2015 SENATE BILL 371

November 6, 2015 – Introduced by Senators VUKMIR, DARLING, NASS and STROEBEL, cosponsored by Representatives J. OTT, MURPHY, BRANDTJEN, CRAIG, HUTTON, JACQUE, KLEEFISCH, KOOYENGA, KREMER, PETERSEN, SKOWRONSKI and ALLEN. Referred to Committee on Economic Development and Commerce.

AN ACT to repeal 20.115 (1) (r), 100.26 (9) and 100.30; to renumber and amend 951.10 (2); to amend 100.201 (2) (h) 5., 100.264 (2) (intro.), 100.33 (1) (c), 100.51 (6) (a), 134.04 (1), 139.39 (3) and 814.04 (intro.); to repeal and recreate 100.33 (1) (g) and 100.33 (1) (h); and to create 951.10 (2) (a) of the statutes; relating to: the minimum price of merchandise sold at wholesale or retail.

Analysis by the Legislative Reference Bureau

This bill repeals the Unfair Sales Act, also called the minimum markup law, which prohibits wholesale and retail sales of merchandise at a price below the cost of the merchandise to the seller. For motor vehicle fuels, tobacco products, and alcoholic beverages, the Unfair Sales Act includes formulas for calculating the cost to the seller that add minimum markups from 3 to 9.18 percent to cover a portion of the seller’s cost of doing business.

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SECTION 1. 20.115 (1) (r) of the statutes is repealed.
SECTION 2. 100.201 (2) (h) 5. of the statutes is amended to read:

100.201 (2) (h) 5. This paragraph shall also apply to any retailer who owns, operates or otherwise contracts for, directly or indirectly, facilities for manufacturing or processing any selected dairy product, and to the cost of a selected dairy product, as defined in this paragraph, shall be added both the wholesale and retail markup as provided in s. 100.30.

SECTION 3. 100.26 (9) of the statutes is repealed.

SECTION 4. 100.264 (2) (intro.) of the statutes is amended to read:

100.264 (2) SUPPLEMENTAL FORFEITURE. (intro.) If a fine or a forfeiture is imposed on a person for a violation under s. 100.16, 100.17, 100.18, 100.182, 100.183, 100.20, 100.205, 100.207, 100.21, 100.30 (3), 100.35, 100.44 or 100.46 or a rule promulgated under one of those sections, the person shall be subject to a supplemental forfeiture not to exceed $10,000 for that violation if the conduct by the defendant, for which the violation was imposed, was perpetrated against an elderly person or disabled person and if the court finds that any of the following factors is present:

SECTION 5. 100.30 of the statutes is repealed.

SECTION 6. 100.33 (1) (c) of the statutes is amended to read:

100.33 (1) (c) “Plastic container” means an individual, separate, rigid plastic bottle, can, jar or carton, except for a blister pack, that is originally used to contain a product that is the subject of a sale at retail, as defined under s. 100.30 (2) (h).

SECTION 7. 100.33 (1) (g) of the statutes is repealed and recreated to read:

100.33 (1) (g) “Sale at retail” means any transfer for a valuable consideration, made in the ordinary course of trade or in the usual prosecution of the retailer’s
business, of title to tangible personal property to the purchaser for consumption or use other than resale or further processing or manufacturing.

**SECTION 8.** 100.33 (1) (h) of the statutes is repealed and recreated to read:

100.33 (1) (h) “Sale at wholesale” includes any transfer for a valuable consideration made in ordinary course of trade or the usual conduct of the wholesaler’s business, of title to tangible personal property to the purchaser for purposes of resale or further processing or manufacturing.

**SECTION 9.** 100.51 (6) (a) of the statutes is amended to read:

100.51 (6) (a) A motor fuel grantor that provides gasoline to a motor fuel dealer under a motor fuel dealership agreement shall offer gasoline to the motor fuel dealer that is not blended with ethanol and that is suitable for subsequent blending with ethanol and for resale. For purposes of this subsection, gasoline that is not blended with ethanol is not suitable for subsequent sale if the price charged for the unblended gasoline by the motor fuel grantor does not fairly reflect the average posted terminal price, as defined in s. 100.30 (2) (a).

**SECTION 10.** 134.04 (1) of the statutes is amended to read:

134.04 (1) No person, firm or corporation engaged in any enterprise in this state shall by any method or procedure directly or indirectly by itself or through a subsidiary agency owned or controlled in whole or in part by such person, firm or corporation, sell or procure for sale or have in its possession or under its control for sale to its employees or any person any article, material, product or merchandise of whatsoever nature not of the person’s, firm’s or corporation’s production or not handled in the person’s, firm’s or corporation’s regular course of trade, excepting meals, candy bars, cigarettes and tobacco for the exclusive use and consumption of such employees of the employer, and excepting tools used by employees in said
enterprise and such specialized appliances and paraphernalia as may be required in
said enterprise for the employees’ safety or health and articles used by employees or
other persons which insure better sanitary conditions and quality in the
manufacture of food or food products. The provisions of this subsection shall not
apply to lumber producers, loggers and dealers nor to any cooperative association
organized under ch. 185 or 193. This section shall not be construed as authorizing
the sale of any merchandise at less than cost as defined in s. 100.30.

SECTION 11. 139.39 (3) of the statutes is amended to read:

139.39 (3) The secretary may suspend or revoke the permit of any permittee
who violates ss. 100.30 or 139.30 to 139.44 or any rules adopted under sub. (1). The
secretary shall revoke the permit of any permittee who violates s. 100.30 3 or more
times within a 5-year period.

SECTION 12. 814.04 (intro.) of the statutes is amended to read:

814.04 Items of costs. (intro.) Except as provided in ss. 93.20, 100.195 (5m)
(b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 115.80 (9), 767.553 (4) (d), 769.313,
802.05, 814.245, 895.035 (4), 895.044, 895.443 (3), 895.444 (2), 895.445 (3), 895.446
(3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51 (2) (b), and 995.10 (3), when
allowed costs shall be as follows:

SECTION 13. 951.10 (2) of the statutes is renumbered 951.10 (2) (b) and
amended to read:

951.10 (2) (b) No retailer, as defined in s. 100.30 (2) (e), may sell, offer for sale,
barter or give away living baby rabbits, baby chicks, ducklings or other fowl under
2 months of age in any quantity less than 6 unless in the business of selling these
animals for agricultural, wildlife or scientific purposes.

SECTION 14. 951.10 (2) (a) of the statutes is created to read:
951.10 (2) (a) In this subsection, “retailer” includes every person engaged in the
business of making sales at retail within this state, 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.

(END)