

2001 DRAFTING REQUEST

Senate Amendment (SA-SSA1-SB55)

Received: 06/15/2001

Received By: gibsom

Wanted: Soon

Identical to LRB:

For: Senate Democratic Caucus

By/Representing: Keckhaver

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

Requester's email:

Pre Topic:

SDC:.....Keckhaver - CN1064,

Topic:

Unfair sales act to exclude motor vehicle fuel

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 06/17/2001	hhagen 06/17/2001	pgreensl 06/18/2001	_____	lrb_docadmin 06/18/2001		

FE Sent For:

<END>

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1?	gibsom	4/1 hmk 6/17/01	6/18 PQ	6/18 PQ/KJA			

FE Sent For:

<END>

CN1064

Adopt the attached motion, which would repeal the minimum markup requirement for motor vehicle fuel.

OBJECTIVE: Repeal of the minimum markup requirement for motor vehicle fuel, Wis. Stat. s. 100.30.

SECTION 1. 100.26(9) of the statutes is repealed. ✓

SECTION 2. 100.30(2)(a) of the statutes is repealed.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

not necessary
SECTION 3. 100.30(2)(am)1. of the statutes is renumbered 100.30(2)(a)1.

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 of the statutes is repealed.

not necessary
SECTION 5. 100.30(2)(am)2. of the statutes is renumbered 100.30(2)(a)2.

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

(b) "Cost to retailer" and "cost to wholesaler" as defined in para. (am) and (c) mean bona fide costs; and purchases made by retailers; or wholesalers, ~~wholesalers of motor vehicle fuel and refiners~~ at prices which cannot be justified by prevailing market conditions within this state shall not be used in determining cost to the retailer and cost to the wholesaler. Prices at which purchases of merchandise other than motor vehicle fuel are made by retailers or wholesalers cannot be justified by prevailing market conditions in this state when they are below the lowest prices at which the manufacturer or producer of such merchandise sells to other retailers or wholesalers in this state. ~~Prices at which sales of motor vehicle fuel are made by retailers, wholesalers, wholesalers of motor vehicle fuel and refiners cannot be justified by prevailing market conditions in this state when they are below the applicable cost to retailers and cost to wholesalers specified under pars. (am) and (c).~~

still valid key

SECTION 7. 100.30(2)(c)1g. of the statutes is repealed.

SECTION 8. 100.30(2)(c)1r. of the statutes is repealed.

SECTION 9. 100.30(2)(c)2. of the statutes is amended to read:

2. With respect to the sale of merchandise other than cigarettes or other tobacco products,

Not amended

fermented malt beverages, intoxicating liquor or wine, or motor vehicle fuel, "cost to wholesaler" means the invoice cost of the merchandise to the wholesaler, or the replacement cost of the merchandise to the wholesaler, whichever is lower, less all trade discounts except customary discounts for cash, plus any excise taxes imposed on the sale thereof prior to the sale at retail, and any cost incurred for transportation and any other charges not otherwise included in the invoice cost or the replacement cost of the merchandise as herein set forth.

SECTION 10. 100.30(2)(cg) of the statutes is repealed.

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

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

SECTION 12. 100.30(2)(cL) of the statutes is repealed.

SECTION 13. 100.30(2)(cm) of the statutes is repealed.

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

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

valid x-ref I think so

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

(e) "Retailer" includes every person engaged in the business of making sales at retail within this state, other than sales of motor vehicle fuel, but, in the case of a person engaged in the business of selling both at retail and at wholesale, such term shall be applied only to the retail

portion of such business.

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

(f) With the respect to the sale of merchandise other than motor vehicle fuel, "retailer" and "wholesaler" shall both be applied to any merchant who buys merchandise for resale at retail from the manufacturer or producer thereof and to any wholesaler under par. (L) 2. and, as to that merchandise or that wholesaler, the terms "cost to retailer" and "cost to wholesaler" as defined in pars. (am) and (c) shall both be applied, including the markup requirements.

*(am) still valid
X ref*

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

(g) "Sell", "sale" or "sold" includes any advertising or offer to sell or any transfer of merchandise where title is retained by the retailer, or wholesaler, ~~wholesaler of motor vehicle fuel or refiner~~ as security for the payment of the purchase price. In determining the selling price of merchandise by wholesalers, ~~wholesalers of motor vehicle fuel, and~~ retailers and refiners under this section, all fractions of a cent shall be carried to the next full cent.

SECTION 18. 100.30(2)(j) of the statutes is repealed.

SECTION 19. 100.30(2)(m) of the statutes is repealed.

AM 100.30(2m)(a)

SECTION 20. 100.30(2m)(a) of the statutes is amended to read:

(a) When one or more items of merchandise are furnished or sold in combination with or on condition of the purchase of one or more other items, or are so advertised, all items shall be included in determining cost under sub. (2) (am) or (c); and if any of the items included therein are separately priced, such separate price shall be subject to the requirements of this section.

*X ref
still valid*

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

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

100.30(3) ILLEGALITY OF LOSS LEADERS. Any sale of any item of merchandise

~~either other than motor vehicle fuel~~ by a retailer, ~~or wholesaler, wholesaler of motor vehicle fuel~~
~~or refiner~~, at less than cost as defined in this section with the intent or effect of inducing the
purchase of other merchandise or of unfairly diverting trade from a competitor impairs and
prevents fair competition, injures public welfare and is unfair competition and contrary to public
policy and the policy of this section. Such sales are prohibited . Evidence of any sale of any item
of merchandise other than motor vehicle fuel by any retailer, ~~or wholesaler, wholesaler of motor~~
~~vehicle fuel or refiner~~ at less than cost as defined in this section shall be prima facie evidence of
intent or effect to induce the purchase of other merchandise, or to unfairly divert trade from a
competitor, or to otherwise injure a competitor.

SECTION 23. 100.30(5)(a) of the statutes is amended to read:

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

SECTION 24. 100.30(5m) of the statutes is repealed.

SECTION 25. 100.30(6)(a)7. of the statutes is amended to read:

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

SECTION 26. 100.30(6)(a)9. of the statutes is repealed.

SECTION 27. 100.30(7) of the statutes is repealed.



noon

D-Note

SDC:.....Keckhaver – CN1064, Unfair sales act to exclude motor vehicle fuel

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS SENATE AMENDMENT

TO SENATE SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

✓
2421m

substitute amendment

1 At the locations indicated, amend the ~~bill~~ as follows:

2 1. Page ~~8~~⁸⁸⁹, line ~~8~~: after that line insert:

3 " SECTION ~~??~~⁸⁹⁰. 100.26 (9) of the statutes is repealed. "

4 2. Page ~~8~~⁸⁹⁰, line ~~8~~¹⁶: after that line insert:

5 " SECTION ~~??~~^{2430b}. 100.30 (2) (a) of the statutes is repealed.

6 SECTION ~~??~~^{2430d}. 100.30 (2) (am) 1m. of the statutes is repealed.

7 SECTION ~~??~~. 100.30 (2) (am) 2. of the statutes is amended to read:

8 100.30 (2) (am) 2. With respect to the sale of merchandise other than cigarettes
9 or other tobacco products, fermented malt beverages, intoxicating liquor or wine, or
10 motor vehicle fuel, "cost to retailer" means the invoice cost of the merchandise to the

1 retailer, or replacement cost of the merchandise to the retailer, whichever is lower,
 2 less all trade discounts except customary discounts for cash, plus any excise taxes
 3 imposed on such merchandise or the sale thereof other than excise taxes collected by
 4 the retailer, and any cost incurred for transportation and any other charges not
 5 otherwise included in the invoice cost or the replacement cost of the merchandise as
 6 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.

7 SECTION ?? 100.30 (2) (b) of the statutes is amended to read:

L 2430f

8 100.30 (2) (b) "Cost to retailer" and "cost to wholesaler" as defined in pars. (am)

9 and (c) mean bona fide costs; and purchases made by retailers, or wholesalers,

10 wholesalers of motor vehicle fuel and refiners at prices which ^{that} cannot be justified by

11 prevailing market conditions within this state shall not be used in determining cost

12 to the retailer and cost to the wholesaler. Prices at which purchases of merchandise

13 other than motor vehicle fuel are made by retailers or wholesalers cannot be justified

14 by prevailing market conditions in this state when they are below the lowest prices

15 at which the manufacturer or producer of such merchandise sells to other retailers

16 or wholesalers in this state. ~~Prices at which sales of motor vehicle fuel are made by~~

17 ~~retailers, wholesalers, wholesalers of motor vehicle fuel and refiners cannot be~~

18 ~~justified by prevailing market conditions in this state when they are below the~~

19 ~~applicable cost to retailers and cost to wholesalers specified under pars. (am) 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.

20 SECTION ?? 100.30 (2) (c) 1g. of the statutes is repealed.

L 2430g

21 SECTION ?? 100.30 (2) (c) 1r. of the statutes is repealed.

2430j

22 SECTION ?? 100.30 (2) (c) 2. of the statutes is amended to read.

1 100.30 (2) (c) 2. With respect to the sale of merchandise other than cigarettes
 2 or other tobacco products, fermented malt beverages, intoxicating liquor or wine, or
 3 motor vehicle fuel, "cost to wholesaler" means the invoice cost of the merchandise to
 4 the wholesaler, or the replacement cost of the merchandise to the wholesaler,
 5 whichever is lower, less all trade discounts except customary discounts for cash, plus
 6 any excise taxes imposed on the sale thereof prior to the sale at retail, and any cost
 7 incurred for transportation and any other charges not otherwise included in the
 8 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.

9 SECTION ?? 100.30 (2) (cg) of the statutes is repealed.

10 SECTION ?? 100.30 (2) (cj) of the statutes is amended to read:

11 100.30 (2) (cj) "Existing price of a competitor" means a price being
 12 simultaneously offered to a buyer for merchandise of like quality and quantity by a
 13 person who is a direct competitor of the retailer, or wholesaler, ~~wholesaler of motor~~
 14 ~~vehicle fuel or refiner~~ and from whom the buyer can practicably purchase the
 15 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.

16 SECTION ?? 100.30 (2) (cL) of the statutes is repealed.

17 SECTION ?? 100.30 (2) (cm) of the statutes is repealed.

18 SECTION ?? 100.30 (2) (d) of the statutes is amended to read:

19 100.30 (2) (d) "Replacement cost" means the cost computed as specified in par.
 20 (am) or (c) at which the merchandise sold could have been bought by the retailer, or
 21 wholesaler ~~or wholesaler of motor vehicle fuel~~ at any time if bought in the same

2430xKj

1 quantity as the retailer's, or wholesaler's ~~or wholesaler of motor vehicle fuel's~~ last
2 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.

3 SECTION ?? 100.30 (2) (e) of the statutes is amended to read:

4 100.30 (2) (e) "Retailer" includes every person engaged in the business of
5 making sales at retail within this state, other than sales of motor vehicle fuel, but,
6 in the case of a person engaged in the business of selling both at retail and at
7 wholesale, such term shall be applied only to the retail portion of such business.

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 ?? 100.30 (2) (f) of the statutes is amended to read:

9 100.30 (2) (f) With respect to the sale of merchandise other than motor vehicle
10 fuel, "retailer" and "wholesaler" shall both be applied to any merchant who buys
11 merchandise for resale at retail from the manufacturer or producer thereof and to
12 any wholesaler under par. (L) 2. and, as to that merchandise or that wholesaler, the
13 terms "cost to retailer" and "cost to wholesaler" as defined in pars. (am) and (c) shall
14 both be applied, including 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.

15 SECTION ?? 100.30 (2) (g) of the statutes is amended to read:

2430xKL

16 100.30 (2) (g) "Sell", "sale" or "sold" includes any advertising or offer to sell or
17 any transfer of merchandise where title is retained by the retailer; or wholesaler;
18 wholesaler of motor vehicle fuel or refiner as security for the payment of the purchase
19 price. In determining the selling price of merchandise by wholesalers, ~~wholesalers~~
20 ~~of motor vehicle fuel~~, and retailers ~~and refiners~~ under this section, all fractions of a
21 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.

22 SECTION ?? 100.30 (2) (j) of the statutes is repealed.

2430xLm

2430*Kn

other than motor vehicle fuel

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SECTION ?? 100.30 (2) (m) of the statutes is repealed.

2430*Kn

SECTION ?? 100.30 (2m) (a) of the statutes is amended to read:

100.30 (2m) (a) When one or more items of merchandise are furnished or sold in combination with or on condition of the purchase of one or more other items, or are so advertised, all items shall be included in determining cost under sub. (2) (am) or (c); and if any of the items included therein are separately priced, such separate price shall be subject to the requirements of this section.

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.

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SECTION ?? 100.30 (2m) (b) of the statutes is amended to read:

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

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SECTION ?? 100.30 (2m) (c) of the statutes is repealed.

2430*Kn

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

2430*Kn

100.30 (3) ILLEGALITY OF LOSS LEADERS. Any sale of any item of merchandise either, other than motor vehicle fuel, by a retailer, ~~or wholesaler, wholesaler of motor vehicle fuel or refiner,~~ at less than cost as defined in this section with the intent or effect of inducing the purchase of other merchandise or of unfairly diverting trade from a competitor, impairs and prevents fair competition, injures public welfare and

1 is unfair competition and contrary to public policy and the policy of this section. Such
 2 sales are prohibited. Evidence of any sale of any item of merchandise, other than
 3 motor vehicle fuel, by any retailer, or wholesaler, ~~wholesaler of motor vehicle fuel or~~
 4 ~~refiner~~ at less than cost as defined in this section shall be prima facie evidence of
 5 intent or effect to induce the purchase of other merchandise, or to unfairly divert
 6 trade from a competitor, or to otherwise injure a competitor.

History: 1973 c. 310; 1979 c. 34 ss. 950a 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.

7 ~~SECTION ??~~ 100.30 (5) (a) of the statutes is amended to read:

224302KT

8 100.30 (5) (a) The department may issue a special order as provided in s. 93.18
 9 against a retailer, or wholesaler, ~~wholesaler of motor vehicle fuel or refiner~~ requiring
 10 the person to cease and desist from violating this section in the sale of cigarettes or
 11 other tobacco products, or fermented malt beverages, intoxicating liquor or wine ~~or~~
 12 ~~motor vehicle fuel~~. The department or a district attorney may commence an action
 13 on behalf of the state against a retailer, or wholesaler, ~~wholesaler of motor vehicle~~
 14 ~~fuel or refiner~~ who violates a special order issued under this paragraph to recover a
 15 forfeiture of not less than \$200 nor more than \$5,000 for each violation.

History: 1973 c. 310; 1979 c. 34 ss. 950a 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.

16 ~~SECTION ??~~ 100.30 (5m) of the statutes is repealed.

224305KV

17 ~~SECTION ??~~ 100.30 (6) (a) 7. of the statutes is amended to read:

224308KY

18 100.30 (6) (a) 7. The price of merchandise is made in good faith to meet an
 19 existing price of a competitor and is based on evidence in the possession of the
 20 retailer, or wholesaler, ~~wholesaler of motor vehicle fuel or refiner~~ in the form of an
 21 advertisement, proof of sale or receipted purchase, price survey or other business

1 record maintained by the retailer, or wholesaler, ~~wholesaler of motor vehicle fuel or~~
2 ~~refiner~~ in the ordinary course of trade or the usual conduct of business.

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.

3 SECTION ?? 100.30 (6) (a) 9. of the statutes is repealed.
22430m

4 SECTION ?? 100.30 (7) of the statutes is repealed. //
22430n

5 3. Page?, line?: after that line insert:

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

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 NOTE: NOTE: NOTE: Section 814.04 (intro.) is shown as affected by two acts of the 1999 legislature and as merged by the revisor under s. 13.93 (2) (c). NOTE:
History: Sup. Ct. Order, 50 Wis. 2d vii (1971); 1971 c. 141; Sup. Ct. Order, 67 Wis. 2d 585, 761, 780 (1975); Stats. 1975 s. 814.04; 1977 c. 209; 1979 c. 110, s. 60 (13); 1979 c. 271, 355; 1981 c. 123, 317; 1985 a. 52, 311; 1987 a. 348; 1991 a. 39, 65, 189, 295; 1993 a. 98, 326, 486, 490, 491; 1995 a. 24, 27, 133, 149, 262, 417; 1997 a. 55, 164, 254; 1999 a. 32, 82, 122, 190; s. 13.93 (2) (c).

12 (END)

. Page 1207, line 19; substitute "100.30(5m)," for
100.30(5m), "

SDC:.....Keckhaver – CN1064, Unfair sales act to exclude motor vehicle fuel
FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION
CAUCUS SENATE AMENDMENT
TO SENATE SUBSTITUTE AMENDMENT 1,
TO 2001 SENATE BILL 55

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 889, line 8: after that line insert:

3 “SECTION 2421m. 100.26 (9) of the statutes is repealed.”

4 **2.** Page 890, line 16: after that line insert:

5 “SECTION 2430b. 100.30 (2) (a) of the statutes is repealed.

6 SECTION 2430d. 100.30 (2) (am) 1m. of the statutes is repealed.

7 SECTION 2430f. 100.30 (2) (b) of the statutes is amended to read:

8 100.30 (2) (b) “Cost to retailer” and “cost to wholesaler” as defined in pars. (am)
9 and (c) mean bona fide costs; and purchases made by retailers, or wholesalers,
10 ~~wholesalers of motor vehicle fuel and refiners at prices which~~ that cannot be justified

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

11 **SECTION 2430g.** 100.30 (2) (c) 1g. of the statutes is repealed.

12 **SECTION 2430j.** 100.30 (2) (c) 1r. of the statutes is repealed.

13 **SECTION 2430k.** 100.30 (2) (cg) of the statutes is repealed.

14 **SECTION 2430kb.** 100.30 (2) (cj) of the statutes is amended to read:

15 100.30 (2) (cj) “Existing price of a competitor” means a price being
16 simultaneously offered to a buyer for merchandise of like quality and quantity by a
17 person who is a direct competitor of the retailer, or wholesaler, ~~wholesaler of motor~~
18 ~~vehicle fuel or refiner~~ and from whom the buyer can practicably purchase the
19 merchandise.

20 **SECTION 2430kd.** 100.30 (2) (cL) of the statutes is repealed.

21 **SECTION 2430kf.** 100.30 (2) (cm) of the statutes is repealed.

22 **SECTION 2430kh.** 100.30 (2) (d) of the statutes is amended to read:

23 100.30 (2) (d) “Replacement cost” means the cost computed as specified in par.
24 (am) or (c) at which the merchandise sold could have been bought by the retailer, or
25 wholesaler ~~or wholesaler of motor vehicle fuel~~ at any time if bought in the same

1 quantity as the retailer's, or wholesaler's ~~or wholesaler of motor vehicle fuel's~~ last
2 purchase of the said merchandise.

3 **SECTION 2430kj.** 100.30 (2) (e) of the statutes is amended to read:

4 100.30 (2) (e) "Retailer" includes every person engaged in the business of
5 making sales at retail within this state, other than sales of motor vehicle fuel, but,
6 in the case of a person engaged in the business of selling both at retail and at
7 wholesale, such term shall be applied only to the retail portion of such business.

8 **SECTION 2430kL.** 100.30 (2) (g) of the statutes is amended to read:

9 100.30 (2) (g) "Sell", "sale" or "sold" includes any advertising or offer to sell
10 or any transfer of merchandise where title is retained by the retailer, or wholesaler,
11 ~~wholesaler of motor vehicle fuel or refiner~~ as security for the payment of the purchase
12 price. In determining the selling price of merchandise by wholesalers, ~~wholesalers~~
13 ~~of motor vehicle fuel~~, and retailers ~~and refiners~~ under this section, all fractions of a
14 cent shall be carried to the next full cent.

15 **SECTION 2430km.** 100.30 (2) (j) of the statutes is repealed.

16 **SECTION 2430kn.** 100.30 (2) (m) of the statutes is repealed.

17 **SECTION 2430ko.** 100.30 (2m) (a) of the statutes is amended to read:

18 100.30 (2m) (a) When one or more items of merchandise, other than motor
19 vehicle fuel, are furnished or sold in combination with or on condition of the purchase
20 of one or more other items, or are so advertised, all items shall be included in
21 determining cost under sub. (2) (am) or (c); and if any of the items included therein
22 are separately priced, such separate price shall be subject to the requirements of this
23 section.

24 **SECTION 2430kp.** 100.30 (2m) (c) of the statutes is repealed.

25 **SECTION 2430ks.** 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, other than motor vehicle fuel,~~ by a retailer, ~~or wholesaler, wholesaler of motor~~
3 ~~vehicle fuel or refiner,~~ at less than cost as defined in this section with the intent or
4 effect of inducing the purchase of other merchandise or of unfairly diverting trade
5 from a competitor, impairs and prevents fair competition, injures public welfare and
6 is unfair competition and contrary to public policy and the policy of this section. Such
7 sales are prohibited. Evidence of any sale of any item of merchandise, ~~other than~~
8 ~~motor vehicle fuel,~~ by any retailer, ~~or wholesaler, wholesaler of motor vehicle fuel or~~
9 ~~refiner~~ at less than cost as defined in this section shall be prima facie evidence of
10 intent or effect to induce the purchase of other merchandise, or to unfairly divert
11 trade from a competitor, or to otherwise injure a competitor.

12 **SECTION 2430kt.** 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, ~~or fermented malt beverages, 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.

21 **SECTION 2430kv.** 100.30 (5m) of the statutes is repealed.

22 **SECTION 2430kx.** 100.30 (6) (a) 7. of the statutes is amended to read:

23 100.30 (6) (a) 7. The price of merchandise is made in good faith to meet an
24 existing price of a competitor and is based on evidence in the possession of the
25 retailer, ~~or wholesaler, wholesaler of motor vehicle fuel or refiner~~ in the form of an

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 2430m.** 100.30 (6) (a) 9. of the statutes is repealed.

5 **SECTION 2430n.** 100.30 (7) of the statutes is repealed.”.

6 **3.** Page 1207, line 19: substitute “100.30 (5m),” for “100.30 (5m).”.

7 (END)