

2005 DRAFTING REQUEST

Bill

Received: 01/06/2005

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **David Zien (608) 266-7511**

By/Representing: **John Hogan**

This file may be shown to any legislator: **NO**

Drafter: **csundber**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Zien@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Unfair sales act: eliminate gasoline minimum markup

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	csundber 02/18/2005	wjackson 02/22/2005	pgreensl 02/22/2005	_____	mbarman 02/22/2005		
/1	csundber 03/01/2005	wjackson 03/01/2005	pgreensl 03/01/2005	_____	sbasford 03/01/2005	mbarman 03/08/2005	

FE Sent For:

<END>

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/P1	csundber						
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/P1MLJ 2/22

2/22
5006

FE Sent For:

2/22
ps

<END>

Sundberg, Christopher

From: Hogan, John
Sent: Thursday, January 06, 2005 9:23 AM
To: Sundberg, Christopher
Subject: Zien bill draft request

Chris,

We'd like to draft a bill that:

Repeals the minimum markup on gasoline, prohibits offering gasoline as a loss leader, and prohibits selling gasoline below cost (cost as currently defined).

John Hogan

Chief of Staff
Senator Dave Zien
266-7511

Per John 2/15/05: prohib. sale at or
below cost.

Sundberg, Christopher

From: Hogan, John
Sent: Thursday, January 06, 2005 9:23 AM
To: Sundberg, Christopher
Subject: Zien bill draft request

Chris,

We'd like to draft a bill that:

Repeals the minimum markup on gasoline, prohibits offering gasoline as a loss leader, and prohibits selling gasoline below cost (cost as currently defined).

John Hogan

Chief of Staff
Senator Dave Zien
266-7511



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1515/P1

CTS:.....
Wlj

Due 2/24/05

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

W: 3/18/05
D-note ✓

Gen

1 AN ACT ...; relating to: regulating the minimum price of motor vehicle fuel.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

2 SECTION 1. 100.30 (2) (am) 1m. a. of the statutes is amended to read:

3 100.30 (2) (am) 1m. a. In the case of the retail sale of motor vehicle fuel by a
4 refiner at a retail station owned or operated either directly or indirectly by the
5 refiner, the refiner's lowest selling price to other retailers or to wholesalers of motor
6 vehicle fuel on the date of the refiner's retail sale, less all trade discounts except
7 customary discounts for cash, plus any excise, sales or use taxes imposed on the
8 motor vehicle fuel or on its sale and any cost incurred for transportation and any
9 other charges not otherwise included in the invoice cost of the motor vehicle fuel, plus
10 a markup of 9.18% of that amount to cover a proportionate part of the cost of doing

1 business; or the average posted terminal price at the terminal located closest to the
2 retail station ~~plus a markup of 9.18% of the average posted terminal price to cover~~
3 ~~a proportionate part of the cost of doing business; whichever is greater.~~

History: 1973 c. 310; 1979 c. 34 ss. 950o to 950y, 2102 (3) (a); 1979 c. 176, 221; 1981 c. 79 s. 17; 1983 a. 189 ss. 136 to 138, 329 (20); 1983 a. 466; 1985 a. 313, 332; 1987 a. 175; 1993 a. 16; 1997 a. 55; 2001 a. 16.

4 **SECTION 2.** 100.30 (2) (am) 1m. b. of the statutes is amended to read:

5 100.30 (2) (am) 1m. b. In the case of the retail sale of motor vehicle fuel by a
6 wholesaler of motor vehicle fuel, who is not a refiner, at a retail station owned or
7 operated either directly or indirectly by the wholesaler of motor vehicle fuel, the
8 invoice cost of the motor vehicle fuel to the wholesaler of motor vehicle fuel within
9 10 days prior to the date of sale, or the replacement cost of the motor vehicle fuel,
10 whichever is lower, less all trade discounts except customary discounts for cash, plus
11 any excise, sales or use taxes imposed on the motor vehicle fuel or on its sale, and any
12 cost incurred for transportation and any other charges not otherwise included in the
13 invoice cost or replacement cost of the motor vehicle fuel, ~~plus a markup of 9.18% of~~
14 ~~that amount to cover a proportionate part of the cost of doing business; or the average~~
15 ~~posted terminal price at the terminal located closest to the retail station plus a~~
16 ~~markup of 9.18% of the average posted terminal price to cover a proportionate part~~
17 ~~of the cost of doing business; whichever is greater.~~

History: 1973 c. 310; 1979 c. 34 ss. 950o to 950y, 2102 (3) (a); 1979 c. 176, 221; 1981 c. 79 s. 17; 1983 a. 189 ss. 136 to 138, 329 (20); 1983 a. 466; 1985 a. 313, 332; 1987 a. 175; 1993 a. 16; 1997 a. 55; 2001 a. 16.

18 **SECTION 3.** 100.30 (2) (am) 1m. c. of the statutes is amended to read:

19 100.30 (2) (am) 1m. c. In the case of the retail sale of motor vehicle fuel by a
20 person other than a refiner or a wholesaler of motor vehicle fuel at a retail station,
21 the invoice cost of the motor vehicle fuel to the retailer within 10 days prior to the
22 date of sale, or the replacement cost of the motor vehicle fuel, whichever is lower, less
23 all trade discounts except customary discounts for cash, plus any excise, sales or use

1 taxes imposed on the motor vehicle fuel or on its sale and any cost incurred for
2 transportation and any other charges not otherwise included in the invoice cost or
3 the replacement cost of the motor vehicle fuel, ~~plus a markup of 6% of that amount~~
4 ~~to cover a proportionate part of the cost of doing business;~~ or the average posted
5 terminal price at the terminal located closest to the retailer ~~plus a markup of 9.18%~~
6 ~~of the average posted terminal price to cover a proportionate part of the cost of doing~~
7 ~~business; whichever is greater.~~

History: 1973 c. 310; 1979 c. 34 ss. 950o to 950y, 2102 (3) (a); 1979 c. 176, 221; 1981 c. 79 s. 17; 1983 a. 189 ss. 136 to 138, 329 (20); 1983 a. 466; 1985 a. 313, 332; 1987 a. 175; 1993 a. 16; 1997 a. 55; 2001 a. 16.

8 **SECTION 4.** 100.30 (2) (am) 1m. d. of the statutes is amended to read:

9 100.30 (2) (am) 1m. d. In the case of a retail sale of motor vehicle fuel by a
10 refiner at a place other than a retail station, the refiner's lowest selling price to other
11 retailers or to wholesalers of motor vehicle fuel on the date of the refiner's retail sale,
12 less all trade discounts except customary discounts for cash, plus any excise, sales
13 or use taxes imposed on the motor vehicle fuel or on its sale and any cost incurred
14 for transportation and any other charges not otherwise included in the invoice cost
15 of the motor vehicle fuel ~~to which shall be added a markup to cover a proportionate~~
16 ~~part of the cost of doing business, which markup, in the absence of proof of a lesser~~
17 ~~cost, shall be 3% of the cost to the retailer as set forth in this subd. 1m. d.~~

History: 1973 c. 310; 1979 c. 34 ss. 950o to 950y, 2102 (3) (a); 1979 c. 176, 221; 1981 c. 79 s. 17; 1983 a. 189 ss. 136 to 138, 329 (20); 1983 a. 466; 1985 a. 313, 332; 1987 a. 175; 1993 a. 16; 1997 a. 55; 2001 a. 16.

18 **SECTION 5.** 100.30 (2) (am) 1m. e. of the statutes is amended to read:

19 100.30 (2) (am) 1m. e. In the case of a retail sale of motor vehicle fuel by a person
20 other than a refiner at a place other than a retail station, the invoice cost of the motor
21 vehicle fuel to the retailer within 10 days prior to the date of the sale, or the
22 replacement cost of the motor vehicle fuel, whichever is lower, less all trade discounts
23 except customary discounts for cash, plus any excise, sales or use taxes imposed on

1 the motor vehicle fuel or on its sale and any cost incurred for transportation and any
2 other charges not otherwise included in the invoice cost or the replacement cost of
3 the motor vehicle fuel to which shall be added a markup to cover a proportionate part
4 of the cost of doing business, which markup, in the absence of proof of a lesser cost,
5 shall be 3% of the cost to the retailer as set forth in this subd. 1m. e.

History: 1973 c. 310; 1979 c. 34 ss. 950o to 950y, 2102 (3) (a); 1979 c. 176, 221; 1981 c. 79 s. 17; 1983 a. 189 ss. 136 to 138, 329 (20); 1983 a. 466; 1985 a. 313, 332; 1987 a. 175; 1993 a. 16; 1997 a. 55; 2001 a. 16.

6 **SECTION 6.** 100.30 (2) (c) 1g. of the statutes is amended to read:

7 100.30 (2) (c) 1g. With respect to the wholesale sale of motor vehicle fuel by a
8 refiner, “cost to wholesaler” means the refiner’s lowest selling price to other retailers
9 or to wholesalers of motor vehicle fuel on the date of the refiner’s wholesale sale, less
10 all trade discounts except customary discounts for cash, plus any excise, sales or use
11 taxes imposed on the motor vehicle fuel or on its sale and any cost incurred for
12 transportation and any other charges not otherwise included in the invoice cost of
13 the motor vehicle fuel, to which shall be added a markup to cover a proportionate part
14 of the cost of doing business, which markup, in the absence of proof of a lesser cost,
15 shall be 3% of the cost to the wholesaler as set forth in this subdivision.

History: 1973 c. 310; 1979 c. 34 ss. 950o to 950y, 2102 (3) (a); 1979 c. 176, 221; 1981 c. 79 s. 17; 1983 a. 189 ss. 136 to 138, 329 (20); 1983 a. 466; 1985 a. 313, 332; 1987 a. 175; 1993 a. 16; 1997 a. 55; 2001 a. 16.

16 **SECTION 7.** 100.30 (2) (c) 1r. of the statutes is amended to read:

17 100.30 (2) (c) 1r. With respect to the wholesale sale of motor vehicle fuel by a
18 person other than a refiner, “cost to wholesaler” means the invoice cost of the motor
19 vehicle fuel to the wholesaler of motor vehicle fuel within 10 days prior to the date
20 of the sale or the replacement cost of the motor vehicle fuel, whichever is lower, less
21 all trade discounts except customary discounts for cash, plus any excise, sales or use
22 taxes imposed on the motor vehicle fuel or on its sale and any cost incurred for
23 transportation and any other charges not otherwise included in the invoice cost or

1 the replacement cost of the motor vehicle fuel ~~to which shall be added a markup to~~
 2 ~~cover a proportionate part of the cost of doing business, which markup, in the absence~~
 3 ~~of proof of a lesser cost, shall be 3% of the cost to the wholesaler as set forth in this~~
 4 ~~subdivision.~~

History: 1973 c. 310; 1979 c. 34 ss. 950o to 950y, 2102 (3) (a); 1979 c. 176, 221; 1981 c. 79 s. 17; 1983 a. 189 ss. 136 to 138, 329 (20); 1983 a. 466; 1985 a. 313, 332; 1987 a. 175; 1993 a. 16; 1997 a. 55; 2001 a. 16.

5 **SECTION 8.** 100.30 (3) of the statutes is amended to read:

6 100.30 (3) ~~ILLEGALITY OF LOSS LEADERS~~ PROHIBITED SALES. Any (a) In this
 7 subsection, "prohibited sale" means any of the following:

8 1. Except as provided in subd. 2., the sale of any an item of merchandise either
 9 by a retailer; or wholesaler, wholesaler of motor vehicle fuel or refiner, at less than
 10 cost as defined in this section.

11 (b) A prohibited sale by a retailer, wholesaler, wholesaler of motor vehicle fuel,
 12 or refiner, when made with the intent or effect of inducing the purchase of other
 13 merchandise or of unfairly diverting trade from a competitor, impairs and prevents
 14 fair competition, injures public welfare, and is unfair competition and contrary to
 15 public policy and the policy of this section. Such sales are prohibited. Evidence of any
 16 sale of any item of merchandise a prohibited sale by any a retailer, wholesaler,
 17 wholesaler of motor vehicle fuel, or refiner at less than cost as defined in this section
 18 shall be prima facie evidence of intent or effect to induce the purchase of other
 19 merchandise, or to unfairly divert trade from a competitor, or to otherwise injure a
 20 competitor.

History: 1973 c. 310; 1979 c. 34 ss. 950o to 950y, 2102 (3) (a); 1979 c. 176, 221; 1981 c. 79 s. 17; 1983 a. 189 ss. 136 to 138, 329 (20); 1983 a. 466; 1985 a. 313, 332; 1987 a. 175; 1993 a. 16; 1997 a. 55; 2001 a. 16.

21 **SECTION 9.** 100.30 (3) (a) 2. of the statutes is created to read:

22 100.30 (3) (a) 2. The sale of motor vehicle fuel by a retailer, wholesaler of motor
 23 vehicle fuel, or refiner at a price equal to or less than cost as defined in this section.

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

LRB-1515/P1dn

CTS:/.....

WJ

Senator Zien:

This is a preliminary draft. The draft eliminates the minimum markup contained in provisions that define "cost" in the context of the sale of motor vehicle fuel. The draft does not affect other components of the definition of "cost," such as trade discounts, taxes, and transportation costs. Per instructions from your aide John Hogan, the draft prohibits the sale of motor vehicle fuel at or below cost. The draft does not change current law with respect to merchandise other than motor vehicle fuel, which may not be sold below cost.

Please let me know if you have any questions or if you would like to make 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-1515/P1dn
CTS:wlj:pg

February 22, 2005

Senator Zien:

This is a preliminary draft. The draft eliminates the minimum markup contained in provisions that define "cost" in the context of the sale of motor vehicle fuel. The draft does not affect other components of the definition of "cost," such as trade discounts, taxes, and transportation costs. Per instructions from your aide John Hogan, the draft prohibits the sale of motor vehicle fuel at or below cost. The draft does not change current law with respect to merchandise other than motor vehicle fuel, which may not be sold below cost.

Please let me know if you have any questions or if you would like to make changes to the draft.

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

2/22 min markup/zien

Redraft: take out "prohib'd trans."
and revert to "loss leader"
term.



1/R RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in: 3/1/05

Drawite

INSA

Regen

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2
3
4

AN ACT *to amend* 100.30 (2) (am) 1m. a., 100.30 (2) (am) 1m. b., 100.30 (2) (am) 1m. c., 100.30 (2) (am) 1m. d., 100.30 (2) (am) 1m. e., 100.30 (2) (c) 1g., 100.30 (2) (c) 1r. and 100.30 (3); and *to create* 100.30 (3) (a) 2. of the statutes; **relating to:** regulating the minimum price of motor vehicle fuel.

Analysis by the Legislative Reference Bureau

~~This is a preliminary draft. An analysis will be provided in a later version.~~

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

5
6
7
8
9
10

SECTION 1. 100.30 (2) (am) 1m. a. of the statutes is amended to read:
100.30 (2) (am) 1m. a. In the case of the retail sale of motor vehicle fuel by a refiner at a retail station owned or operated either directly or indirectly by the refiner, the refiner's lowest selling price to other retailers or to wholesalers of motor vehicle fuel on the date of the refiner's retail sale, less all trade discounts except customary discounts for cash, plus any excise, sales or use taxes imposed on the

1 motor vehicle fuel or on its sale and any cost incurred for transportation and any
2 other charges not otherwise included in the invoice cost of the motor vehicle fuel, plus
3 a markup of 9.18% of that amount to cover a proportionate part of the cost of doing
4 business; or the average posted terminal price at the terminal located closest to the
5 retail station plus a markup of 9.18% of the average posted terminal price to cover
6 a proportionate part of the cost of doing business; whichever is greater.

7 **SECTION 2.** 100.30 (2) (am) 1m. b. of the statutes is amended to read:

8 100.30 (2) (am) 1m. b. In the case of the retail sale of motor vehicle fuel by a
9 wholesaler of motor vehicle fuel, who is not a refiner, at a retail station owned or
10 operated either directly or indirectly by the wholesaler of motor vehicle fuel, the
11 invoice cost of the motor vehicle fuel to the wholesaler of motor vehicle fuel within
12 10 days prior to the date of sale, or the replacement cost of the motor vehicle fuel,
13 whichever is lower, less all trade discounts except customary discounts for cash, plus
14 any excise, sales or use taxes imposed on the motor vehicle fuel or on its sale, and any
15 cost incurred for transportation and any other charges not otherwise included in the
16 invoice cost or replacement cost of the motor vehicle fuel, plus a markup of 9.18% of
17 that amount to cover a proportionate part of the cost of doing business; or the average
18 posted terminal price at the terminal located closest to the retail station plus a
19 markup of 9.18% of the average posted terminal price to cover a proportionate part
20 of the cost of doing business; whichever is greater.

21 **SECTION 3.** 100.30 (2) (am) 1m. c. of the statutes is amended to read:

22 100.30 (2) (am) 1m. c. In the case of the retail sale of motor vehicle fuel by a
23 person other than a refiner or a wholesaler of motor vehicle fuel at a retail station,
24 the invoice cost of the motor vehicle fuel to the retailer within 10 days prior to the
25 date of sale, or the replacement cost of the motor vehicle fuel, whichever is lower, less

1 all trade discounts except customary discounts for cash, plus any excise, sales or use
2 taxes imposed on the motor vehicle fuel or on its sale and any cost incurred for
3 transportation and any other charges not otherwise included in the invoice cost or
4 the replacement cost of the motor vehicle fuel, ~~plus a markup of 6% of that amount~~
5 ~~to cover a proportionate part of the cost of doing business;~~ or the average posted
6 terminal price at the terminal located closest to the retailer ~~plus a markup of 9.18%~~
7 ~~of the average posted terminal price to cover a proportionate part of the cost of doing~~
8 ~~business; whichever is greater.~~

9 **SECTION 4.** 100.30 (2) (am) 1m. d. of the statutes is amended to read:

10 100.30 (2) (am) 1m. d. In the case of a retail sale of motor vehicle fuel by a
11 refiner at a place other than a retail station, the refiner's lowest selling price to other
12 retailers or to wholesalers of motor vehicle fuel on the date of the refiner's retail sale,
13 less all trade discounts except customary discounts for cash, plus any excise, sales
14 or use taxes imposed on the motor vehicle fuel or on its sale and any cost incurred
15 for transportation and any other charges not otherwise included in the invoice cost
16 of the motor vehicle fuel ~~to which shall be added a markup to cover a proportionate~~
17 ~~part of the cost of doing business, which markup, in the absence of proof of a lesser~~
18 ~~cost, shall be 3% of the cost to the retailer as set forth in this subd. 1m. d.~~

19 **SECTION 5.** 100.30 (2) (am) 1m. e. of the statutes is amended to read:

20 100.30 (2) (am) 1m. e. In the case of a retail sale of motor vehicle fuel by a person
21 other than a refiner at a place other than a retail station, the invoice cost of the motor
22 vehicle fuel to the retailer within 10 days prior to the date of the sale, or the
23 replacement cost of the motor vehicle fuel, whichever is lower, less all trade discounts
24 except customary discounts for cash, plus any excise, sales or use taxes imposed on
25 the motor vehicle fuel or on its sale and any cost incurred for transportation and any

1 other charges not otherwise included in the invoice cost or the replacement cost of
2 the motor vehicle fuel ~~to which shall be added a markup to cover a proportionate part~~
3 ~~of the cost of doing business, which markup, in the absence of proof of a lesser cost,~~
4 ~~shall be 3% of the cost to the retailer as set forth in this subd. 1m. e.~~

5 **SECTION 6.** 100.30 (2) (c) 1g. of the statutes is amended to read:

6 100.30 (2) (c) 1g. With respect to the wholesale sale of motor vehicle fuel by a
7 refiner, "cost to wholesaler" means the refiner's lowest selling price to other retailers
8 or to wholesalers of motor vehicle fuel on the date of the refiner's wholesale sale, less
9 all trade discounts except customary discounts for cash, plus any excise, sales or use
10 taxes imposed on the motor vehicle fuel or on its sale and any cost incurred for
11 transportation and any other charges not otherwise included in the invoice cost of
12 the motor vehicle fuel, ~~to which shall be added a markup to cover a proportionate part~~
13 ~~of the cost of doing business, which markup, in the absence of proof of a lesser cost,~~
14 ~~shall be 3% of the cost to the wholesaler as set forth in this subdivision.~~

15 **SECTION 7.** 100.30 (2) (c) 1r. of the statutes is amended to read:

16 100.30 (2) (c) 1r. With respect to the wholesale sale of motor vehicle fuel by a
17 person other than a refiner, "cost to wholesaler" means the invoice cost of the motor
18 vehicle fuel to the wholesaler of motor vehicle fuel within 10 days prior to the date
19 of the sale or the replacement cost of the motor vehicle fuel, whichever is lower, less
20 all trade discounts except customary discounts for cash, plus any excise, sales or use
21 taxes imposed on the motor vehicle fuel or on its sale and any cost incurred for
22 transportation and any other charges not otherwise included in the invoice cost or
23 the replacement cost of the motor vehicle fuel ~~to which shall be added a markup to~~
24 ~~cover a proportionate part of the cost of doing business, which markup, in the absence~~

5

loss leader

1 of proof of a lesser cost, shall be 3% of the cost to the wholesaler as set forth in this
2 subdivision.

plain text

3 SECTION 8. 100.30 (3) of the statutes is amended to read:

4 100.30 (3) ~~ILLEGALITY OF LOSS LEADERS~~ ~~PROHIBITED SALES~~ Any (a) In this
5 subsection, "prohibited sale" means any of the following:

6 1. Except as provided in subd. 2., the sale of any an item of merchandise either
7 by a retailer, or wholesaler, wholesaler of motor vehicle fuel or refiner, at less than
8 cost as defined in this section.

loss leader

9 (b) A ~~prohibited sale~~ by a retailer, wholesaler, wholesaler of motor vehicle fuel,
10 or refiner, when made with the intent or effect of inducing the purchase of other
11 merchandise or of unfairly diverting trade from a competitor, impairs and prevents
12 fair competition, injures public welfare, and is unfair competition and contrary to
13 public policy and the policy of this section. Such sales are prohibited. Evidence of any
14 sale of any item of merchandise a ~~prohibited sale~~ by any a retailer, wholesaler,
15 wholesaler of motor vehicle fuel, or refiner at less than cost as defined in this section
16 shall be prima facie evidence of intent or effect to induce the purchase of other
17 merchandise, or to unfairly divert trade from a competitor, or to otherwise injure a
18 competitor.

loss leader

19 SECTION 9. 100.30 (3) (a) 2. of the statutes is created to read:

20 100.30 (3) (a) 2. The sale of motor vehicle fuel by a retailer, wholesaler of motor
21 vehicle fuel, or refiner at a price equal to or less than cost as defined in this section.

22 SECTION 10. Initial applicability. (1) This act first applies to sales of motor
23 vehicle fuel occurring on the effective date of this subsection.

24 (END)

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1515/lins
CTS:wlj:pg

Insert A:

Under current law, the unfair sales act or "minimum markup" law prohibits "loss leaders," or wholesale and retail sales of merchandise at a price below the cost of the merchandise to the seller. With respect to motor vehicle fuel, current law prescribes certain formulas for calculating cost; a separate formula applies to each of several categories of wholesalers and retailers. Each calculation includes a minimum markup to cover a portion of the cost of doing business.

The minimum markup for a wholesaler of motor vehicle fuel is currently 3%, which means that the wholesaler must sell the fuel for at least 3% more than the cost of the fuel to the wholesaler. The minimum markup for the sale of motor vehicle fuel at a retail station owned by a refiner or a motor vehicle fuel wholesaler is 9.18% of the cost to the wholesaler or 9.18% of the average posted terminal price, whichever is greater. The "average posted terminal price" is an average price at which motor vehicle fuel is offered on a specific date, plus certain excise taxes and overhead costs. The minimum markup for the sale of fuel at a retail station not owned by a refiner or wholesaler is either 6% of the cost or 9.18% of the average posted terminal price, whichever is greater. The minimum markup for the retail sale of motor vehicle at a location other than a retail station is 3%. Current law does not define "retail station."

This bill eliminates the minimum markup component of each formula for calculating the cost of motor vehicle fuel. For sales of motor vehicle fuel, the bill changes the definition of loss leader from a sale below cost to a sale at or below cost. As a result, motor vehicle fuel must be sold at a price greater than the cost to the seller, but cost no longer includes a minimum markup for the cost of doing business.

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

LRB-1515/1dn

CTS: f:...

Wlj

Senator Zien:

This is a redraft of LRB-1515/P1. In this version, the term "prohibited sale" has been replaced with "loss leader." Please contact me if you have any questions or if you would like to make any changes to the draft.

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

LRB-1515/1dn
CTS:wlj:pg

March 1, 2005

Senator Zien:

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Basford, Sarah

From: Hogan, John
Sent: Monday, March 07, 2005 5:19 PM
To: LRB.Legal
Subject: Draft review: LRB 05-1515/1 Topic: Unfair sales act: eliminate gasoline minimum markup

It has been requested by <Hogan, John> that the following draft be jacketed for the SENATE:

Draft review: LRB 05-1515/1 Topic: Unfair sales act: eliminate gasoline minimum markup