

2003 DRAFTING REQUEST

Bill

Received: **05/14/2003**

Received By: **rkite**

Wanted: **As time permits**

Identical to LRB:

For: **Terry Musser (608) 266-7461**

By/Representing: **himself**

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

Drafter: **rkite**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - cigs/tobacco**

Extra Copies:

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Cigarette product promotion

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> |
|--------------|---------------------|------------------------|------------------------|----------------|------------------------|----------------------|-----------------|
| /? | | | | | | | |
| /P1 | rkite 08/01/2003 | csicilia 08/01/2003 | rschluet 08/01/2003 | _____ | amentkow 08/01/2003 | | |
| /P2 | rkite 08/22/2003 | csicilia 08/29/2003 | rschluet 08/29/2003 | _____ | mbarman 08/29/2003 | | |
| /1 | rkite 10/21/2003 | csicilia 10/30/2003 | jfrantze 10/30/2003 | _____ | lnorthro 10/30/2003 | lemery 01/23/2004 | |

FE Sent For: *None needed*

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| /P2 | rkite 08/22/2003 | csicilia 08/29/2003 | rschluet 08/29/2003 | _____ | mbarman 08/29/2003 | | |

FE Sent For:

<END>

/1 cigs 10/30
03

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|--------------|---------------------|------------------------|------------------------|----------------|------------------------|-----------------|-----------------|
| /? | | | | | | | |
| /P1 | rkite 08/01/2003 | csicilia 08/01/2003 | rschluet 08/01/2003 | | amentkow 08/01/2003 | | |

FE Sent For:

P2 cigs 8/29/03

Handwritten signature and text: <END> 8-29-03

2003 DRAFTING REQUEST

Bill

Received: 05/14/2003

Received By: rkite

Wanted: As time permits

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Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

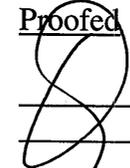
Cigarette product promotion

Instructions:

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| /? | rkite | Pl cjs 8/1 03 |  |  | | | |
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FE Sent For:

<END>

Bill Request Form

Legislative Reference Bureau
100 N. Hamilton Street
Legal Section 266-3561

You may use this form or talk directly with the LRB attorney who will draft the bill.

Date 5/8/03

Legislator, agency, or other person requesting this draft Rep. Musser

Person submitting request (name and phone number) 266-741

Persons to contact for questions about this draft (names and phone numbers) James Tenuta
255-5522 jim@tenuta-hermes.com

Describe the problem, including any helpful examples. How do you want to solve the problem?
Please draft similar to attached Indiana bill.

Ron Hermes

Please attach a copy of any correspondence or other material that may help us. If you know of any statute sections that might be affected, list them or provide a marked-up copy.

You may attach a marked-up copy of any LRB draft or provide its number (e.g., 2001 LRB-2345/1 or 1999AB-67).

Requests are confidential unless stated otherwise. May we tell others that we are working on this for you? YES NO

If yes: Anyone who asks? YES NO
 Any legislator? YES NO

Only the following persons _____

Do you consider this request urgent? YES NO If yes, please indicate why _____

Should we give this request priority over any pending request of this legislator, agency, or person?

YES NO

1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
2 1, 2003]: Sec. 14. (a) Subject to subsection (c), a cigarette retailer
3 may enter into an agreement concerning, and participate in, a
4 cigarette manufacturer's merchandising, advertising, display, or
5 consumer discount or promotional program in which the retailer:

6 (1) provides cigarette merchandising, advertising, shelf space,
7 stocking, or display to the manufacturer;

8 (2) conducts the manufacturer's consumer promotion and
9 discount programs and provides the promotions and
10 discounts to customers; and

11 (3) is paid or compensated by the manufacturer for
12 performing the manufacturer's program.

13 (b) Subject to subsection (c), a cigarette manufacturer may:

14 (1) enter into an agreement with a retailer concerning the
15 manufacturer's program;

16 (2) provide a retailer with a monetary payment or other
17 compensation for participating in the manufacturer's
18 program; and

19 (3) provide consumer promotions and discounts to a retailer
20 for the retailer to furnish to consumers.

21 (c) A cigarette manufacturer may not, directly or indirectly, do
22 the following:

23 (1) Require the retailer to take certain actions concerning
24 another manufacturer's products as a condition for the
25 retailer to participate in a consumer or product promotion, or
26 to receive a consumer cigarette price discount, or any
27 compensation, rebate, or other inducement relating to the
28 promotion. However, the manufacturer may require the
29 retailer to provide the promotion or discount to consumers
30 and advertise and display the promotion and the promoted or
31 discounted product to consumers.

32 (2) Require a retailer to allocate to the manufacturer more
33 than the lesser of:

34 (A) the percentage of the manufacturer's Indiana market
35 share in the most recent calendar year; or

36 (B) fifty percent (50%);

37 of the retailer's merchandising, stocking, display, shelf, or
38 advertising space if the manufacturer has more than fifteen

*unfair
trade
practice*

1 percent (15%) of the Indiana market for the most recent
2 calendar year.

3 (3) Prevent, restrict, or limit a retailer from stocking,
4 displaying, advertising, or participating in a program of
5 another manufacturer.

6 (4) Prevent, restrict, or limit a retailer from determining the
7 size or location of the space that the retailer uses to stock,
8 display, promote, or advertise cigarettes.

9 (5) Require the retailer to raise its prices on, or prevent a
10 retailer from raising, reducing, setting, or retaining the price
11 on, another manufacturer's products.

12 SECTION 9. IC 24-3-5 IS ADDED TO THE INDIANA CODE AS
13 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
14 1, 2003]:

15 Chapter 5. Master Settlement Agreement Protection Act

16 Sec. 1. As used in this chapter, "brand family" means cigarettes
17 that are:

- 18 (1) sold under the same trademark; and
- 19 (2) differentiated from one another by means of modifiers
20 such as menthol, lights, kings, or 100s.

21 The term includes the use of a brand name, trademark, logo,
22 symbol, motto, selling message, recognizable pattern of colors, or
23 other indicia of product identification that is identical or similar to
24 or identifiable with a previously known brand of cigarettes.

25 Sec. 2. As used in this chapter, "cigarette" has the meaning set
26 forth in IC 24-3-3-5.

27 Sec. 3. As used in this chapter, "department" means the
28 department of state revenue.

29 Sec. 4. As used in this chapter, "distributor" means a person
30 that:

- 31 (1) purchases cigarettes on which the tax under IC 6-7-1 is not
32 paid; and
- 33 (2) stores, sells, or otherwise disposes of the cigarettes.

34 Sec. 5. As used in this chapter, "master settlement agreement"
35 has the meaning set forth in IC 24-3-3-6.

36 Sec. 6. As used in this chapter, "nonparticipating
37 manufacturer" means a tobacco product manufacturer that is not
38 a participating manufacturer.

7/30

Spoke to Ron Hermes

issue is that manufacturers require retailers to devote certain shelf space to their brands or take other actions ~~is~~ or else they won't give discounts to the retailers

this has become a problem because the cigarette settlement agreement has severely restricted manufacturers other methods of advertising

we agreed to start w/ a D/draft

I explained that the Indiana law was very difficult to follow especially re: the market share formula



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT ^{gen cat.} relating to: cigarette advertising and promotion.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version of the draft.

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

- 2 SECTION 1. 100.20 (1v) of the statutes is created to read:
- 3 100.20 (1v) (a) In this subsection:
- 4 1. "Cigarette" has the meaning given in s. 139.30 (1). ✓
 - 5 2. "Manufacturer" means a person specified under s. 139.30 (7) or s. 139.75 (5). ✓
 - 6 3. "Retailer" means any person licensed under s. 134.65 (1). ✓
- 7 (b) It is an unfair trade practice for a manufacturer to do any of the following:
- 8 1. Require a retailer to take certain action concerning another manufacturer's
 - 9 products as a condition for allowing the retailer to participate in a product promotion,

1 to receive any compensation, rebate, or other inducement relating to the product
 2 promotion, or to receive a discount on the price of the manufacturer's products,
 3 except that the manufacturer may require the retailer to provide the promotion or
 4 discount to the retailer's customers and to advertise and display the promotion and
 5 the promoted product. ✓

6 2. If more than 15% of all cigarettes sold in this state in the preceding calendar
 7 year are made by the manufacturer, require a retailer to allocate more than the lesser
 8 of the following percentage of the retailer's stocking, shelf, or advertising space to the
 9 manufacturer's products: ✓

10 a. A percentage equal to the percentage of all cigarettes sold in this state that
 11 are made by the manufacturer.

12 b. 50%.

13 3. ~~Prevent~~ ^{Prohibit} a retailer from stocking another manufacturer's products.

14 4. ~~Prevent~~ ^{Prohibit} a retailer from advertising or participating in another
 15 manufacturer's product promotion.

16 5. Prevent a retailer from determining the size or location of the space that the
 17 retailer uses to stock the manufacturer's cigarettes or to display, promote, or
 18 advertise the manufacturer's cigarettes. ✓

19 5. ~~UA~~ Require a retailer to charge a certain price for another manufacturer's
 20 products. ✓

21 (END)

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

LRB-2728/P1dn

RNK:.....

y^s

I have prepared this draft in preliminary form to enable you to review the draft and make any desired changes before preparing the draft in final form.

Please note that the Indiana bill specifies not only what a cigarette manufacturer may not require a retailer to do but also specifies what kinds of agreements ^{into} ~~that~~ a cigarette retailer may enter into with a cigarette manufacturer. I did not include in this draft any of the language that specifies what kinds of agreements ~~into which~~ the retailer and manufacturer may enter because I do not believe that there is anything in current law that prohibits these parties from entering into such agreements. Consequently, there is no reason to affirmatively state what is not prohibited in current law. ✓

Please look very closely at the language in the draft created in s. 100.20 (1v) (b) 2. to ensure that it is consistent with your intent. The language in the Indiana bill refers to Indiana "market share". Because that term is not defined in the Indiana bill, it is not entirely clear to me what that term means. I have assumed for the purpose of this draft that this term refers to a percentage equal to the percentage of all cigarette ~~sales~~ sold in Wisconsin that are made by the manufacturer.

Under this draft, as under the Indiana bill, with certain exceptions, a manufacturer may not require a retailer to take "certain action" concerning another manufacturer's products as a condition for allowing the retailer to participate in a product promotion or to receive a discount on the price of the manufacturer's products. The use of the term "certain action" is extremely vague and is so broad that it could have unintended consequences. You may want to specify in the draft what actions a manufacturer may not require a retailer to take.

Please feel free to contact me if you have any questions concerning this draft. ✓

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2728/P1dn
RNK:cjs:rs

August 1, 2003

I have prepared this draft in preliminary form to enable you to review the draft and make any desired changes before preparing the draft in final form.

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Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.state.wi.us

Kite, Robin

From: Musser, Terry
Sent: Monday, August 11, 2003 11:26 AM
To: Kite, Robin
Subject: LRB 2728

Hi, Robin ... You have drafted LRB 2728 for me at the request of Ron Hermes and Jim Tenuta.

Please allow Jim and/or Ron to speak to you with changes/suggestions on this draft.

Thanks,

Terry Musser
WI State Representative
92nd Assembly District

266-7461

rep.musser@legis.state.wi.us

Kite, Robin

From: Ron Hermes [ron@tenuta-hermes.com]

Sent: Wednesday, August 13, 2003 3:06 PM

To: robin.kite@legis.state.wi.us

Subject: LRB 2728/P1 (Rep. Musser cig.

Hi Robin-

As I mentioned on the voicemail message I left for you, there are a few additions and deletions we would like to make in LRB 2728/P1. I have attached a draft of new language that we would like to use for the bill and I have also attached an explanation of each section.

Instead of typing out the list of changes, I think that we can probably discuss the changes more easily on the phone or in person. Please call me when you are back in the office. 255-5522

Thanks,
Ron Hermes
Tenuta-Hermes Corp.
B&W WI Lobbyist

255-5522

08/15/2003

1. A cigarette retailer may enter into and participate in a cigarette manufacturer's merchandising, advertising, display, or consumer discount or promotional agreement or program in which the retailer:
 - a. Provides cigarette merchandising, shelf-space, advertising, inventory stocking or display to the manufacturer,
 - b. Conducts the manufacturer's consumer promotion and discount programs and provides such promotions and discounts to consumers, and
 - c. Is paid or compensated by the manufacturer for performing such activities.

2. A cigarette manufacturer may:
 - a. Offer and enter into such retailer agreements and programs,
 - b. Pay, or provide other compensation to retailers for participating in such agreements and programs, and
 - c. Provide consumer promotions and discounts to retailers for the retailers to furnish to consumers.

3. It shall be unlawful for a cigarette manufacturer to directly or indirectly:
 - a. Prevent, restrict or limit a retailer from selling, stocking, advertising, displaying, or participating in an agreement or program for another manufacturer's product,
 - b. Prevent, restrict or limit the retailer from determining or increasing the size, contents or location of the space that the retailer uses to sell stock, display, promote, or advertise any cigarettes,
 - c. Require the retailer to raise its prices on, or prevent the retailer from setting, retaining or reducing its prices on, another manufacturer's products,

4. A manufacturer agreement or program shall define the amount of each element described in Section 1 that the retailer is to provide to the manufacturer at the start of the agreement or program. It shall be unlawful for such agreement or program to require the retailer to increase any element provided to the manufacturer during its term.

8/1/03

| | |
|---|--|
| <p>1. A cigarette retailer may enter into and participate in a cigarette manufacturer's merchandising, advertising, display, or consumer discount or promotional agreement or program in which the retailer:</p> | <p>Affirms that retailers may enter into merchandising contracts with cigarette manufacturers.</p> <p>Nothing in this bill prohibits contracts, RDA's, slotting allowances, discounts or "buy downs".</p> |
| <p>a. Provides cigarette merchandising, shelf-space, advertising, stocking or display to the manufacturer,</p> | <p>Retailers may contract to provide space to a cigarette manufacturer under the manufacturer's retailer and consumer programs.</p> <p>The retailer may provide this space on a fixed number or percentage basis.</p> <p>THE BILL ALLOWS - DOES NOT PROHIBIT - SHELF CONTRACTS.</p> |
| <p>b. Conducts the manufacturer's consumer promotion and discount programs and provides such promotions and discounts to consumers, and</p> | <p>Retailers may contract for, and participate in, cigarette manufacturers' consumer programs and may pass discounts and promotions such as buy downs on to consumers.</p> <p>THE BILL ALLOWS - DOES NOT PROHIBIT - BUY-DOWNS.</p> |
| <p>c. Is paid or compensated by the manufacturer for performing such activities.</p> | <p>Retailers may be paid by the manufacturer, for shelf space, display space, advertising, and signage, and for participating in consumer promotions.</p> <p>THE BILL ALLOWS - DOES NOT PROHIBIT - RDA'S, DISCOUNTS OR BUY DOWNS.</p> |
| <p>2. A cigarette manufacturer may:</p> | <p>This section (2a, b, and c) complements Section 1 and affirms that cigarette manufacturers may conduct, contract with, and pay retailers for participating in advertising and merchandising programs such as shelf and display contracts, and consumer promotion and discount programs.</p> <p>NOTHING HERE PROHIBITS SHELF CONTRACTS, RDA'S OR "BUY DOWNS".</p> |
| <p>a. Offer and enter into such retailer agreements and programs.</p> | <p>Manufacturers may lawfully offer shelf space, merchandising and promotional contracts on a fixed number or</p> |

| | |
|---|--|
| | percentage basis. NOTHING IN THIS BILL PROHIBITS THEM. |
| b. Pay or provide other compensation to retailers for participating in such agreements and programs, and | Manufacturers may pay RDA's or make other payments to retailers for participating in agreements and programs. THIS SECTION ALLOWS – IT DOES NOT PROHIBIT - RDA'S AND OTHER RETAILER PAYMENTS. |
| c. Provide consumer promotions and discounts to retailers for the retailers to furnish to consumers. | Manufacturers may provide buy-downs and other promotions to retailers for the retailers to pass on to consumers. THIS SECTION ALLOWS – IT DOES NOT PROHIBIT - BUY-DOWNS OR OTHER CONSUMER PROMOTIONS. |
| 3. It shall be unlawful for a cigarette manufacturer to, directly or indirectly: | This section prohibits a manufacturer from contracting or paying for the items stated in 3a - 3c. It does not prohibit anything not covered in 3a-3c. |
| a. Prevent, restrict or limit a retailer from selling, stocking, advertising, displaying, or participating in an agreement or program for another manufacturer's product, | This section prevents a manufacturer from using any kind of leverage to prevent or limit a retailer from selling or merchandising other manufacturers' products in the way the retailer wants, or from participating in the programs that the retailer chooses. |
| b. Prevent, restrict or limit the retailer from determining or increasing the size, contents or location of the space that the retailer uses to sell stock, display, promote, or advertise any cigarettes, | The retailer is free to determine the size, contents and location of its cigarette category space without fear of being out of compliance with a shelf space contract or of being denied buy-downs. The retailer is free to increase the size of his cigarette department or of any manufacturer's portion. A manufacture can not prevent the retailer from increasing or changing his department or threaten the retailer with non-compliance if he enlarges or changes his department or any portion of it. |

| | |
|---|--|
| | <p>This section prevents a manufacturer from forcing a retailer to reduce or limit the size of its cigarette category space, thus relieving the retailer from manufacturer controls that keep it from selling and merchandising the products of its choice.</p> |
| <p>c. Require the retailer to raise its prices on, or prevent the retailer from setting, retaining or reducing its prices on, another manufacturer's products,</p> | <p>This section prevents a manufacturer from using "lowest price product in the store" or similar programs, to force the retailer to keep prices on competitive products higher than the retailer wants, or to reject competitive low-price products or promotions. If a manufacturer wants to be the lowest priced product in the store, it ought to match all competitive price and promotional programs and offers rather than forcing the retailer not to participate in them.</p> |
| <p>4. A manufacturer agreement or program shall define the amount of each element described in Section 1 that the retailer is to provide to the manufacturer at the start of the agreement or program. It shall be unlawful for such agreement or program to require the retailer to increase any element provided to the manufacturer during its term.</p> | <p>This section allows the retailer who adds additional space to his department or additional inventory, displays or advertising to assign the entire addition as he chooses without being required to give a portion of the new addition to any manufacturer without receiving any additional payment for it.</p> <p>For example, it prevents a manufacturer who has a contract for 50% of the retailer's space from demanding 50% of the retailer's new space. It does not prevent the manufacturer and retailer from renegotiating the contract if they want to.</p> <p>This section does not prohibit contracts based on market shares or percentages.</p> |



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-2728/

RNK:cjs:re

D-Note

stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA ✓
new CR ✓

Reger cat.

1 AN ACT to create 100.20 (1v) of the statutes; relating to: cigarette advertising
2 and promotion.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version of the draft.

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

3 SECTION 1. ~~100.20 (1v)~~ ^{100.195} of the statutes is created to read: ^(B)
4 ¹⁹⁵ ~~100.20 (1v)~~ Cigarette sales practices. ⁽¹⁾
5 (a) In this section:
6 (b) "Cigarette" has the meaning given in s. 139.30 (1).
7 (c) "Manufacturer" means a person specified under s. 139.30 (7) or s. 139.75 (5).
8 "Retailer" means any person licensed under s. 134.65 (1).

~~It is an unfair trade practice for a manufacturer to do any of the following:
1. Require a retailer to take certain action concerning another manufacturer's products as a condition for allowing the retailer to participate in a product promotion,~~

1 to receive any compensation, rebate, or other inducement relating to the product
2 promotion, or to receive a discount on the price of the manufacturer's products,
3 except that the manufacturer may require the retailer to provide the promotion or
4 discount to the retailer's customers and to advertise and display the promotion and
5 the promoted product.

6 2. If more than 15% of all cigarettes sold in this state in the preceding calendar
7 year are made by the manufacturer, require a retailer to allocate more than the lesser
8 of the following percentage of the retailer's stocking, shelf, or advertising space to the
9 manufacturer's products:

10 a. A percentage equal to the percentage of all cigarettes sold in this state that
11 are made by the manufacturer.

12 b. 50%.

Insert 12
2-12-13

13 ~~4 (a)~~ Prohibit a retailer from stocking ^{or advertising} another manufacturer's products ^{or}

14 ~~Prohibit a retailer from advertising or~~ participating in another
15 manufacturer's product promotion.

16 9 (C) Require a retailer to charge a certain price for another manufacturer's
17 products.

Insert 17
2-17-18

(END)

18 ~~9 (b) Require a retailer to~~ ^{Specify the location or} limit
the amount of space ^{or to specify}
the location, for stocking, advertising, or
another manufacturer's products. ^{displaying}

that a retailer may use

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2728/P2ins.
RNK:.....

INSERT 2-12

(2) Except as provided under sub. (3)[✓], a manufacturer may enter into an agreement with a retailer specifying the terms and conditions under which the retailer may stock, advertise, or display the manufacturer's products and under which the manufacturer may require the retailer to conduct a promotion of the manufacturer's products. The agreement may authorize a manufacturer to compensate, or provide discounts to, the retailer for stocking, advertising, displaying or promoting the manufacturer's products.

(3) Notwithstanding sub. (2)[✓], an agreement under sub. (2)[✓] may not authorize
a manufacturer to do any of the following:

INSERT 2-17

(4) An agreement under sub. (2)[✓] shall specify the amount and location of space the retailer agrees to provide for stocking, displaying, and advertising the manufacturer's products.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2728/P2dn

RNK:/:....

ej's

I prepared this redraft based on discussions with Ron Hermes. The previous version of this draft specified that certain conduct by a cigarette manufacturer constituted an unfair trade practice under s. 100.20, stats. That statute generally prohibits methods of competition in business and trade practices in business that are unfair. Mr. Hermes indicated that he preferred that the draft also specifically state the type of conduct in which a cigarette manufacturer was allowed to engage. Based on this new approach, I do not think it works to try and fit this proposal into the current law prohibition against engaging in unfair trade practices. Accordingly, this version of the draft creates an entirely new section in ch. 100. ^{stats.} ✓

Under this version of the draft, the penalties under s. 100.26 (1) ^{stats.} apply to any violations of proposed s. 100.195. Is this O.K.? ✓

Please review this version of the draft closely to ensure that it is consistent with your intent. Feel free to contact me if you have any questions concerning this draft.

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.state.wi.us

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

LRB-2728/P2dn
RNK:cjs:rs

August 29, 2003

I prepared this redraft based on discussions with Ron Hermes. The previous version of this draft specified that certain conduct by a cigarette manufacturer constituted an unfair trade practice under s. 100.20, stats. That statute generally prohibits methods of competition in business and trade practices in business that are unfair. Mr. Hermes indicated that he preferred that the draft also specifically state the type of conduct in which a cigarette manufacturer was allowed to engage. Based on this new approach, I do not think it works to try and fit this proposal into the current law prohibition against engaging in unfair trade practices. Accordingly, this version of the draft creates an entirely new section in ch. 100, stats.

Under this version of the draft, the penalties under s. 100.26 (1), stats., apply to any violations of proposed s. 100.195. Is this O.K.?

Please review this version of the draft closely to ensure that it is consistent with your intent. Feel free to contact me if you have any questions concerning this draft.

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.state.wi.us

Emery, Lynn

From: Emery, Lynn
Sent: Thursday, October 09, 2003 4:00 PM
To: Rep.Musser
Subject: LRB-2728/P2 & P2dn (attached as requested)



03-2728/P2



03-2728/P2dn

Lynn Emery
Program Assistant
Legislative Reference Bureau
608-266-3561
lynn.emery@legis.state.wi.us

Kite, Robin

From: Musser, Terry
Sent: Monday, October 20, 2003 12:56 PM
To: Kite, Robin
Subject: Please draft 2728 for jacketing

Robin,

Terry, with input from Jim Tenuta, has ahd LRB 2728/P2 drafted.

They're ready to introduce it, but I believe it must be in -/1 form.

Could you have that changed, please?

Thanks,

Kathie @ Rep Musser's Office
6-7461

rep.musser@legis.state.wi.us



State of Wisconsin
2003 - 2004 LEGISLATURE

(soon)
D-Note

RMR
1
LRB-2728/P
RNK:cjs:re
T
stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT *to create* ~~100.195~~ ^{Regen cat} of the statutes; relating to: cigarette advertising and
2 promotion.

Analysis by the Legislative Reference Bureau

~~(This is a preliminary draft. An analysis will be provided in a later version of the draft.)~~

Insert Analysis →

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

3 SECTION 1. 100.195 of the statutes is created to read:
4 **100.195 Cigarette sales practices.** (1) In this section:
5 (a) "Cigarette" has the meaning given in s. 139.30 (1).
6 (b) "Manufacturer" means a person specified under s. 139.30 (7) or s. 139.75 (5).
7 (c) "Retailer" means any person licensed under s. 134.65 (1).
8 (2) Except as provided under sub. (3), a manufacturer may enter into an
9 agreement with a retailer specifying the terms and conditions under which the

1 retailer may stock, advertise, or display the manufacturer's products and under
2 which the manufacturer may require the retailer to conduct a promotion of the
3 manufacturer's products. The agreement may authorize a manufacturer to
4 compensate, or provide discounts to, the retailer for stocking, advertising, displaying
5 or promoting the manufacturer's products.

6 (3) Notwithstanding sub. (2), an agreement under sub. (2) may not do any of
7 the following:

8 (a) Prohibit a retailer from stocking, ~~or~~ advertising, ^{or displaying} another manufacturer's
9 products or participating in another manufacturer's product promotion.

10 (b) Specify the location or limit the amount of space that a retailer may use for
11 stocking, advertising, or displaying another manufacturer's products.

12 (c) Require a retailer to charge a certain price for another manufacturer's
13 products.

14 (4) An agreement under sub. (2) shall specify the amount and location of space
15 the retailer agrees to provide for stocking, ^{advertising, and} displaying ~~and advertising~~ the
16 manufacturer's products.

17 (END)

**2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2728/lins.
RNK:.....

INSERT ANALYSIS

This bill authorizes a cigarette manufacturer to enter into an agreement with a retailer specifying the terms and conditions under which the retailer may stock, advertise, or display (advertise) the manufacturer's products and under which the manufacturer may require the retailer to conduct a product promotion. The bill provides that if a cigarette manufacturer and a retailer enter into such an agreement, the agreement must specify the amount and location of space that the retailer agrees to provide for advertising the cigarette manufacturer's products. ✓

The bill also specifies that if a cigarette manufacturer and a retailer enter into an agreement specifying the terms and conditions under which the retailer may advertise the manufacturer's products, the agreement may not prohibit a retailer from advertising another cigarette manufacturer's products. The agreement may also not specify the location or limit the amount of space that the retailer may use for advertising another cigarette manufacturer's products, or require a retailer to charge a certain price for another cigarette manufacturer's products. ✓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2728/1dn

RNK:.....

js

✓
Please note that I added the term "displaying" in proposed s. 100.195 (3) (a). That provision describes the activities that an agreement between a manufacturer and a retailer may not prohibit. I believe that this was an oversight in the earlier version of the draft. If this change is not consistent with your intent, please let me know and I will redraft accordingly. ✓

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2728/1dn
RNK:cjs:jf

October 30, 2003

Please note that I added the term "displaying" in proposed s. 100.195 (3) (a). That provision describes the activities that an agreement between a manufacturer and a retailer may not prohibit. I believe that this was an oversight in the earlier version of the draft. If this change is not consistent with your intent, please let me know and I will redraft accordingly.

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.state.wi.us

Basford, Sarah

From: Musser, Terry
Sent: Friday, January 23, 2004 10:18 AM
To: Basford, Sarah
Subject: Request jacket for introduction in Assembly of LRB 2728/1

Please ask the appropriate person to jacket LRB 2728/1 for introduction in the Assembly.

Thanks,
Kathie @ Rep Musser's Office



03-2728/1

Sarah Basford
Program Assistant
State of Wisconsin
Legislative Reference Bureau
PH: (608) 266-3561/FAX: (608) 264-6948
sarah.basford@legis.state.wi.us