

**2001 DRAFTING REQUEST**

**Bill**

Received: 01/19/2001

Received By: gibsom

Wanted: As time permits

Identical to LRB:

For: Shirley Krug (608) 266-5813

By/Representing: Daniel Lorentz

This file may be shown to any legislator: NO

Drafter: gibsom

May Contact:

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:**

Motor vehicle fuel under unfair sales act

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**Instructions:**

See Attached

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**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>
/1	gibsom 02/13/2001	hhagen 02/15/2001	rschluet 02/16/2001	_____	lrb_docadmin 02/16/2001	lrb_docadminState 08/28/2001	

FE Sent For:

<END>

→ At Intro.

**2001 DRAFTING REQUEST**

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Received: **01/19/2001**

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Wanted: **As time permits**

Identical to LRB:

For: **Shirley Krug (608) 266-5813**

By/Representing: **Daniel Lorentz**

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

Drafter: **gibsom**

May Contact:

Alt. Drafters:

Subject: **Trade Regulation - other**

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Motor vehicle fuel under unfair sales act

**Instructions:**

See Attached

**Drafting History:**

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/1	gibsom 02/13/2001	hhagen 02/15/2001	rschluet 02/16/2001	_____	lrb_docadmin 02/16/2001		State

FE Sent For:

<END>

*Assembly requested by Krug's office*

### 2001 DRAFTING REQUEST

#### Bill

Received: 01/19/2001

Received By: gibsom

Wanted: As time permits

Identical to LRB:

For: Shirley Krug (608) 266-5813

By/Representing: <sup>Jan</sup> David Lorentz

This file may be shown to any legislator: NO

Drafter: gibsom

May Contact:

Alt. Drafters:

Subject: Trade Regulation - other

Extra Copies:

#### Pre Topic:

No specific pre topic given


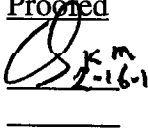
#### Topic:

~~Unfair sales act limited to tobacco products and alcohol~~

#### 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>
1?	gibsom	11 hmk 2/13/01	 2-16-1	 2-16-1			

FE Sent For:

<END>

## Gibson-Glass, Mary

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**From:** Malaise, Gordon  
**Sent:** Thursday, January 18, 2001 4:20 PM  
**To:** Gibson-Glass, Mary  
**Cc:** Lorentz, Daniel  
**Subject:** FW: drafting request

Mary:

I think that this drafting request belongs to you.

Gordon

-----Original Message-----

**From:** Lorentz, Daniel  
**Sent:** Thursday, January 18, 2001 4:09 PM  
**To:** Malaise, Gordon  
**Subject:** drafting request

Rep. Krug would like to request a modified re-draft of her "minimum mark-up" bill (LRB 1924/1). Just to be clear, Rep. Krug's intent is that the provisions eliminating the minimum mark-up would apply *only* to sales of gasoline (or, as you all put it, motor vehicle fuel)...which is to say that other minimum mark-up requirements for other products would stay in place.

Questions? Please call.

Daniel Lorentz  
Policy Director  
Assembly Democratic Leader Shirley Krug's Office  
State Capitol, Room 201-W  
PO Box 8952  
Madison, WI 53708  
Direct line: 608.266.5302  
Fax: 608.264.6967  
Email: Daniel.Lorentz@legis.state.wi.us



State of Wisconsin  
2001 - 2002 LEGISLATURE

RMR  
LRB-2148/2/1  
MGG:hmh

D-Note

soon

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Generate

1 AN ACT ...; relating to: ~~the~~ regulation of the sale of motor vehicle fuel below cost.

*Under current law*  
*or*  
*currently,*  
**Analysis by the Legislative Reference Bureau**  
~~currently,~~ the state unfair sales act or "minimum markup" law requires a wholesaler of motor vehicle fuel, tobacco products, or fermented malt beverages, liquor, or wine (alcohol beverages) to sell those items for at least 3% more than the cost of the items to the wholesaler. ~~The law requires,~~ a retailer of tobacco products or alcohol beverages to sell those items for a price that is at least 6% more than the cost of the items to the retailer. For motor vehicle fuel sold at retail, the percentage varies depending on whether the fuel is sold from a retail station. ~~The law requires~~ a wholesaler or retailer to sell any other type of merchandise for a price that is at least the wholesaler's or retailer's cost. *Current*

(X) is required  
(X)  
(X)  
(X)

(X)

(X)

Current law provides specific methods for determining the cost to the wholesaler or the retailer. For merchandise other than motor vehicle fuel, basically the cost is computed as the lesser of the invoice cost or replacement cost of the merchandise, plus taxes and certain overhead costs, ~~and~~ minus certain trade discounts (computed cost). For motor vehicle fuel, the cost is the greater of the computed cost or the average posted terminal price, which is an average price at which motor vehicle fuel is offered on a specific date plus excise taxes and certain overhead costs.

This bill eliminates the special provisions for motor vehicle fuel resulting in the sale of motor vehicle fuel being treated like the sale of merchandise in general.

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:*

1       ~~SECTION 1. 20.115 (1) (r) of the statutes is repealed.~~

2       SECTION 2. 100.26 (9) of the statutes is repealed.

3       SECTION 3. 100.30 (2) (a) of the statutes is repealed.

4       SECTION 4. 100.30 (2) (am) 1m. of the statutes is repealed.

5       SECTION 5. 100.30 (2) (am) 2. of the statutes is amended to read:

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

History: 1973 c. 310; 1979 c. 34 ss. 950o to 950y, 2102 (3) (d); 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.

15       SECTION 6. 100.30 (2) (b) of the statutes is amended to read:

16       100.30 (2) (b) "Cost to retailer" and "cost to wholesaler" as defined in pars. (am)  
17       and (c) mean bona fide costs; and purchases made by retailers, or wholesalers,  
18       ~~wholesalers of motor vehicle fuel and refiners~~ at prices which cannot be justified by  
19       prevailing market conditions within this state shall not be used in determining cost  
20       to the retailer and cost to the wholesaler. Prices at which purchases of merchandise

1 ~~other than motor vehicle fuel~~ are made by retailers or wholesalers cannot be justified  
2 by prevailing market conditions in this state when they are below the lowest prices  
3 at which the manufacturer or producer of such merchandise sells to other retailers  
4 or wholesalers in this state. ~~Prices at which sales of motor vehicle fuel are made by~~  
5 ~~retailers, wholesalers, wholesalers of motor vehicle fuel and refiners cannot be~~  
6 ~~justified by prevailing market conditions in this state when they are below the~~  
7 ~~applicable cost to retailers and cost to wholesalers specified under pars. (am) and (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.

8 **SECTION 7.** 100.30 (2) (c) 1. a. of the statutes is renumbered 100.30 (2) (c) 1. and

9 amended to read:

10 100.30 (2) (c) 1. With respect to the sale of cigarettes or other tobacco products,  
11 fermented malt beverages, or intoxicating liquor or wine, "cost to wholesaler" means,  
12 except as provided in subd. 1. b. 1m., the invoice cost of the merchandise to the  
13 wholesaler within 30 days prior to the date of sale, or the replacement cost of the  
14 merchandise to the wholesaler, whichever is lower, less all trade discounts except  
15 customary discounts for cash, plus any excise taxes imposed on the sale thereof prior  
16 to the sale at retail, and any cost incurred for transportation and any other charges  
17 not otherwise included in the invoice cost or the replacement cost of the merchandise  
18 as herein set forth, to which shall be added, except for sales at wholesale between  
19 wholesalers, a markup to cover a proportionate part of the cost of doing business,  
20 which markup, in the absence of proof of a lesser cost, shall be 3% of the cost to the  
21 wholesaler as herein set forth.

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.

22 **SECTION 8.** 100.30 (2) (c) 1. b. of the statutes is renumbered 100.30 (2) (c) 1m.

23 and amended to read:

1           100.30 (2) (c) 1m. For every person holding a permit as a distributor as defined  
 2 in s. 139.30 (3) or as a multiple retailer as defined in s. 139.30 (8), with respect to that  
 3 portion of the person's business which involves the purchase and sale of cigarettes  
 4 "cost to wholesaler" means the cost charged by the cigarette manufacturer,  
 5 disregarding any manufacturer's discount or any discount under s. 139.32 (5), plus  
 6 the amount of tax imposed under s. 139.31. Except for a sale at wholesale between  
 7 wholesalers, a markup to cover a proportionate part of the cost of doing business shall  
 8 be added to the cost to wholesaler. In the absence of proof of a lesser cost, this markup  
 9 shall be 3% of the cost to wholesaler as set forth in this ~~subd. 1. b~~ 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.

10           **SECTION 9.** 100.30 (2) (c) 1g. of the statutes is repealed.

11           **SECTION 10.** 100.30 (2) (c) 1r. of the statutes is repealed.

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

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

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.

21           **SECTION 12.** 100.30 (2) (cg) of the statutes is repealed.

22           **SECTION 13.** 100.30 (2) (cj) of the statutes is amended to read:



1 100.30 (2) (cj) "Existing price of a competitor" means a price being  
2 simultaneously offered to a buyer for merchandise of like quality and quantity by a  
3 person who is a direct competitor of the retailer, or wholesaler, ~~wholesaler of motor~~  
4 ~~vehicle fuel or refiner~~ and from whom the buyer can practicably purchase the  
5 merchandise.

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.

6 SECTION 14. 100.30 (2) (cL) of the statutes is repealed.

7 SECTION 15. 100.30 (2) (cm) of the statutes is repealed.

8 SECTION 16. 100.30 (2) (d) of the statutes is amended to read:

9 100.30 (2) (d) "Replacement cost" means the cost computed as specified in par.  
10 (am) or (c) at which the merchandise sold could have been bought by the retailer, or  
11 ~~wholesaler or wholesaler of motor vehicle fuel~~ at any time if bought in the same  
12 quantity as the retailer's, or wholesaler's ~~or wholesaler of motor vehicle fuel's~~ last  
13 purchase of the said merchandise.

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.

14 SECTION 17. 100.30 (2) (f) of the statutes is amended to read:

15 ~~100.30 (2) (f) With respect to the sale of merchandise other than motor vehicle~~  
16 fuel, "retail *LPS:* wholesaler" shall both be applied to any merchant who  
17 buys merch *Strike "* retail from the manufacturer or producer thereof and  
18 to any whol *Score, "* 2. and, as to that merchandise or that wholesaler,  
19 the terms " " "cost to wholesaler" as defined in pars. (am) and (c)  
20 shall both b *↓* g the markup requirements.

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.

21 SECTION 18. 100.30 (2) (g) of the statutes is amended to read:

22 100.30 (2) (g) "Self *↑*, "sale" *↑* or "sold" includes any advertising or offer to sell or  
23 any transfer of merchandise where title is retained by the retailer, or wholesaler,

1 ~~wholesaler of motor vehicle fuel or refiner~~ as security for the payment of the purchase  
2 price. In determining the selling price of merchandise by wholesalers, ~~wholesalers~~  
3 ~~of motor vehicle fuel, and~~ retailers and refiners under this section, all fractions of a  
4 cent shall be carried to the next full cent.

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.

5 **SECTION 19.** 100.30 (2) (j) of the statutes is repealed.

6 **SECTION 20.** 100.30 (2) (L) (intro.) of the statutes is amended to read:

7 100.30 (2) (L) (intro.) "Wholesaler" includes every person holding a permit as  
8 a multiple retailer under s. 139.30 (8) and every person engaged in the business of  
9 making sales at wholesale, ~~other than sales of motor vehicle fuel at wholesale,~~ within  
10 this state except as follows:

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.

11 **SECTION 21.** 100.30 (2) (m) of the statutes is repealed.

12 **SECTION 22.** 100.30 (2m) (b) of the statutes is amended to read:

13 100.30 (2m) (b) ~~With respect to the sale of merchandise other than motor~~  
14 ~~vehicle fuel, any~~ Any retailer who also sells to other retailers shall use the invoice  
15 cost to other retailers in computing the selling price at retail under sub. (2) (am); and  
16 if that retailer is a manufacturer or producer, both sub. (2) (am) and (c) shall be used  
17 in computing the selling price at retail. In the absence of sales to other retailers, the  
18 manufacturer's or producer's invoice cost to wholesalers shall be used in computing  
19 the manufacturer's or producer's selling price at retail as provided in sub. (2) (am)  
20 and (c).

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.

21 **SECTION 23.** 100.30 (2m) (c) of the statutes is repealed.

22 **SECTION 24.** 100.30 (3) of the statutes is amended to read:

1           100.30 (3) ILLEGALITY OF LOSS LEADERS. Any sale of any item of merchandise  
2 either by a retailer; or wholesaler, ~~wholesaler of motor vehicle fuel or refiner~~, at less  
3 than cost as defined in this section with the intent or effect of inducing the purchase  
4 of other merchandise or of unfairly diverting trade from a competitor, impairs and  
5 prevents fair competition, injures public welfare and is unfair competition and  
6 contrary to public policy and the policy of this section. Such sales are prohibited.  
7 Evidence of any sale of any item of merchandise by any retailer; or wholesaler;  
8 ~~wholesaler of motor vehicle fuel or refiner~~ at less than cost as defined in this section  
9 shall be prima facie evidence of intent or effect to induce the purchase of other  
10 merchandise, or to unfairly divert trade from a competitor, or to otherwise injure a  
11 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.

12           **SECTION 25.** 100.30 (5) (a) of the statutes is amended to read:

13           100.30 (5) (a) The department may issue a special order as provided in s. 93.18  
14 against a retailer; or wholesaler, ~~wholesaler of motor vehicle fuel or refiner~~ requiring  
15 the person to cease and desist from violating this section in the sale of cigarettes or  
16 other tobacco products, fermented malt beverages, or intoxicating liquor or wine ~~or~~  
17 ~~motor vehicle fuel~~. The department or a district attorney may commence an action  
18 on behalf of the state against a retailer; or wholesaler, ~~wholesaler of motor vehicle~~  
19 ~~fuel or refiner~~ who violates a special order issued under this paragraph to recover a  
20 forfeiture of not less than \$200 nor more than \$5,000 for each violation.

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.

21           **SECTION 26.** 100.30 (5m) of the statutes is repealed

22           **SECTION 27.** 100.30 (6) (a) 7. of the statutes is amended to read:

1           100.30 (6) (a) 7. The price of merchandise is made in good faith to meet an  
 2 existing price of a competitor and is based on evidence in the possession of the  
 3 retailer; or wholesaler, ~~wholesaler of motor vehicle fuel or refiner~~ in the form of an  
 4 advertisement, proof of sale or receipted purchase, price survey, or other business  
 5 record maintained by the retailer, or wholesaler, ~~wholesaler of motor vehicle fuel or~~  
 6 ~~refiner~~ in the ordinary course of trade or the usual conduct of business.

History: 1973 c. 310; 1979 c. 34 ss. 950 to 950y, 2102 (3) (b); 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.

7           **SECTION 28.** 100.30 (6) (a) 9. of the statutes is repealed

8           **SECTION 29.** 100.30 (7) of the statutes is repealed.

← INSERT 8-8

(END)

**BILL**

1 advertisement, proof of sale or receipted purchase, price survey or other business  
2 record maintained by the retailer, or wholesaler, wholesaler of motor vehicle fuel or  
3 refiner in the ordinary course of trade or the usual conduct of business.

4 **SECTION 34.** 100.30 (6) (a) 9. of the statutes is repealed.

5 **SECTION 35.** 100.30 (7) of the statutes is repealed.

6 **SECTION 36.** 814.04 (intro.) of the statutes is amended to read:

INS  
✓ 8-8

7 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.30 (5m),

8 106.50 (6) (i) and (6m) (a), 115.80 (9), 769.313, 814.025, 814.245, 895.035 (4), 895.10

9 (3), 895.75 (3), 895.77 (2), 895.79 (3), 895.80 (3), 943.212 (2) (b), 943.245 (2) (d) and

10 943.51 (2) (b), when allowed costs shall be as follows:

11 ~~(END)~~

Dak

D-Note  
LRB-2148/1  
MGG: hmb:

Do you want to repeal s. 20.115 (1)(r) since there  
are no longer any specific provisions for motor vehicle  
fuel under s. 100.30?

MSB

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

LRB-2148/1dn  
MGG:lml:rs

February 16, 2001

Do you want to repeal s. 20.115 (1) (r) since there are no longer any specific provisions for motor vehicle fuel under s. 100.30?

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