a single violation.

895.505(4)(b)

(b) Any person who possesses a record that was disposed of by a financial institution, medical business or tax preparation business and who intends to use, for any purpose, personal information contained in the record may be fined not more than \$1,000 or imprisoned for not more than 90 days or both. This paragraph does not apply to a person who possesses a record with the authorization or consent of the individual whose personal information is contained in the record.

895.505 - ANNOT.

History: 1999 a. 9.

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2005 BILL

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 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

at or before the time the consumer agrees to purchase the

BILL

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.

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

BILL

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

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

6 2. Telecommunications services or cable television services.

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

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

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

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

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

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

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

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

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

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

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

BILL**SECTION 1**

1 (b) Bill a consumer for consumer goods or services at a price that is higher than
2 a price previously agreed upon between the seller and consumer unless the consumer
3 agrees to the higher price before the seller bills the consumer. This paragraph does
4 not prohibit a seller from increasing the price of goods or services under a sale or lease
5 agreement of indefinite duration if the seller gives the consumer reasonable
6 disclosure of the proposed increase and the opportunity to cancel the agreement
7 without penalty at or before the time of a delivery at the increased price. If a seller
8 proposes an increased price at the time of a delivery of goods or services and the
9 consumer elects to cancel the agreement, the seller shall pay the costs of returning
10 the goods or services.

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

14 (d) Offer a consumer a prize or prize opportunity or free or reduced-price goods
15 or services, the acceptance of which commits the consumer to receive or pay for other
16 consumer goods or services, unless the seller makes a disclosure of that commitment
17 at or before the time the consumer agrees to purchase the 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) EXCEPTIONS.** (a) Subsection (2) does not apply to the conduct of an agent
23 or 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).

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

BILL

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

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

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

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

11 **100.197 Lawn care service contracts. (1) DEFINITIONS.** In this section:

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

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

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

18 2. A plant mowing or trimming service.

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

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

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

BILL**SECTION 2**

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

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

7 1. The lawn care service included in the contract and the price and frequency
8 of the lawn care service.

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

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

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

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

17 **100.198 Unfair billing; lawn care service; penalties and remedies. (1)**
18 INVESTIGATION. The department may exercise its authority under ss. 93.14 and 93.15
19 to investigate violations of s. 100.195 or 100.197.

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

BILL

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

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

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

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

13 165.25 (4) (ar) The department of justice shall furnish all legal services
14 required by the department of agriculture, trade and consumer protection relating
15 to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,
16 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50
17 and, 100.51, 100.95, and 100.97 and chs. 126, 136, 344, 704, 707, and 779, together
18 with any other services as are necessarily connected to the legal services.

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

20 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.198 (2),
21 100.30 (5m), 106.50 (6) (i) and (6m) (a), 115.80 (9), 281.36 (2) (b) 1., 767.33 (4) (d),
22 769.313, 814.025, 814.245, 895.035 (4), 895.10 (3), 895.75 (3), 895.77 (2), 895.79 (3),
23 895.80 (3), 943.212 (2) (b), 943.245 (2) (d), and 943.51 (2) (b), when allowed costs shall
24 be as follows:

25 **SECTION 6. Initial applicability.**

Barman, Mike

From: Matthews, Pam
Sent: Monday, June 20, 2005 3:58 PM
To: LRB.Legal
Subject: Draft review: LRB 05-1402/4 Topic: Billing practices for consumer goods

It has been requested by <Matthews, Pam> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-1402/4 Topic: Billing practices for consumer goods