

**2001 DRAFTING REQUEST**

**Bill**

Received: 12/10/2001

Received By: gibsom

Wanted: As time permits

Identical to LRB:

For: Neal Kedzie (608) 266-9650

By/Representing: Dan Johnson

This file may be shown to any legislator: NO

Drafter: gibsom

May Contact: Peggy Krusick's office (Christia

Addl. Drafters:

Subject: Trade Regulation - other

Extra Copies:

Submit via email: NO

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Ban on sale of goods and services at unreasonable prices during times of emergency

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**Instructions:**

See Attached

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**Drafting History:**

Vers.	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	gibsom 01/04/2002	hhagen 01/07/2002	jfrantze 01/07/2002	_____	lrb_docadmin 01/07/2002	lrb_docadminState 01/14/2002	

FE Sent For:

<END>

*Intro.*

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1/?	gibson	11 hmb 1/4/01	10/1/01	10/1/01			

FE Sent For:

<END>

## Gibson-Glass, Mary

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**From:** Johnson, Dan (Legislature)  
**Sent:** Thursday, December 06, 2001 4:17 PM  
**To:** Gibson-Glass, Mary  
**Subject:** Price gouging draft request

Hi Mary,

About a month ago or so, we were working on a maximum mark up bill for gasoline, I believe it was LRB 3780. After talking with Leg. Council and Leg. Fiscal Bureaus, as well as DATCP, we have decided to scrap that proposal due to the fact our percentage amount was to arbitrary and not getting us to a satisfactory result.

Therefore, we would like to request a draft for a more general approach to price gouging. The proposal would apply to any goods or services sold during a time a state or national crisis, adverse weather and so on. We are modeling this language after the New York law that was recently passed after September 11. We believe the intent of the proposal is clearly expressed in the language we have crafted.

We are working with Representative Peggy Krusick's office on this proposal as well. If you have any questions, you may contact me or Christian Moran in her office. Thank you very much.

*Dan Johnson*

Policy Advisor  
Clerk, Assembly Committee on Environment  
**Office of State Representative Neal Kedzie**  
43rd Assembly District  
(608) 266-9650



price gouging  
proposal.doc

**Definitions:**

For purposes of this section, "abnormal disruption of the market" is defined as any change in the market, whether actual or imminently threatened, resulting from stress of weather, convulsion of nature, failure or shortage of electric power or other source of energy, strike, civil disorder, war, military action, national or local emergency.

For the purposes of this section, "consumer goods and services" is defined as those used, bought or rendered primarily for personal, family or household purposes and include any repairs made by any party within the chain of distribution of consumer goods on an emergency basis as a result of such abnormal disruption of the market.

**Bill Text**

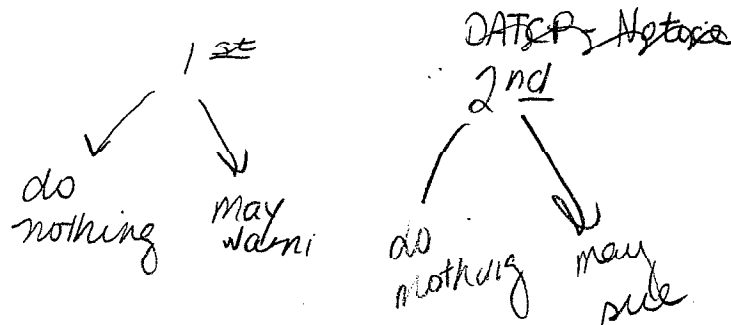
During any abnormal disruption of the market for consumer goods and services vital and necessary for the health, safety and welfare of consumers, no party within the chain of distribution of such consumer goods or services or both shall sell or offer to sell any such goods or services or both for an amount which represents an unreasonably excessive price.

This prohibition shall apply to all parties within the chain of distribution, including any manufacturer, supplier, wholesaler, distributor or retail seller of consumer goods or services or both sold by one party to another when the product sold was located in the state prior to the sale.

**Penalty**

Where a violation of this section has occurred and is a first time offense, the attorney general may issue a notice of violation to the violator. For a second offense, the attorney general may apply in the name of the people of the State of Wisconsin to the circuit court within the judicial district in which such violations have occurred, on notice of five days, for an order enjoining or restraining commission or continuance of the alleged unlawful acts.

In any such proceeding, the court shall impose a civil penalty in an amount not to exceed ten thousand dollars and, where appropriate, order restitution to aggrieved consumers.





State of Wisconsin  
2001 - 2002 LEGISLATURE

QMR  
LRB-4395/1  
MGG:hmh

D-Note

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

LPS: please  
fix request  
sheet ok

1 **AN ACT** <sup>Generate</sup> ...; **relating to:** sales of consumer goods and services during periods of  
2 abnormal economic disruption, and requiring the exercise of rule-making  
3 authority, and providing a penalty.

requires that

a disruption

Keep this

**Analysis by the Legislative Reference Bureau**

This bill prohibits the sale in this state of consumer goods and services at unreasonably excessive prices during a period of abnormal economic disruption caused by an emergency. Under the bill, an emergency includes destructive acts of nature, hostile action, terrorism, and lack of energy supplies that poses a risk to public's economic well-being, or public health, safety, or welfare. The prohibition is only in effect if the governor, by executive order, certifies that a period of abnormal economic disruption exists. The bill defines consumer goods and services to be those that are used primarily for personal, family, or household purposes. The prohibition applies to all wholesale and retail sales of consumer goods and services. Under the bill, the department of agriculture, trade and consumer protection (DATCP) must promulgate rules to establish formulas or other standards to be used in determining what are unreasonably excessive wholesale and retail prices.

For an initial violation of this prohibition, the bill allows DATCP to issue a warning notice instead of filing an action against the seller. If the seller fails to comply with the warning notice or subsequently violates the prohibition after receiving the notice, DATCP, or the department of justice (DOJ), after consulting with DATCP, may file a court action to enjoin the seller from violating the prohibition or to recover a forfeiture of not more than \$10,000, or DATCP or DOJ may seek both the injunction and the forfeiture.

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

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

SECTION 1. 100.305 of the statutes is created to read:

**100.305 Prohibited selling practices during periods of abnormal economic disruption.** (1) DEFINITIONS. In this section:

(a) "Consumer goods or services" means goods or services that are used primarily for personal, family, or household purposes.

(b) "Emergency" includes <sup>any</sup> ~~all~~ of the following:

1. A tornado, flood, <sup>fire,</sup> storm, or other destructive act of nature.

2. A ~~lack~~ <sup>disruption</sup> of energy supplies to the degree that a serious risk is posed to the economic well-being, health, ~~safety~~ or welfare of the public.

3. Hostile action.

4. A strike or civil disorder.

(c) "Hostile action" means ~~a hostile action~~ <sup>an act of violence against a person or property in the United States</sup> by a foreign power or ~~an act of terrorism~~ <sup>by a terrorist</sup>

(d) "Period of abnormal economic disruption" means a period of time during which normal business transactions in the state are disrupted, or are threatened to be disrupted, due to an emergency.

(e) "Seller" means a manufacturer, supplier, wholesaler, distributor, or retailer.

(2) PROHIBITION. No seller may sell, or offer to sell, in this state at wholesale or at retail, consumer goods or services at unreasonably excessive prices if the governor, by executive order, has certified that the state is in a period of abnormal economic disruption.

1 (3) RULES. The department shall promulgate rules to establish formulas or  
2 other standards to be used in determining whether a wholesale or retail price is  
3 unreasonably excessive <sup>(CS)</sup>

<sup>(3M)</sup> ~~WARNING NOTICE.~~ If a person violates

4 (4) PENALTIES. ~~(a) For a violation of sub. (2), if a warning notice has not been~~  
5 ~~previously issued to a seller who allegedly committed the violation, the department~~  
6 ~~may~~ <sup>shall</sup> issue a warning notice to the seller. The warning notice shall specify the action  
7 that the seller is required to take in order to not be in violation of sub. (2).

8 <sup>sub (3m)</sup> ~~(b)~~ If a warning notice under ~~part (a)~~ <sup>sub (3m)</sup> has been ~~previously~~ <sup>previously</sup> issued to a seller, and  
9 the seller either fails to take the required action that is specified in the notice or  
10 subsequently violates sub. (2), the department, or the department of justice, after  
11 consulting with the department, may commence an action in the name of the state  
12 to do ~~any~~ <sup>either or both</sup> of the following:

13 <sup>(a)</sup> ~~a.~~ Recover a civil forfeiture of not <sup>more than</sup> \$10,000 from the seller.

14 <sup>(b)</sup> ~~b.~~ Temporarily or permanently restrain or enjoin the seller from violating sub.  
15 <sup>(2)</sup> ~~(2).~~

(END)



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

LRB-4395/24n  
MGC:Amk

Date

I felt it necessary to require that rules be promulgated to set formulas or standards for what is an "unreasonably excessive price" since that phrase is extremely vague. However, you may wish to make some other suggestion for pinning this concept down.

Mary Gibson-Glass  
Senior Legislative Attorney  
Phone: (608) 267-3215

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

LRB-4395/1dn  
MGG:hmh:jf

January 7, 2002

I felt it necessary to require that rules be promulgated to set formulas or standards for what is an "unreasonably excessive price" since that phrase is extremely vague. However, you may wish to make some other suggestion for pinning this concept down.

Mary Gibson-Glass  
Senior Legislative Attorney  
Phone: (608) 267-3215

**Barman, Mike**

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**From:** Barman, Mike  
**Sent:** Tuesday, January 08, 2002 10:21 AM  
**To:** Johnson, Dan (Legislature)  
**Subject:** LRB-4395/1 (attached) (per MGG)



01-4395/1



01-4395/1dn

## Gibson-Glass, Mary

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**From:** Johnson, Dan (Legislature)  
**Sent:** Friday, January 11, 2002 9:36 AM  
**To:** Gibson-Glass, Mary  
**Subject:** LRB 4395/1 jacketing

Hi Mary,

I have talked to all interested parties and everyone is in agreement on LRB 4395/1, relating to a ban on the sale of good and services at unreasonable prices during a time of emergency.

Thus, I would like the draft jacketed for introduction. Thank you very much!

*Dan Johnson*

Policy Advisor  
Clerk, Assembly Committee on Environment  
**Office of State Representative Neal Kedzie**  
43rd Assembly District  
(608) 266-9650