



1995 ASSEMBLY BILL 989

March 6, 1996 - Introduced by Representatives SILBAUGH, SKINDRUD, POWERS, GREEN, OWENS, PORTER, AINSWORTH, LADWIG, FREESE, HARS DORF, ALBERS, HAHN, KRUSICK, CARPENTER, MEYER, JOHNSRUD, TURNER, LORGE, OTTE, HUTCHISON, OLSEN, KREIBICH, DOBYNS, WIRCH, GUNDERSON and HASENOHRL, cosponsored by Senators BUETTNER, DRZEWIECKI, BRESKE and GROBSCHMIDT. Referred to Committee on Aging and Long-Term Care.

- 1 **AN ACT to create** 100.264 and 134.95 of the statutes; **relating to:** certain
2 fraudulent or unfair trade practices against elderly and disabled persons and
3 providing a penalty.

Analysis by the Legislative Reference Bureau

This bill creates a supplemental forfeiture for violation of certain consumer fraud and unfair trade practices laws. Under the bill, a court may impose this supplemental forfeiture if the court imposes a fine or forfeiture on a defendant for violating these laws and if the violation involved was perpetrated against an elderly person or a disabled person. The bill defines an elderly person as being one who is at least 62 years of age.

The supplemental forfeiture may not exceed \$10,000 and may be imposed only if elderly or disabled persons, as a group, are more likely to be harmed by the fraudulent or unfair activities or if an elderly or disabled person suffers a certain type of economic loss. These economic losses include:

1. Loss or encumbrance of the person's principal residence.
2. Loss of employment.
3. Loss of more than 25% of the property that the elderly or disabled person has set aside for retirement or for personal or family care or maintenance.
4. Loss of more than 25% of total future pension or retirement plan payments.
5. Loss of assets essential to the health or welfare of the elderly or handicapped person.

This supplemental forfeiture applies to fraudulent, unfair or otherwise illegal conduct related to various activities affecting consumers, including the following:

1. Drug advertising.
2. Food advertising.
3. Requiring purchases for receiving prizes.
4. Use of prize notices.
5. Selling and advertising of telecommunications services.

6. Contracting for dating services or with fitness centers.
7. Contracting for future purchases or services, such as buyers' clubs.
8. Selling merchandise at less than cost in order to induce other purchases.
9. Mail-order selling.

10. Other unfair trade practices regulated by the department of agriculture, trade and consumer protection (DATCP), such as home sales solicitation, residential rental practices and motor vehicle repair.

Under current law, the fines and forfeitures applicable to these fraudulent, unfair or otherwise illegal activities are as follows:

1. A person found to have engaged in untrue, deceptive or misleading drug advertising is subject to a forfeiture of not less than \$50 nor more than \$200. The person is also subject to a fine of not less than \$500 nor more than \$5,000 or imprisonment for not more than one year or both. Also, a person who violates an injunction entered against the person for such illegal drug advertising is subject to a forfeiture of not less than \$100 nor more than \$10,000.

2. A person found guilty of untrue, deceptive or misleading advertising of foods or of requiring purchases for the receipt of prizes is subject to a fine of not more than \$200 or imprisonment for not more than 6 months or both.

3. A person who violates the law regulating prize notices distributed to consumers is subject to a forfeiture of not less than \$100 nor more than \$5,000. In addition, any person who commits an intentional violation is subject to a fine of not more than \$10,000 or imprisonment for not more than 2 years or both.

4. A person found to have engaged in untrue, deceptive or misleading advertising of telecommunications services or other prohibited practices relating to the sale of, or collection of payment for, these services is subject to a forfeiture of not less than \$25 nor more than \$5,000.

5. A person found to have engaged in illegal activities in entering into dating services contracts, fitness center contracts or future services contracts is subject to a forfeiture of not less than \$100 nor more than \$10,000.

6. A person found to have engaged in selling merchandise at less than cost in order to induce other purchases is subject to a forfeiture of not less than \$50 nor more than \$500 for the first violation and not less than \$200 nor more than \$2,500 for a subsequent violation.

7. A person who violates the law regulating mail-order sales is subject to a forfeiture of not less than \$100 nor more than \$1,000.

8. A person who violates a court injunction or a DATCP order relating to other unfair trade practices is subject to a forfeiture of not less than \$100 nor more than \$10,000. In addition, a person found to have neglected or to have failed or intentionally refused to obey such a DATCP order is subject to a fine of not less than \$25 nor more than \$5,000 or imprisonment for not more than one year or both.

Finally, if a court has ordered any restitution for violation of these laws, the payment of the restitution takes priority over the payment of any supplemental forfeiture ordered.

For further information see the *state and local* 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.** 100.264 of the statutes is created to read:

2 **100.264 Violations against elderly or disabled persons. (1) DEFINITIONS.**

3 In this section:

4 (a) “Disabled person” means a person who has an impairment of a physical,
5 mental or emotional nature that substantially limits at least one major life activity.

6 (b) “Elderly person” means a person who is at least 62 years of age.

7 (c) “Major life activity” means self-care, walking, seeing, hearing, speaking,
8 breathing, learning, performing manual tasks or being able to be gainfully employed.

9 **(2) SUPPLEMENTAL FORFEITURE.** If a fine or a forfeiture is imposed on a person
10 for a violation under s. 100.16, 100.17, 100.18, 100.182, 100.183, 100.20, 100.205,
11 100.207, 100.21, 100.30 (3), 100.35, 100.44 or 100.46 or a rule promulgated under one
12 of those sections, the person shall be subject to a supplemental forfeiture not to
13 exceed \$10,000 for that violation if the conduct by the defendant, for which the
14 violation was imposed, was perpetrated against an elderly person or disabled person
15 and if the court finds that any of the following factors is present:

16 (a) The defendant knew or should have known that the defendant’s conduct was
17 perpetrated against an elderly person or disabled person.

18 (b) The defendant’s conduct caused an elderly person or disabled person to
19 suffer any of the following:

20 1. Loss or encumbrance of his or her primary residence.

21 2. Loss of principal employment or principal source of income.

1 3. Loss of more than 25% of the property that the elderly person or disabled
2 person has set aside for retirement or for personal or family care or maintenance.

3 4. Loss of more than 25% of the total of payments to be received under a pension
4 or retirement plan.

5 5. Loss of assets essential to the health or welfare of the elderly person or
6 disabled person.

7 (c) The defendant's conduct caused physical or emotional damage or economic
8 loss, other than the losses specified in par. (b) 1. to 5., and elderly persons or disabled
9 persons are more likely to suffer the loss than other persons due to their age, poor
10 health, impaired understanding or restricted mobility.

11 **(3) PRIORITY FOR RESTITUTION.** If the court orders restitution under s. 100.18 (11)
12 (d), 100.182 (5) (a), 100.20 (6), 100.205 (7), 100.207 (6) (b) 1. or 100.44 (5) for a
13 pecuniary or monetary loss suffered by a person, the court shall require that the
14 restitution be paid by the defendant before the defendant pays any forfeiture
15 imposed under this section.

16 **SECTION 2.** 134.95 of the statutes is created to read:

17 **134.95 Violations against elderly or disabled persons. (1) DEFINITIONS.**

18 In this section:

19 (a) "Disabled person" means a person who has an impairment of a physical,
20 mental or emotional nature that substantially limits at least one major life activity.

21 (b) "Elderly person" means a person who is at least 62 years of age.

22 (c) "Major life activity" means self-care, walking, seeing, hearing, speaking,
23 breathing, learning, performing manual tasks or being able to be gainfully employed.

24 **(2) SUPPLEMENTAL FORFEITURE.** If a fine or a forfeiture is imposed on a person
25 for a violation under s. 134.22, 134.68, 134.70, 134.71, 134.72, 134.74, 134.83 or

1 134.87 or ch. 136 or a rule promulgated under these sections or that chapter, the
2 person shall be subject to a supplemental forfeiture not to exceed \$10,000 for that
3 violation if the conduct by the defendant, for which the fine or forfeiture was imposed,
4 was perpetrated against an elderly person or disabled person and if any of the factors
5 under s. 100.264 (2) (a), (b) or (c) is present.

6 **(3) PRIORITY FOR RESTITUTION.** If the court orders restitution under s. 134.22 (4)
7 (a), 134.68 (7), 134.70 (15), 134.74 (8), 134.83 (7) or 134.87 (6) for a pecuniary or
8 monetary loss suffered by a person, the court shall require that the restitution be
9 paid by the defendant before the defendant pays any forfeiture imposed under this
10 section.

11 **SECTION 3. Initial applicability**

12 (1) This act first applies to forfeitures or fines imposed for violations under
13 section 100.16, 100.17, 100.18, 100.182, 100.183, 100.20, 100.205, 100.207, 100.21,
14 100.30 (3), 100.35, 100.44, 100.46, 134.22, 134.68, 134.70, 134.71, 134.72, 134.74,
15 134.83 or 134.87 or chapter 136 of the statutes, or under rules promulgated under
16 these sections or that chapter, that occur on the effective date of this subsection.

17 **(END)**