

**TESTIMONY OF KENT BAUMAN  
CONDON OIL COMPANY  
Assembly Consumer Affairs Committee  
Thursday, May 8, 1997  
Room 424 NorthEast of the Capitol  
1:00 p.m.**

**INTRODUCE YOURSELF**

Thank you Chairman Otte, Members of the Committee, My name is Kent Bauman, I am the owner of Condon Oil Company in Ripon Wisconsin. I run 30 stations, I supply to more than 150 stores, and I employ over 300 people.

I want to stress just a few points about this bill:

**COMPETITION IS GOOD**

The most important point is that fair competition is good! .... It is good for consumers because it keeps prices low. This bill protects fair competition; therefore, this bill is good for consumers.

**CONSUMERS NEED THE UNFAIR SALES ACT**

People who buy gas in Wisconsin need an enforceable Unfair Sales Act. Without it, refiner direct companies can undercut price until they drive out competition. Once competition is curtailed or eliminated, the refiner direct can raise prices as high as the market will bear -- hurting consumers.

**HOW REFINER DIRECTS CAN UNDERCUT**

Let me explain how refiner directs undercut price and markets. Refiner directs are also known as "big oil" gas stations. They own the product from the time it comes out of the ground, through its refining process, through delivery to its stations, until it is finally sold to the consumer. "Big Oil" companies own stations in a large region of the country. Some even have stores nationwide. They can afford to sell below cost in one location, because losses will be offset by higher prices in another part of their organization or another part of the country.

We have seen this happen several times in Wisconsin. Most notably was during 1991 when there was a price inversion. This means that major oil company stores sold gas on the street at less than the price they sold it at to wholesalers.

### **OTHER LOSS LEADERS**

But Refiner direct companies aren't the only ones breaking the law. In the past few years we have seen a lot of warehouse store type companies selling gasoline. They typically undercut the price of gasoline -- to bring in customers -- and then make up profits in other areas of their operations. Or they may simply undercut the price of gasoline for 6 to 9 months. That is usually how long it takes to shut down the small business gas stations in the area.

### **CURRENT LAW IS WEAK**

Unfortunately, the current law is not working to protect consumers because it is unenforceable. This is due to two factors: First, it is so hard to tell what the "cost" of fuel is. How can someone determine what a "big oil" company's cost of product is, when they own it from the minute it comes out of the ground?

The second weakness with the law is that it is not being enforced by local District Attorneys. This is understandable since DAs are already too busy prosecuting rape, robbery or murder cases.

### **THIS BILL MAKES LAW ENFORCEABLE**

So, this bill makes the Unfair Sales Act enforceable by eliminating these two weaknesses. First it makes clear what "cost" is. This bill bases cost on the average posted terminal price. The APTP is a price which is published daily by various sources and is readily available to anyone.

Second, this bill allows me to enforce the law. I no longer have to wait to see if the Department of Agriculture has time to research my complaint. I no longer have to wait to see if they recommend that my local DA prosecute. I no longer have to wait to see if my DA has the time to investigate and prosecute my case. Instead, I can directly sue an illegal competitor. I can enforce this law. I can protect myself and the consumer.

### **6% IS NO WINDELL**

And just in case you are wondering, this bill is not going to make me rich. In other words, this bill requires everyone sell at 6 % above cost. 6 % is no windfall. Just because I have to sell gas at 6% doesn't mean I am making a huge profit in my business. In fact, I could not survive on a mere 6% above cost for the gasoline I sell.

### **WHY BE AGAINST THIS BILL?**

Let me just leave you with one final question. Who is against this bill? The big oil companies? Why? Why would they be against a bill that merely makes current law enforceable?

Maybe, because they are already undercutting markets. Maybe because they are getting away with breaking the law and they don't want you to stop them.

### **ANY QUESTIONS?**

I'd be happy to answer any questions from the committee.



## Kwik Trip, Inc.

1626 Oak Street • P.O. Box 2107  
La Crosse, WI 54602-2107  
Phone: (608) 781-8988 • Fax: (608) 781-8950

*"To serve our customers and community more effectively than anyone else by treating our customers, co-workers, and suppliers as we, personally, would like to be treated."*

May 7, 1997

Mr. Mike Huebsch  
State Representative  
P.O. Box 8952  
State Capitol  
Madison, Wisconsin 53708-8952

Dear Mike:

I am following up on our telephone conversation regarding Assembly Bill 283 (Amendments to the Minimum Mark Up Law for Motor Fuel).

Kwik Trip does not object to the proposed changes to those sections of AB283 which would set forth how the minimum price for motor fuel is determined. However, we strenuously object to two sections of AB283 which makes officers and directors personally liable for violations of this law and to allow individuals to have a private cause of action to enforce this legislation.

First of all, this Bill states that any partner, officer or director of a company is also personally liable if there is a violation of this law. As a family owned company, we see that our owners of the company or any other owner of a distributorship or retailer in Wisconsin will be personally named in all of these lawsuits in order to embarrass/harass these individuals so as to encourage quick cash settlements in order to avoid this type of "publicity". It is our belief that the purpose of this law is to stop companies from selling below cost and that can be accomplished by having the state sue the legal entity that is selling the product in violation of the law.

More importantly, Kwik Trip strenuously objects to the provision in this law which would now allow private individuals to sue people violating this statute for three times the amount of any monetary loss sustained or an amount equal to \$2,000, whichever is greater, multiplied by each day of continued violation, together with cost, including accounting fees and reasonable attorney's fees.

It is common when these violations are alleged that there is a gap of time, sometimes may weeks, from when the alleged violation took place before a company, such as Kwik Trip, would even be notified that it allegedly violated this law. If this new law was

Mr. Mike Huebsch  
May 7, 1997  
Page 2

enacted, as currently written, any operator could sue the company, such as Kwik Trip, for damages of at least \$2,000 a day plus accounting fees and attorney's fees for each day this violation occurred. If a company such as Kwik Trip wasn't notified for two months over a violation, which could be inadvertent or for a minimal amount of 1/10¢, the party suing could gain over a \$100,000 in damages from Kwik Trip plus substantial attorney's and accounting fees. It could even be possible that anybody in the particular city where this alleged violation takes place could all join in and sue a particular party and each recover these sums again just multiplying damages one company would have to pay for what could be a minimal violation of the law.

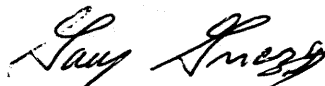
We are particularly concerned that this private cause of action is a wide-open invitation for full employment for attorneys suing petroleum operators, large or small, who inadvertently violate this statute. It is possible that some gasoline station operators would make far more money suing other people than even operating their own businesses if this law was passed as enacted.

Based upon these concerns, we would request that you speak against these two particular provisions in the upcoming public hearing on this Bill by the Committee on Consumer Affairs on May 8, 1997.

If you need any further information on this, please feel free to contact me.

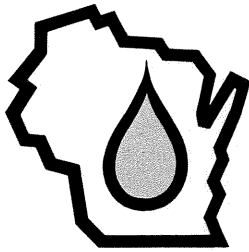
Very truly yours,

KWIK TRIP, INC.

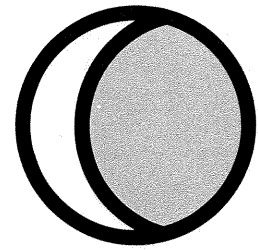


Gary Gonzcy  
Marketing Director

GG/rca



PMAW



WACS

## UNFAIR SALES ACT POSITION: SUPPORT

Our members, along with members of the Wisconsin Automotive Trades Association and the Wisconsin Association of Truck Stop Operators, own and manage thousands of retail fuel outlets throughout Wisconsin. Together we are working to make some important changes to the Unfair Sales Act. We respectfully ask your support for the attached bill authored by Representatives Michael Lehman and Gregory Huber.

### BRIGHT LINE TEST

This bill is necessary because the current Unfair Sales Act is not being enforced. For example, according to the Department of Agriculture, Trade and Consumer Protection (DATCP), from 1992-94 there were 297 complaints regarding the unfair sale of motor vehicle fuel. Of those 297 complaints, 226 were closed with no action. We believe this is because under current law it is difficult to prove a violation has occurred, there is no "bright line" under which a price is illegal. In other words, current law does not clearly define "cost", which is very complicated and unique to petroleum. This bill does set clear standards. It bases the mark-up on the average posted terminal price (AFTP) for gasoline and diesel fuel. The AFTP is published daily by various sources and therefore is readily available.

### PRIVATE CAUSE OF ACTION

The second important provision of this bill is the creation of a private cause of action. This allows individual retailers to sue a violator directly rather than having to rely on the local, very busy, District Attorney to enforce the law. To illustrate how important this provision is, imagine you are the owner and operator of a single retail operation – a "gas station". The store has been in your family for generations, or perhaps it was built with your risk, your determination and of course, your money.

You work hard, you try to keep the customers coming back to your establishment, and you obey the law. One of the laws you obey prevents you from selling gasoline below "cost" in order to drive your competitors out of the market. This law, passed in 1973, was put in place to enable you and every other small gas station owner to compete with the large oil corporations, some of which control the flow of their fuel from the moment it's tapped from the ground to the moment it's pumped into your vehicle ("refiner-direct operations").

One day you find that just a few blocks away, one of your competitors has decided to illegally sell his gasoline below cost. He can afford to do so because the corporation which owns his business will recover the loss in another area of operation (see attachment). When you realize your competitor is illegally selling below cost you file a complaint with the DATCP. DATCP does what it can - it does some preliminary investigating of the complaint, but because the definition of "cost" is unclear, DATCP is unable to prove that any law has been broken. Even in situations where DATCP can clearly document a retailer is unfairly and illegally selling below cost, DATCP can not directly enforce the law. Instead, DATCP must refer the case to the local District Attorney. Understandably, District Attorneys who are busily concentrating on "hard crimes" such as murders and robberies, rarely find time to prosecute retailers of gasoline.

As a result, your competitor is never stopped from breaking the law. You are certainly economically harmed and this could be a significant factor in your going out of business. Eventually, as the refiner-direct operators control the majority of the marketplace, they will raise prices in their retail operations. Obviously, with few competitors, their price can be excessive. The final victim is the consumer who has fewer competing retailers from which to choose.

As a legislator, each of you has many individual retailers as constituents. This bill strengthens enforcement of the current law by protecting these small businesses against illegal pricing and maintains a competitive marketplace guaranteeing constituents continuing low prices. Again, we ask for your support of this measure.

**PETROLEUM MARKETERS  
ASSOCIATION OF WISCONSIN**

**WISCONSIN ASSOCIATION  
OF CONVENIENCE STORES**

Representing Independent Businesses

**WHY IS THE PETROLEUM INDUSTRY DIFFERENT  
AND  
HOW DOES THE MARKET PLACE CURRENTLY OPERATE?**

Petroleum is a vertically integrated industry. Major oil companies pump the product from the ground up, refine it, and also distribute it. They distribute and sell it at both the wholesale and retail levels.

This is like Miller Brewing owning farms to grow hops, making the beer, selling it at wholesale and then also owning taverns at which they sell it at retail. It is obvious that economic unfairness can exist when a large company controls all segments of the industry. Below is a brief description of this situation.

The pricing and distribution system for petroleum products is unique and complicated. The complexity results because there are 3 general types of petroleum retailers:

**1 REFINER DIRECT**

This is what is commonly referred to as "big oil" gas stations. These operations are able to control price because they own the product from the time it comes out of the ground to when the consumer actually purchases it. Losses from illegal pricing in one area can be subsidized by higher prices in another part of their organization and/or another part of the country.

**2 WHOLESALER DIRECT**

This type of retail station is owned and operated by an independent wholesaler who purchases product from a refiner and sells it at retail.

**3 RETAILER DIRECT**

These are independent retailers who typically purchase product from an independent wholesaler. Retailer Directs may have a branded relationship with a major oil company. That is, they may be a Mobil or Amoco dealer, but they are locally owned businesses. They do not distribute petroleum product to other retailers.

The complexity of petroleum marketing is precisely why the Unfair Sales Act is so important to our existence. Over the past 20 years we have seen a decline in the number of direct retail operations. This is due, in part, to retailers being unable to fairly compete in the pricing market.

The fact of the matter is that without Wisconsin's Unfair Sales Act and the power to enforce it, more and more direct retailers will be forced out of business. Eventually very little competition will remain, thus enabling the price to be driven up.



# Wisconsin Merchants Federation

*The Voice Of Wisconsin Retailing*

30 West Mifflin Street  
Madison, Wisconsin 53703  
Telephone 608/257-3541  
Fax 608/257-8755  
E-mail WMF@execpc.com

## MEMORANDUM

### OFFICERS

**Chairman of  
The Board**  
Alan Rudnick  
R. Rudnick, Inc.  
Sheboygan

**Secretary**  
Dave Liebergen  
Shopko Stores  
Green Bay

**Treasurer**  
Fritz Ragatz  
Oriental Specialties  
Madison

### EXECUTIVE STAFF

**President/CEO**  
Chris C. Tackett

**Sr. Vice President  
& General Counsel**  
Douglas Q. Johnson

**V.P./Administration**  
Mary C. Kaja

**TO:** Members of the Assembly Consumer Affairs Committee  
**FROM:** Douglas Johnson, Sr. V.P. & General Counsel  
**DATE:** May 9, 1997  
**RE:** AB 283 Minimum Markup

Our merchant members find it curious that as this legislature continues to enact legislation punishing crime and those who steal from our stores, there is a public hearing on legislation that will punish merchants who don't charge enough for their merchandise. Our members find it difficult to understand why any state resources should be devoted to keeping prices high and why next to no state resources are spent to catch and punish retail thieves.

**HISTORY.** After more than 20 years of neutrality on the issue of the state's "minimum markup law" in 1985 the Wisconsin Merchants Federation determined that this law arising from the Great Depression was outdated. During the 1985-86 Legislative Session significant changes were made to scale back this law after efforts to repeal it fell short in bitter debate.

**KEEP THE PEACE.** Since the 1986 changes our members have learned to live with the current law. Still, they continue to feel strongly that the minimum markup law should be repealed and are somewhat embarrassed in discussions with fellow merchants from all states that border Wisconsin that we still have such a law while none of the others do (there is limited enforcement in a handful of states in selected product areas but nothing like Wisconsin).

**PRICE POLICE.** Former State Representative/State Senator John Norquist coined the phrase the "price police" before he left to run the City of Milwaukee. We find the term an apt description arising from this nonsensical law that in the 1930's was designed to prevent "chain stores" from competing with the corner store. The law didn't work then...it doesn't work now.

In short, we ask you to oppose AB 283. Our members suspect that the rhetoric supporting its passage will be driven by the same fears of the 1930's rather than a rational economic analysis about how this relic has managed to survive in our now highly competitive and now global economy. If that's the case there are better ways for this committee and the legislature to occupy their time than to even consider this bill.

Thank you.





- Bill G. Smith, National Federation of Independent Businesses/Wisconsin, Madison
- Lisa Hilbert, Wisc. Assn. of Truck Stop Operators, Madison

Registrations against

- Brandon Scholz, Wis. Grocers Assn., Madison
- Eric Borgerding, Wis. Manufacturers & Commerce Assn., Madison
- James E. Hough, Marathon Oil Co., Madison

May 22, 1997

**EXECUTIVE SESSION**

Present: (8) Representatives Otte, Johnsrud, Ott, M. Lehman, Urban, Williams, Hasenohrl and Black.

Absent: (0) None.

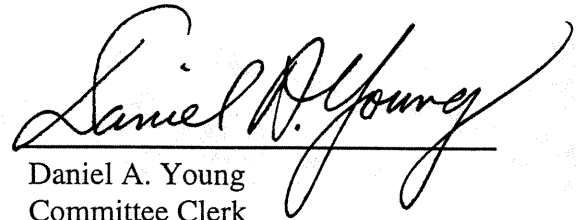
Moved by Representative M. Lehman, seconded by Representative Urban, that **Assembly Bill 283** be recommended for passage.

Ayes: (8) Representatives Otte, Johnsrud, Ott, M. Lehman, Urban, Williams, Hasenohrl and Black.

Noes: (0) None.

Absent: (0) None.

PASSAGE RECOMMENDED, Ayes 8, Noes 0, Absent 0

  
Daniel A. Young  
Committee Clerk

*Assembly*

**Committee Report**

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The committee on Consumer Affairs, reports and recommends:

**Assembly Bill 283**

Relating to: the regulation of the sale of merchandise below cost and providing a penalty.

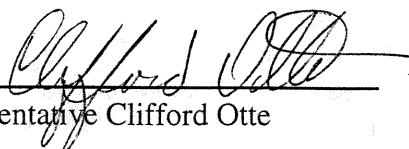
By Representatives M. Lehman, Huber, Ainsworth, Albers, Brandemuehl, Coggs, Dobyms, Freese, Gard, Goetsch, Grothman, Gunderson, Hahn, Harsdorf, Hasenohrl, Huebsch, Johnsrud, Kaufert, F. Lasee, Meyer, Musser, Olsen, Ott, Otte, Ourada, Porter, Reynolds, Seratti, Springer, Staskunas and Ziegelbauer; cosponsored by Senators C. Potter, Welch, Buettner, Clausing, Drzewiecki, Fitzgerald, Jauch, Plache, Rude, Schultz and Wineke.

PASSAGE RECOMMENDED, Ayes 8, Noes 0, Absent 0

Ayes: (8) Representatives Otte, Johnsrud, Ott, M. Lehman, Urban, Williams, Hasenohrl and Black.

Noes: (0) None.

Absent: (0) None.

  
\_\_\_\_\_  
Representative Clifford Otte  
Chair

OPIS 0194 RCK-1649 05-08-97 START MSG

*from James Goety as  
part of testimony*

97-05-08 10:32:11 EDT  
9.0 RVP

MADISON, WI

\*\*OPIS/PETROSAT NET/SF CLEAR PRICES\*\*

	Terms	Unl	Move	Mid	Move	Pre	Move	Date
Koch	u N-10	64.25	1.00	67.05	1.00	71.25	1.00	05/08
Cenex	b N-10	64.50	-.75	---	---	73.00	-.75	05/06
Sinclair	b 1-10	64.55	-.50	68.26	-.50	72.96	-.50	05/07
Farmland	b N-Rpt	64.75	.25	68.75	.25	72.00	.25	05/08
Marathon	u N-10	64.95	.80	67.67	.80	72.95	.80	05/08
Citgo	b 1-10	65.04	.40	68.26	.40	73.46	.40	05/08
Phillips	b 1-10	65.29	.20	68.76	.20	73.21	.20	05/08
Conoco	b 1-10	65.39	-.50	69.10	-.50	74.05	-.50	05/06
Marathon	b N-10	65.45	.60	68.85	.60	75.45	.60	05/08
U.S. Oil	u N-10	65.50	-.50	---	---	73.50	-.50	05/06
Murphy	u N-12	65.75	1.00	68.75	1.00	73.75	1.00	05/08
Mobil	b 1-10	65.88	1.00	70.83	1.00	75.78	1.00	05/08
Amoco	b 1-10	66.03	-.50	---	---	---	---	05/06
Shell	b 1-10	66.33	.50	---	---	76.73	.50	05/08
Coast.R&M	b 1-10	66.83	.50	---	---	75.24	.50	05/08
LOW		64.25		67.05		71.25		
HIGH		66.83		70.83		76.73		
AVG		65.37		68.63		73.81		
BRD AV		65.46		68.97		74.19		
UBD AV		65.11		67.82		72.86		
Regular Average	--			---				

97-05-08 10:32:12 EDT

# Vote Record

## Assembly Committee on Consumer Affairs

Date: 5/22/97  
Moved by: Lehman Seconded by: Urban  
AB: 283 Clearinghouse Rule: \_\_\_\_\_  
AB: \_\_\_\_\_ SB: \_\_\_\_\_ Appointment: \_\_\_\_\_  
AJR: \_\_\_\_\_ SJR: \_\_\_\_\_ Other: \_\_\_\_\_  
A: \_\_\_\_\_ SR: \_\_\_\_\_

A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_  
A/S Sub Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_  
A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_  
A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_

Be recommended for:

- Passage
- Introduction
- Adoption
- Rejection

- Indefinite Postponement
- Tabling
- Concurrence
- Nonconcurrence
- Confirmation

### Committee Member

Rep. Clifford Otte, Chair  
Rep. DuWayne Johnsrud  
Rep. Alvin Ott  
Rep. Michael Lehman  
Rep. Frank Urban  
Rep. Annette Polly Williams  
Rep. Donald Hasenohrl  
Rep. Spencer Black

	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Rep. Clifford Otte, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. DuWayne Johnsrud	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Alvin Ott	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Michael Lehman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Frank Urban	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Annette Polly Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Donald Hasenohrl	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Spencer Black	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals:

8      0      0      0

Motion Carried

Motion Failed

FISCAL ESTIMATE

DOA-2048 (R 10/94)

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

LRB or Bill No. / Adm. Rule No.  
AB-283

Amendment No. (If Applicable)

Subject

Proposed Act to amend the Unfair Sales Act and to provide a penalty.

Fiscal Effect

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

Increase Existing Appropriation       Increase Existing Revenues

Decrease Existing Appropriation       Decrease Existing

Revenues

Create New Appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget       Yes       No

Decrease Costs

Local:  No local government costs

1.  Increase Costs  
 Permissive       Mandatory

2.  Decrease Costs  
 Permissive       Mandatory

3.  Increase Revenues  
 Permissive       Mandatory

4.  Decrease Revenues  
 Permissive       Mandatory

5. Types of Local Governmental Unit Affected:

Towns       Villages       Cities

Counties       Others \_\_\_\_\_

School Districts       WTCS Districts

Fund Source Affected

GPR       FED       PRO       PRS       SEG       SEG-S

Affected Ch. 20 Appropriations  
20.115(1)(r)

Assumptions Used in Arriving at Fiscal Estimate

The proposed Act changes the minimum markup requirements for retail and wholesale marketers of motor vehicle fuel as required under s.100.30 Wis. Stats., commonly referred to as the Unfair Sales Act. The proposed Act requires generally that the minimum markup for retail motor vehicle fuel marketers be 6% above the invoice cost of the motor vehicle fuel or 6% or 9.18% above the retail marketers lowest selling price to other retailers, or 9.18% above the "average posted terminal price" at the terminal located closest to the retail station. The proposed Act will require that a motor vehicle fuel marketer use the higher of invoice cost or average posted terminal price. The opportunity for marketers to markup their motor vehicle fuel based on providing evidence of a lesser cost of doing business is no longer applicable.

The Act will create a private remedy for an injunction and treble damages for any monetary loss sustained or an amount equal to \$2,000 multiplied by each day of continued violation, whichever is greater, plus costs and attorney fees for any person injured by a violation of the statute.

The proposed Act will complicate the current law concerning sales below cost of motor vehicle fuel and will cause some increase in the workload associated with the enforcement of the statute. This estimate is premised on the assumption that the Department of Agriculture, Trade and Consumer Protection staff will be responsible for obtaining the necessary information required to calculate the "average posted terminal price." This information is currently available from private consulting firms.

Continued on page two

Long - Range Fiscal Implications

None

Agency/prepared by: (Name & Phone No.)

DATCP  
Paul Dingee (608) 224-4925

Authorized Signature/Telephone No.

*Barbara Knapp*  
Barbara Knapp (608) 224-4746

Date

4/29/97

It is estimated that an additional .5 FTE Program Assistant will be required to collect and maintain the necessary data to compute the average posted terminal price on a daily basis and to serve as a clearinghouse for this information to complainants and respondents. The major responsibility of this Program Assistant will be downloading and maintaining the average posted terminal price database information provided by a private consulting firm. This proprietary information could be collected and distributed from such a data base for an annual licensing fee of approximately \$15,000. The projected on-going expenses for salaries, fringes and supplies and services are \$33,600 per year. One-time costs are projected at \$2,600 for computers and other office equipment.

If the assumption is that staff will not be required to obtain and maintain the necessary information to compute the average posted price, the Department will not need additional staff and fiscal resources to enforce the proposed Act. Under this assumption, the fiscal impact is negligible.

**FISCAL ESTIMATE WORKSHEET**

**1997 SESSION**

Detailed Estimate of Annual Fiscal Effect  
 DOA-2047 (R10/94)

ORIGINAL  UPDATED  
 CORRECTED  SUPPLEMENTAL

LRB or Bill No/Adm.Rule No. AB-283	Amendment No.
---------------------------------------	---------------

**Subject**  
**Proposed Act to amend the Unfair Sales Act and to provide a penalty.**

**I. One-time Cost or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**  
 \$2,600 computers, office equipment

II. Annualized Cost:		Annualized Fiscal Impact on State funds from:	
A. State Costs by Category		Increased Costs	Decreased Costs
State Operations - Salaries and Fringes		\$ 13,500	\$ -
(FTE Position Changes)		(.5 FTE)	(- FTE)
State Operations - Other Costs		20,100	-
Local Assistance			-
Aids to Individuals or Organizations			-
<b>TOTAL State Costs by Category</b>		<b>\$ 33,600</b>	<b>\$ -</b>
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR		\$	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S		33,600	-
III. State Revenues -	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Costs	Decreased Costs
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
<b>TOTAL State Revenues</b>		<b>\$</b>	<b>\$ -</b>

**NET ANNUALIZED FISCAL IMPACT**

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ <u>33,600</u>	\$ _____
NET CHANGE IN REVENUES	\$ _____	\$ _____

Agency Prepared by: (Name & Phone No.) DATCP Paul Dingee (608) 224-4925	Authorized Signature/Telephone No. <i>Barbara Knapp</i> Barbara Knapp (608) 224-4746	Date 4/24/97
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1997 Session

FISCAL ESTIMATE

OOA-2048 (R 10/94)

- ORIGINAL
- UPDATED
- CORRECTED
- SUPPLEMENTAL

LRB or Bill No. / Adm. Rule No.

AB-283

Amendment No. (If Applicable)

Subject

Proposed Act to amend the Unfair Sales Act and to provide a penalty.

Fiscal Effect

State:  No State Fiscal Effect  
Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues
- Create New Appropriation

- Increase Costs - May be possible to Absorb Within Agency's Budget  Yes  No
- Decrease Costs

Local:  No local government costs

- 1.  Increase Costs  Permissive  Mandatory
- 2.  Decrease Costs  Permissive  Mandatory

- 3.  Increase Revenues  Permissive  Mandatory
- 4.  Decrease Revenues  Permissive  Mandatory

5. Types of Local Governmental Unit Affected:  
 Towns  Villages  Cities  
 Counties  Others \_\_\_\_\_  
 School Districts  WTCS Districts

Fund Source Affected

- GPR  FED  PRO  PRS  SEG  SEG-S

Affected Ch. 28 Appropriations  
20.115(1)(r)

Assumptions Used in Arriving at Fiscal Estimate

The proposed Act changes the minimum markup requirements for retail and wholesale marketers of motor vehicle fuel as required under s. 100.30 Wis. Stats., commonly referred to as the Unfair Sales Act. The proposed Act requires generally that the minimum markup for retail motor vehicle fuel marketers be 6% above the invoice cost of the motor vehicle fuel or 6% or 9.18% above the retail marketers lowest selling price to other retailers, or 9.18% above the "average posted terminal price" at the terminal located closest to the retail station. The proposed Act will require that a motor vehicle fuel marketer use the higher of invoice cost or average posted terminal price. The opportunity for marketers to markup their motor vehicle fuel based on providing evidence of a lesser cost of doing business is no longer applicable.

The Act will create a private remedy for an injunction and treble damages for any monetary loss sustained or an amount equal to \$2,000 multiplied by each day of continued violation, whichever is greater, plus costs and attorney fees for any person injured by a violation of the statute.

The proposed Act will complicate the current law concerning sales below cost of motor vehicle fuel. Under the assumption that the Department of Agriculture, Trade and Consumer Protection staff will not be responsible for obtaining and maintaining the necessary data base information required to calculate the "average posted terminal price", the Department will not need additional staff and fiscal resources to enforce the proposed Act. Under this assumption, the fiscal impact is negligible.

Continued on page two

Long - Range Fiscal Implications

None

Agency/prepared by: (Name & Phone No.)

DATCP  
Paul Dingee (608) 224-4925

Authorized Signature/Telephone No.

*Barbara Knapp*  
Barbara Knapp (608) 224-4746

Date

5/7/97

Page two  
Fiscal Estimate Assumptions Continued

AB-283

If the assumption is that the Department will be responsible for obtaining and maintaining the necessary data base information, it is estimated that an additional .5 FTE Program Assistant will be required to collect and maintain the necessary data to compute the average posted terminal price on a daily basis and to serve as a clearinghouse for this information to complainants and respondents. This data base information is currently available from private consulting firms. The major responsibility of the Program Assistant will be downloading and maintaining the average posted terminal price data base information provided by a private consulting firm. This proprietary information could be collected and distributed from such a data base for an annual licensing fee of approximately \$15,000. The projected on-going expenses for salaries, fringes and supplies and services are \$33,600 per year. One-time costs are projected at \$2,600 for computers and other office equipment.

05/07/97 14:11  
05/07/97 15:03

CAPITAL FINANCE MDSN WI → 608 264 8522  
DATCP→DMS MDSN WI → SBO

NO. 859 P004/004  
NO. 280 F004/004

**FISCAL ESTIMATE WORKSHEET**

**1997 SESSION**

Detailed Estimate of Annual  
Fiscal Effect  
DOA-2047 (R10/96)

ORIGINAL  UPDATED  
 CORRECTED  SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. Amendment No.  
AB-283

Subject  
**Proposed Act to amend the Unfair Sales Act and to provide a penalty.**

I. One-time Cost or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

\$ 0

II. Annualized Cost:	Annualized Fiscal Impact on State funds from:	
	Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>		
State Operations - Salaries and Fringes	\$ 0	\$ -
(FTE Position Changes)		(- FTE)
State Operations - Other Costs	0	-
Local Assistance		-
Aids to Individuals or Organizations		-
<b>TOTAL State Costs by Category</b>	<b>\$ 0</b>	<b>\$ -</b>
<b>B. State Costs by Source of Funds</b>	<b>Increased Costs</b>	<b>Decreased Costs</b>
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S	0	-
<b>III. State Revenues</b>	<b>Increased Costs</b>	<b>Decreased Costs</b>
<small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>		
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
<b>TOTAL State Revenues</b>	<b>\$</b>	<b>\$ -</b>

**NET ANNUALIZED FISCAL IMPACT**

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ 0	\$ _____
NET CHANGE IN REVENUES	\$ _____	\$ _____

Agency Prepared by: (Name & Phone No.) DATCP Paul Dinges (608) 224-4925	Authorized Signature/Telephone No. <i>Barbara Knapp</i> Barbara Knapp (608) 224-4746	Date 3/7/97
---	--	----------------



## Kwik Trip, Inc.

1626 Oak Street • P.O. Box 2107  
La Crosse, WI 54602-2107  
Phone: (608) 781-8988 • Fax: (608) 781-8950

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*"To serve our customers and community more effectively than anyone else by treating our customers, co-workers, and suppliers as we, personally, would like to be treated."*

May 7, 1997

Mr. Mike Huebsch  
State Representative  
P.O. Box 8952  
State Capitol  
Madison, Wisconsin 53708-8952

Dear Mike:

I am following up on our telephone conversation regarding Assembly Bill 283 (Amendments to the Minimum Mark Up Law for Motor Fuel).

Kwik Trip does not object to the proposed changes to those sections of AB283 which would set forth how the minimum price for motor fuel is determined. However, we strenuously object to two sections of AB283 which makes officers and directors personally liable for violations of this law and to allow individuals to have a private cause of action to enforce this legislation.

First of all, this Bill states that any partner, officer or director of a company is also personally liable if there is a violation of this law. As a family owned company, we see that our owners of the company or any other owner of a distributorship or retailer in Wisconsin will be personally named in all of these lawsuits in order to embarrass/harass these individuals so as to encourage quick cash settlements in order to avoid this type of "publicity". It is our belief that the purpose of this law is to stop companies from selling below cost and that can be accomplished by having the state sue the legal entity that is selling the product in violation of the law.

More importantly, Kwik Trip strenuously objects to the provision in this law which would now allow private individuals to sue people violating this statute for three times the amount of any monetary loss sustained or an amount equal to \$2,000, whichever is greater, multiplied by each day of continued violation, together with cost, including accounting fees and reasonable attorney's fees.

It is common when these violations are alleged that there is a gap of time, sometimes may weeks, from when the alleged violation took place before a company, such as Kwik Trip, would even be notified that it allegedly violated this law. If this new law was

Mr. Mike Huebsch  
May 7, 1997  
Page 2

enacted, as currently written, any operator could sue the company, such as Kwik Trip, for damages of at least \$2,000 a day plus accounting fees and attorney's fees for each day this violation occurred. If a company such as Kwik Trip wasn't notified for two months over a violation, which could be inadvertent or for a minimal amount of 1/10¢, the party suing could gain over a \$100,000 in damages from Kwik Trip plus substantial attorney's and accounting fees. It could even be possible that anybody in the particular city where this alleged violation takes place could all join in and sue a particular party and each recover these sums again just multiplying damages one company would have to pay for what could be a minimal violation of the law.

We are particularly concerned that this private cause of action is a wide-open invitation for full employment for attorneys suing petroleum operators, large or small, who inadvertently violate this statute. It is possible that some gasoline station operators would make far more money suing other people than even operating their own businesses if this law was passed as enacted.

Based upon these concerns, we would request that you speak against these two particular provisions in the upcoming public hearing on this Bill by the Committee on Consumer Affairs on May 8, 1997.

If you need any further information on this, please feel free to contact me.

Very truly yours,

KWIK TRIP, INC.



Gary Gonzcy  
Marketing Director

GG/rca

Assembly Hearing Slip

(Please print plainly)

Date: 5/8/97  
Bill No. AB 283  
Or  
Subject

Tom Coenen  
(Name)  
44 E. Mifflin, Suite 101  
(Street Address or Route Number)  
Madison 53703  
(City & Zip Code)

W. Automotive Trades Association  
(Representing)

- Speaking in favor:
- Speaking against:
- Registering in favor:
- Registering against:
- Speaking for information only; Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms  
Room 411 West  
State Capitol  
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 5/8/97  
Bill No. AB 283  
Or  
Subject

Rep Michael Lehman  
(Name)  
(Street Address or Route Number)  
(City & Zip Code)  
author  
(Representing)

- Speaking in favor:
- Speaking against:
- Registering in favor:
- Registering against:
- Speaking for information only; Neither for nor against:

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Room 411 West  
State Capitol  
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 5/8/97  
Bill No. AB 283  
Or  
Subject

James R. Goetz  
(Name)  
15040 Hwy U  
(Street Address or Route Number)  
P.O. TAGS, W.I. 53901  
(City & Zip Code)  
S.E.F. AND WATSO  
(Representing)

- Speaking in favor:
- Speaking against:
- Registering in favor:
- Registering against:
- Speaking for information only; Neither for nor against:

Please return this slip to a messenger pr

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Room 411 West  
State Capitol  
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: May 8  
Bill No. AB-283  
Or  
Subject UNFAIR SALES ACT  
Bob Bartlett  
(Name)  
121 S. Pinckney  
(Street Address or Route Number)  
MADISON WI 53703  
(City & Zip Code)  
Petroleum Marketers Association  
(Representing)

Speaking in favor:   
Speaking against:   
Registering in favor:   
Registering against:   
Speaking for information only; Neither for nor against:

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State Capitol  
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 5-8-97  
Bill No. AB 283  
Or  
Subject REP. MICE HUEBSCHE  
(Name)  
(Street Address or Route Number)  
(City & Zip Code)  
(Representing)

Speaking in favor:   
Speaking against:   
Registering in favor:   
Registering against:   
Speaking for information only; Neither for nor against:

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State Capitol  
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 5/8/97  
Bill No. AB 283  
Or  
Subject Rep. Greg. Huber  
(Name)  
(Street Address or Route Number)  
(City & Zip Code)  
(Representing)

Speaking in favor:   
Speaking against:   
Registering in favor:   
Registering against:   
Speaking for information only; Neither for nor against:

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Room 411 West  
State Capitol  
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: MAY 8, 1997  
Bill No. AB 283  
Or  
Subject WEAR SALES ACT  
KENT BAUMAN  
(Name)  
126 E. JACKSON  
(Street Address or Route Number)  
RIPON, WI 54971  
(City & Zip Code)  
CONROD OIL COMPANY  
(Representing)

- Speaking in favor:
- Speaking against:
- Registering in favor:
- Registering against:
- Speaking for information only; Neither for nor against:

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State Capitol  
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 5/8/97  
Bill No. AB 283  
Or  
Subject PROBATIONARY DISC  
PAUL DINGER  
(Name)  
Dept of Ag Tech  
(Street Address or Route Number)  
(City & Zip Code)  
(Representing)

- Speaking in favor:
- Speaking against:
- Registering in favor:
- Registering against:
- Speaking for information only; Neither for nor against:

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Room 411 West  
State Capitol  
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: MAY 8, 1997  
Bill No. 283  
Or  
Subject \_\_\_\_\_  
MIKE CHAPMAN  
(Name)  
1130 MCKEAN RD  
(Street Address or Route Number)  
MADISON WI 53713  
(City & Zip Code)  
SuperAmerica  
(Representing)

- Speaking in favor:
- Speaking against:
- Registering in favor:
- Registering against:
- Speaking for information only; Neither for nor against:

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State Capitol  
Madison, WI 53702



Assembly Hearing Slip

(Please print plainly)

Date: May 8, 1997  
Bill No. AB 283  
Or  
Subject Charles Elliott  
25 West Main St.  
(Street Address or Route Number)  
Madison, WI 53703  
(City & Zip Code)  
Wis. Petroleum Council  
(Representing) Div. of API

- Speaking in favor:
- Speaking against:
- Registering in favor:
- Registering against:
- Speaking for information only; Neither for nor against:

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State Capitol  
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 5-8-'97  
Bill No. AB 283  
Or  
Subject Price Police  
Doug Johnson  
(Name)  
30 W. Mifflin  
(Street Address or Route Number)  
Madison  
(City & Zip Code)  
WI Merchants  
(Representing) Federation

- Speaking in favor:
- Speaking against:
- Registering in favor:
- Registering against:
- Speaking for information only; Neither for nor against:

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State Capitol  
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: May 8, 1997  
Bill No. AB 283  
Or  
Subject MINIMUM MARKUP  
DANIEL MOENTER  
(Name)  
539 S. MAIN ST.  
(Street Address or Route Number)  
FINDLAY, OH 4584  
(City & Zip Code)  
MARATHON OIL COMP.  
(Representing)

- Speaking in favor:
- Speaking against:
- Registering in favor:
- Registering against:
- Speaking for information only; Neither for nor against:

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State Capitol  
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 5-8-97

Bill No. AB 283

Or Subject LISA HERBERT

(Name) LISA HERBERT

(Street Address or Route Number) 16 N. CARROLL SQUARE 800

(City & Zip Code) MADISON WI 53702

(Representing) WI ASSOC. OF TRUCK STOP OPERATORS

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only:

Neither for nor against:

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Assembly Sergeant at Arms  
Room 411 West  
State Capitol  
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 5/8/97

Bill No. 283

Or Subject Bill G. Smith

(Name) Bill G. Smith

(Street Address or Route Number) One N. Pinckney Suite 201

(City & Zip Code) MADISON 53703

(Representing) National Federation of Independent Business Wisconsin

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only:

Neither for nor against:

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Assembly Sergeant at Arms  
Room 411 West  
State Capitol  
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: MAY 8, 1997

Bill No. AB 283

Or Subject UNFAIR SALES ACT

(Name) JENNIFER BOEHL

(Street Address or Route Number) 121 PICKSLEY ST. #210

(City & Zip Code) MADISON, WI

(Representing) PEREZMAN MARKETERS

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only:

Neither for nor against:

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State Capitol  
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 5-8-'97  
Bill No. AB 283  
Or  
Subject Min. Markup  
~~\_\_\_\_\_~~  
Brandon Scholz  
(Name)

(Street Address or Route Number)  
Madison  
(City & Zip Code)  
WI Grocers  
(Representing) Association

- Speaking in favor:
- Speaking against:
- Registering in favor:
- Registering against:
- Speaking for information only:  
Neither for nor against:

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Room 411 West  
State Capitol  
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 5/8/97  
Bill No. AB 283  
Or  
Subject \_\_\_\_\_  
Eric Bergerding  
(Name)

(Street Address or Route Number)  
501 E. Washington  
Madison, WI 53703  
(City & Zip Code)  
Wis. Manufacturers + Commerce  
(Representing)

- Speaking in favor:
- Speaking against:
- Registering in favor:
- Registering against:
- Speaking for information only:  
Neither for nor against:

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Assembly Sergeant at Arms:  
Room 411 West  
State Capitol  
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 5/8/97  
Bill No. AB 283  
Or  
Subject \_\_\_\_\_  
James E. Hough  
(Name)

(Street Address or Route Number)  
44 East Miff/in St. Sa. Tel  
Madison, WI 53703  
(City & Zip Code)  
MARATHON Oil Company  
(Representing)

- Speaking in favor:
- Speaking against:
- Registering in favor:
- Registering against:
- Speaking for information only:  
Neither for nor against:

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Room 411 West  
State Capitol  
Madison, WI 53702