



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-3199/1  
MCP:kjf

## 2017 ASSEMBLY BILL 359

June 1, 2017 - Introduced by Representatives OTT, MURPHY, BERNIER, BRANDTJEN, R. BROOKS, DUCHOW, GANNON, HUTTON, JACQUE, KATZMA, KLEEFISCH, KOOYENGA, KREMER, SKOWRONSKI and THIESFELDT, cosponsored by Senators VUKMIR, CRAIG, CARPENTER, COWLES, DARLING, KAPENGA and STROEBEL. Referred to Committee on Small Business Development.

1     **AN ACT** *to amend* 100.30 (2) (am) 2., 100.30 (2) (c) 2., 100.30 (3) and 134.04 (1);  
2             and *to create* 100.30 (2) (ck) and 100.30 (6) (a) 10. of the statutes; **relating to:**  
3             regulating the sale of prescription drugs and other merchandise below cost.

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### *Analysis by the Legislative Reference Bureau*

This bill eliminates the prohibition on selling prescription drugs and certain types of merchandise at below cost under the Unfair Sales Act.

This state's Unfair Sales Act, also known as the "minimum markup" law, prohibits retailers and wholesalers from selling merchandise for less than the cost of the merchandise to the seller, if the below-cost sale is intended to induce the purchase of other merchandise or divert trade unfairly from a competitor. In addition, current law requires a retailer or wholesaler of motor vehicle fuel, tobacco products, fermented malt beverages, liquor, or wine to sell those items for a specified amount more than the cost of the merchandise to the retailer or wholesaler to cover a portion of the cost of doing business. Current law does not require such a minimum markup for sales of prescription drugs. The prohibition on below-cost sales and the minimum markup requirements do not apply to merchandise that is sold in clearance sales, damaged merchandise, merchandise at risk of spoiling, and merchandise that is priced in good faith to meet the existing price of a competitor.

This bill eliminates the prohibition on retailers and wholesalers selling prescription drugs for less than the cost of those items to the seller. The bill also eliminates the prohibition on retailers and wholesalers selling merchandise, other than motor vehicle fuel, tobacco products, fermented malt beverages, liquor, or wine,

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or groceries, for less than the cost of the merchandise to the seller. The bill does not affect the prohibition on below-cost sales of motor vehicle fuel, tobacco products, fermented malt beverages, liquor, or wine, or groceries. The bill also does not affect the minimum markup requirements for sales of motor vehicle fuel, tobacco products, fermented malt beverages, liquor, or wine.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

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

2           100.30 (2) (am) 2. With respect to the sale of ~~merchandise other than cigarettes~~  
3 ~~or other tobacco products, fermented malt beverages, intoxicating liquor or wine, or~~  
4 ~~motor vehicle fuel~~ groceries, “cost to retailer” means the invoice cost of the  
5 merchandise to the retailer, or replacement cost of the merchandise to the retailer,  
6 whichever is lower, less all trade discounts except customary discounts for cash, plus  
7 any excise taxes imposed on such merchandise or the sale thereof other than excise  
8 taxes collected by the retailer, and any cost incurred for transportation and any other  
9 charges not otherwise included in the invoice cost or the replacement cost of the  
10 merchandise as herein set forth.

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

12           100.30 (2) (c) 2. With respect to the sale of ~~merchandise other than cigarettes~~  
13 ~~or other tobacco products, fermented malt beverages, intoxicating liquor or wine, or~~  
14 ~~motor vehicle fuel~~ groceries, “cost to wholesaler” means the invoice cost of the  
15 merchandise to the wholesaler, or the replacement cost of the merchandise to the  
16 wholesaler, whichever is lower, less all trade discounts except customary discounts  
17 for cash, plus any excise taxes imposed on the sale thereof prior to the sale at retail,  
18 and any cost incurred for transportation and any other charges not otherwise

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1 included in the invoice cost or the replacement cost of the merchandise as herein set  
2 forth.

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

4 100.30 (2) (ck) "Groceries" means food or beverage items, other than fermented  
5 malt beverages or intoxicating liquor or wine.

6 **SECTION 4.** 100.30 (3) of the statutes is amended to read:

7 100.30 (3) ILLEGALITY OF LOSS LEADERS. Any sale of ~~any item of merchandise~~  
8 either cigarettes or other tobacco products, fermented malt beverages, intoxicating  
9 liquor or wine, motor vehicle fuel, or groceries by a retailer, wholesaler, wholesaler  
10 of motor vehicle fuel or refiner, at less than cost as defined in this section with the  
11 intent or effect of inducing the purchase of other merchandise or of unfairly diverting  
12 trade from a competitor, impairs and prevents fair competition, injures public  
13 welfare and is unfair competition and contrary to public policy and the policy of this  
14 section. Such sales are prohibited. Evidence of any sale of ~~any item of merchandise~~  
15 cigarettes or other tobacco products, fermented malt beverages, intoxicating liquor  
16 or wine, motor vehicle fuel, or groceries by any retailer, wholesaler, wholesaler of  
17 motor vehicle fuel or refiner at less than cost as defined in this section shall be prima  
18 facie evidence of intent or effect to induce the purchase of other merchandise, or to  
19 unfairly divert trade from a competitor, or to otherwise injure a competitor.

20 **SECTION 5.** 100.30 (6) (a) 10. of the statutes is created to read:

21 100.30 (6) (a) 10. The merchandise sold is a prescription drug, as defined in s.  
22 450.01 (20).

23 **SECTION 6.** 134.04 (1) of the statutes is amended to read:

24 134.04 (1) No person, firm or corporation engaged in any enterprise in this  
25 state shall by any method or procedure directly or indirectly by itself or through a

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1 subsidiary agency owned or controlled in whole or in part by such person, firm or  
2 corporation, sell or procure for sale or have in its possession or under its control for  
3 sale to its employees or any person any article, material, product or merchandise of  
4 whatsoever nature not of the person's, firm's or corporation's production or not  
5 handled in the person's, firm's or corporation's regular course of trade, excepting  
6 meals, candy bars, cigarettes and tobacco for the exclusive use and consumption of  
7 such employees of the employer, and excepting tools used by employees in said  
8 enterprise and such specialized appliances and paraphernalia as may be required in  
9 said enterprise for the employees' safety or health and articles used by employees or  
10 other persons which insure better sanitary conditions and quality in the  
11 manufacture of food or food products. The provisions of this subsection shall not  
12 apply to lumber producers, loggers and dealers nor to any cooperative association  
13 organized under ch. 185 or 193. This section shall not be construed as authorizing  
14 the sale of ~~any merchandise~~ cigarettes or other tobacco products, fermented malt  
15 beverages, intoxicating liquor or wine, motor vehicle fuel, or groceries at less than  
16 cost as defined in s. 100.30.

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**(END)**