

2019 DRAFTING REQUEST

Bill

For: **Administration-Budget 266-2081** Drafter: **mpfotenh**
 By: **Potts** Secondary Drafters:
 Date: **2/12/2019** May Contact:

Same as LRB:

Submit via email: **YES**
 Requester's email:
 Carbon copy (CC) to: **doasbostatlanguage@wisconsin.gov**
mary.pfotenhauer@legis.wisconsin.gov
konrad.paczuski@legis.wisconsin.gov

Pre Topic:

DOA:.....Potts, BB0342 -

Topic:

Unfair Sales Act

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mpfotenh 2/12/2019	wjackson 2/15/2019			
/P1	mpfotenh 2/17/2019	wjackson 2/17/2019	mbarman 2/15/2019		State
/P2	mpfotenh 2/18/2019	wjackson 2/19/2019	chanaman 2/17/2019		State
/P3			mbarman 2/19/2019		State

FE Sent For:

<END>

Pfotenhauer, Mary

From: Hanaman, Cathlene
Sent: Tuesday, February 12, 2019 11:15 AM
To: Pfotenhauer, Mary; Paczuski, Konrad
Subject: FW: Statutory Language Drafting Request - 2019-21

Follow Up Flag: Follow up
Flag Status: Flagged

From: Potts, Andrew - DOA <Andrew.Potts@wisconsin.gov>
Sent: Tuesday, February 12, 2019 11:09 AM
To: Hanaman, Cathlene <Cathlene.Hanaman@legis.wisconsin.gov>
Cc: Potts, Andrew - DOA <Andrew.Potts@wisconsin.gov>; Potts, Andrew - DOA <Andrew.Potts@wisconsin.gov>
Subject: Statutory Language Drafting Request - 2019-21

Biennial Budget: 2019-21

Topic: Unfair Sales Act

Tracking Code: BB0342

SBO Team: AEJ

SBO Analyst: Potts, Andrew
Phone: 608-266-2081
E-mail: andrew.potts@wisconsin.gov

Agency Acronym: 115

Agency Number: 115

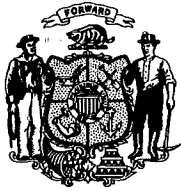
Priority: High

Intent:

Repeal application of the Unfair Sales Act (minimum markup) as it applies to motor vehicle fuel.

Attachments: False

Please send completed drafts to SBOSatlanguage@spsmail.enterprise.wisstate.us



State of Wisconsin
2019 - 2020 LEGISLATURE

In 2/13

/P1
LRB-1986(?)
MCP:...
Wlj

DOA:.....Potts, BB0342 - Unfair Sales Act

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

COMMERCE AND ECONOMIC DEVELOPMENT

Unfair Sales Act - Minimum markup for motor vehicle fuel
COMMERCE

NOA

The bill exempts sales of motor vehicle fuel from the Unfair Sales Act, which
(This state's Unfair Sales Act 1) prohibits below-cost sales of any merchandise, if the sale is intended to induce the purchase of other merchandise or divert trade unfairly from a competitor; and 2) requires a "minimum markup" (a specified amount over the cost of the merchandise to the seller) to be added to sales of motor vehicle fuel, tobacco products, fermented malt beverages, liquor, or wine. Under current law, the required minimum markup for motor vehicle fuel is 3, 6, or 9.18 percent of the cost of the fuel to the seller, depending on whether the fuel is sold by a retailer or a wholesaler and whether or not the fuel is sold from a retail station.

NOA

Under the bill, the prohibition on below-cost sales and the minimum markup requirement do not apply to sales of motor vehicle fuel.

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.

 ****NOTE: This section repeals the appropriation from the petroleum inspection fund for enforcement of the Unfair Sales Act. Is this okay? Would you like to provide a different appropriation for enforcement of the remaining Unfair Sales Act provisions?

 ****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

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

3 **SECTION 3.** 100.30 (2) (a) and (am) 1m. of the statutes are repealed.

4 **SECTION 4.** 100.30 (2) (b) of the statutes is amended to read:

5 100.30 (2) (b) "Cost to retailer" and "cost to wholesaler" as defined in pars. (am)
6 and (c) mean bona fide costs; and purchases made by retailers, or wholesalers,
7 wholesalers of motor vehicle fuel and refiners at prices which cannot be justified by
8 prevailing market conditions within this state shall not be used in determining cost
9 to the retailer and cost to the wholesaler. Prices at which purchases of merchandise
10 other than motor vehicle fuel are made by retailers or wholesalers cannot be justified
11 by prevailing market conditions in this state when they are below the lowest prices
12 at which the manufacturer or producer of such merchandise sells to other retailers
13 or wholesalers in this state. ~~Prices at which sales of motor vehicle fuel are made by~~
14 ~~retailers, wholesalers, wholesalers of motor vehicle fuel and refiners cannot be~~
15 ~~justified by prevailing market conditions in this state when they are below the~~
16 ~~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; 2001 a. 16.

Cross-reference: See also s. ATCP 105.01, Wis. adm. code.

17 **SECTION 5.** 100.30 (2) (c) 1g. and 1r. of the statutes are repealed.

18 **SECTION 6.** 100.30 (2) (cg) of the statutes is repealed.

19 **SECTION 7.** 100.30 (2) (cj) of the statutes is amended to read:

20 100.30 (2) (cj) "Existing price of a competitor" means a price being
21 simultaneously offered to a buyer for merchandise of like quality and quantity by a

1 person who is a direct competitor of the retailer, or wholesaler, ~~wholesaler of motor~~
2 ~~vehicle fuel or refiner~~ and from whom the buyer can practicably purchase the
3 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; 2001 a. 16.

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4 **SECTION 8.** 100.30 (2) (cL) and (cm) of the statutes are repealed.

5 **SECTION 9.** 100.30 (2) (d) of the statutes is amended to read:

6 100.30 (2) (d) "Replacement cost" means the cost computed as specified in par.
7 (am) or (c) at which the merchandise sold could have been bought by the retailer, or
8 ~~wholesaler or wholesaler of motor vehicle fuel~~ at any time if bought in the same
9 quantity as the retailer's, or wholesaler's ~~or wholesaler of motor vehicle fuel's~~ last
10 purchase of the said merchandise.

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Cross-reference: See also s. ATCP 105.01, Wis. adm. code.

11 **SECTION 10.** 100.30 (2) (g) of the statutes is amended to read:

12 100.30 (2) (g) "Sell", "sale", or "sold" includes any advertising or offer to sell or
13 any transfer of merchandise where title is retained by the retailer, or wholesaler;
14 ~~wholesaler of motor vehicle fuel or refiner~~ as security for the payment of the purchase
15 price. In determining the selling price of merchandise by retailers and wholesalers,
16 ~~wholesalers of motor vehicle fuel, retailers and refiners~~ under this section, all
17 fractions of a 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; 2001 a. 16.

Cross-reference: See also s. ATCP 105.01, Wis. adm. code.

18 **SECTION 11.** 100.30 (2) (j) and (m) of the statutes are repealed.

19 **SECTION 12.** 100.30 (2m) (c) of the statutes is repealed.

20 **SECTION 13.** 100.30 (3) of the statutes is amended to read:

SECTION 13

1 100.30 (3) ILLEGALITY OF LOSS LEADERS. Any sale of any item of merchandise,
 2 ~~other than motor vehicle fuel~~, either 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~~^X 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.

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; 2001 a. 16.

plain

12 **Cross-reference:** See also s. ATCP 105.01, Wis. adm. code.[✓]
 12 **SECTION 14.** 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~~^X 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~~^X 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; 2001 a. 16.

21 **Cross-reference:** See also s. ATCP 105.01, Wis. adm. code.^X
 21 **SECTION 15.** 100.30 (5m) of the statutes is repealed.

22 **SECTION 16.** 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~~
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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; 2001 a. 16.

Cross-reference: See also s. ATCP 105.01, Wis. adm. code.

7 **SECTION 17.** 100.30 (6) (a) 9. of the statutes is repealed.

8 **SECTION 18.** 100.30 (7) of the statutes is repealed.

9 **SECTION 19.** 100.51 (6) (a) of the statutes is amended to read:

10 100.51 (6) (a) A motor fuel grantor that provides gasoline to a motor fuel dealer
11 under a motor fuel dealership agreement shall offer gasoline to the motor fuel dealer
12 that is not blended with ethanol and that is suitable for subsequent blending with
13 ethanol and for resale. For purposes of this subsection, gasoline that is not blended
14 with ethanol is not suitable for subsequent sale if the price charged for the unblended
15 gasoline by the motor fuel grantor does not fairly reflect the average posted terminal
16 price, as defined in s. 100.30 (2) (a), 2017 stats.

History: 1987 a. 95, 399; 1989 a. 31; 1995 a. 27; 1997 a. 35; 1997 a. 111 s. 30; Stats. 1997 s. 100.51; 2009 a. 246, 401.

17 **SECTION 20.** 814.04 (intro.) of the statutes is amended to read:

18 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.195 (5m)
19 (b), ~~100.30 (5m)~~, 106.50 (6) (i) and (6m) (a), 115.80 (9), 767.553 (4) (d), 769.313,
20 802.05, 814.245, 895.035 (4), 895.044, 895.443 (3), 895.444 (2), 895.445 (3), 895.446
21 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51 (2) (b), and 995.10 (3), when
22 allowed costs shall be as follows:

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; 2001 a. 6, 16; 2003 a. 138; Sup. Ct. Order No. 03-06A, 2005 WI 86, 280 Wis. 2d xiii; 2005 a. 155, 325; 2005 a. 443 s. 265; 2005 a. 458; 2007 a. 96; 2009 a. 20; 2011 a. 2, 69, 118, 219; 2013 a. 165.

1

(END)



State of Wisconsin
2019 - 2020 LEGISLATURE

1820
LRB-1986/P1
MCP:wlj

Jan 2/17

DOA:.....Potts, BB0342 - Unfair Sales Act

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

only change
is on p. 2

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau
COMMERCE AND ECONOMIC DEVELOPMENT

COMMERCE

1. Minimum markup for motor vehicle fuel

The bill exempts sales of motor vehicle fuel from the Unfair Sales Act, which 1) prohibits below-cost sales of any merchandise if the sale is intended to induce the purchase of other merchandise or divert trade unfairly from a competitor; and 2) requires a "minimum markup" (a specified amount over the cost of the merchandise to the seller) to be added to sales of motor vehicle fuel, tobacco products, fermented malt beverages, liquor, or wine. Under current law, the required minimum markup for motor vehicle fuel is 3, 6, or 9.18 percent of the cost of the fuel to the seller, depending on whether the fuel is sold by a retailer or a wholesaler and whether the fuel is sold from a retail station. Under the bill, the prohibition on below-cost sales and the minimum markup requirement do not apply to sales of motor vehicle fuel.

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24 from a competitor, impairs and prevents fair competition, injures public welfare, and
25 is unfair competition and contrary to public policy and the policy of this section. Such

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Pfotenhauer, Mary

From: Potts, Andrew - DOA
Sent: Saturday, February 16, 2019 2:50 PM
To: Pfotenhauer, Mary
Subject: Unfair Sales Act LRB-1986/P1

Follow Up Flag: Follow up
Flag Status: Flagged

Hi, Mary,

Thanks for getting this back so quickly. Under Section 1, please keep the appropriation.

Thanks again,

Andy



Andrew R. Potts

Executive Budget and Policy Manager

Department of Administration

Division of Executive Budget and Finance

Andrew.Potts@wisconsin.gov

(608) 266-2081



In 2/18

DOA:.....Potts, BB0342 - Unfair Sales Act

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

Delete all
+ use Insert

This
The bill exempts sales of motor vehicle fuel from the minimum markup requirement under the Unfair Sales Act

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau
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5 against a retailer, or wholesaler, ~~wholesaler of motor vehicle fuel or refiner~~ requiring
6 the person to cease and desist from violating this section in the sale of cigarettes or
7 other tobacco products, fermented malt beverages, or intoxicating liquor or wine ~~or~~
8 ~~motor vehicle fuel~~. The department or a district attorney may commence an action
9 on behalf of the state against a retailer, or wholesaler, ~~wholesaler of motor vehicle~~
10 ~~fuel or refiner~~ who violates a special order issued under this paragraph to recover a
11 forfeiture of not less than \$200 nor more than \$5,000 for each violation.

12 **SECTION 14.** 100.30 (5m) of the statutes is repealed.

13 **SECTION 15.** 100.30 (6) (a) 7. of the statutes is amended to read:

14 100.30 (6) (a) 7. The price of merchandise is made in good faith to meet an
15 existing price of a competitor and is based on evidence in the possession of the
16 retailer, or wholesaler, ~~wholesaler of motor vehicle fuel or refiner~~ in the form of an
17 advertisement, proof of sale, or receipted purchase, price survey, or other business
18 record maintained by the retailer, or wholesaler, ~~wholesaler of motor vehicle fuel or~~
19 ~~refiner~~ in the ordinary course of trade or the usual conduct of business.

20 **SECTION 16.** 100.30 (6) (a) 9. of the statutes is repealed.

21 **SECTION 17.** 100.30 (7) of the statutes is repealed.

22 **SECTION 18.** 100.51 (6) (a) of the statutes is amended to read:

23 100.51 (6) (a) A motor fuel grantor that provides gasoline to a motor fuel dealer
24 under a motor fuel dealership agreement shall offer gasoline to the motor fuel dealer
25 that is not blended with ethanol and that is suitable for subsequent blending with

1 ethanol and for resale. For purposes of this subsection, gasoline that is not blended
2 with ethanol is not suitable for subsequent sale if the price charged for the unblended
3 gasoline by the motor fuel grantor does not fairly reflect the average posted terminal
4 price, as defined in s. 100.30 (2) (a), 2017 stats.

5 **SECTION 19.** 814.04 (intro.) of the statutes is amended to read:

6 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.195 (5m)
7 (b), ~~100.30 (5m)~~, 106.50 (6) (i) and (6m) (a), 115.80 (9), 767.553 (4) (d), 769.313,
8 802.05, 814.245, 895.035 (4), 895.044, 895.443 (3), 895.444 (2), 895.445 (3), 895.446
9 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51 (2) (b), and 995.10 (3), when
10 allowed costs shall be as follows:

11

(END)

Insert

**2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1986/P2ins
MCP:wlj

1 INSERT

2 **SECTION 1.** 100.30 (2) (am) 1m. a., 1m. b., 1m. c., 1m. d., 1m. e., (c) 1g., 1r. of the
3 statutes are amended to read:

4 100.30 (2) (am) 1m. a. In the case of the retail sale of motor vehicle fuel by a
5 refiner at a retail station owned or operated either directly or indirectly by the
6 refiner, the refiner's lowest selling price to other retailers or to wholesalers of motor
7 vehicle fuel on the date of the refiner's retail sale, less all trade discounts except
8 customary discounts for cash, plus any excise, sales or use taxes imposed on the
9 motor vehicle fuel or on its sale and any cost incurred for transportation and any
10 other charges not otherwise included in the invoice cost of the motor vehicle fuel, plus
11 a markup of 9.18 percent of that amount to cover a proportionate part of the cost of
12 doing business; or the average posted terminal price at the terminal located closest
13 to the retail station plus a markup of 9.18 percent of the average posted terminal
14 price to cover a proportionate part of the cost of doing business; whichever is greater.

15 b. In the case of the retail sale of motor vehicle fuel by a wholesaler of motor
16 vehicle fuel, who is not a refiner, at a retail station owned or operated either directly
17 or indirectly by the wholesaler of motor vehicle fuel, the invoice cost of the motor
18 vehicle fuel to the wholesaler of motor vehicle fuel within 10 days prior to the date
19 of sale, or the replacement cost of the motor vehicle fuel, whichever is lower, less all
20 trade discounts except customary discounts for cash, plus any excise, sales or use
21 taxes imposed on the motor vehicle fuel or on its sale, and any cost incurred for
22 transportation and any other charges not otherwise included in the invoice cost or
23 replacement cost of the motor vehicle fuel, plus a markup of 9.18 percent of that

1 ~~amount to cover a proportionate part of the cost of doing business; or the average~~
2 ~~posted terminal price at the terminal located closest to the retail station plus a~~
3 ~~markup of 9.18 percent of the average posted terminal price to cover a proportionate~~
4 ~~part of the cost of doing business; whichever is greater.~~

5 c. In the case of the retail sale of motor vehicle fuel by a person other than a
6 refiner or a wholesaler of motor vehicle fuel at a retail station, the invoice cost of the
7 motor vehicle fuel to the retailer within 10 days prior to the date of sale, or the
8 replacement cost of the motor vehicle fuel, whichever is lower, less all trade discounts
9 except customary discounts for cash, plus any excise, sales or use taxes imposed on
10 the motor vehicle fuel or on its sale and any cost incurred for transportation and any
11 other charges not otherwise included in the invoice cost or the replacement cost of
12 the motor vehicle fuel, ~~plus a markup of 6 percent of that amount to cover a~~
13 ~~proportionate part of the cost of doing business; or the average posted terminal price~~
14 ~~at the terminal located closest to the retailer plus a markup of 9.18 percent of the~~
15 ~~average posted terminal price to cover a proportionate part of the cost of doing~~
16 ~~business; whichever is greater.~~

17 d. In the case of a retail sale of motor vehicle fuel by a refiner at a place other
18 than a retail station, the refiner's lowest selling price to other retailers or to
19 wholesalers of motor vehicle fuel on the date of the refiner's retail sale, less all trade
20 discounts except customary discounts for cash, plus any excise, sales or use taxes
21 imposed on the motor vehicle fuel or on its sale and any cost incurred for
22 transportation and any other charges not otherwise included in the invoice cost of
23 the motor vehicle fuel, ^{plain} ~~to which shall be added a markup to cover a proportionate part~~
24 ~~of the cost of doing business, which markup, in the absence of proof of a lesser cost,~~
25 ~~shall be 3 percent of the cost to the retailer as set forth in this subd. 1m. d.~~

1 e. In the case of a retail sale of motor vehicle fuel by a person other than a refiner
2 at a place other than a retail station, the invoice cost of the motor vehicle fuel to the
3 retailer within 10 days prior to the date of the sale, or the replacement cost of the
4 motor vehicle fuel, whichever is lower, less all trade discounts except customary
5 discounts for cash, plus any excise, sales or use taxes imposed on the motor vehicle
6 fuel or on its sale and any cost incurred for transportation and any other charges not
7 otherwise included in the invoice cost or the replacement cost of the motor vehicle
8 fuel ^(plain) to which shall be added a markup to cover a proportionate part of the cost of doing
9 business, which markup, in the absence of proof of a lesser cost, shall be 3 percent
10 of the cost to the retailer as set forth in this subd. 1m. e.

11 (c) 1g. With respect to the wholesale sale of motor vehicle fuel by a refiner, "cost
12 to wholesaler" means the refiner's lowest selling price to other retailers or to
13 wholesalers of motor vehicle fuel on the date of the refiner's wholesale sale, less all
14 trade discounts except customary discounts for cash, plus any excise, sales or use
15 taxes imposed on the motor vehicle fuel or on its sale and any cost incurred for
16 transportation and any other charges not otherwise included in the invoice cost of
17 the motor vehicle fuel, to which shall be added a markup to cover a proportionate part
18 of the cost of doing business, which markup, in the absence of proof of a lesser cost,
19 shall be 3 percent of the cost to the wholesaler as set forth in this subdivision.

20 1r. With respect to the wholesale sale of motor vehicle fuel by a person other
21 than a refiner, "cost to wholesaler" means the invoice cost of the motor vehicle fuel
22 to the wholesaler of motor vehicle fuel within 10 days prior to the date of the sale or
23 the replacement cost of the motor vehicle fuel, whichever is lower, less all trade
24 discounts except customary discounts for cash, plus any excise, sales or use taxes
25 imposed on the motor vehicle fuel or on its sale and any cost incurred for

1 transportation and any other charges not otherwise included in the invoice cost or
2 the replacement cost of the motor vehicle fuel, ^{plain} to which shall be added a markup to
3 cover a proportionate part of the cost of doing business, which markup, in the absence
4 of proof of a lesser cost, shall be 3 percent of the cost to the wholesaler as set forth
5 in this 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; 2001 a. 16.

Cross-reference: See also s. ATCP 105.01, Wis. adm. code.

Pfotenhauer, Mary

From: Potts, Andrew - DOA
Sent: Monday, February 18, 2019 4:37 PM
To: Pfotenhauer, Mary
Subject: Re: LRB Draft Number 19-1986_P2

Hi, Mary,

Please have the provisions only apply to the minimum markup on motor vehicle fuel. Retain language that prohibits below cost sales of motor vehicle fuel.

Thanks,

Andy

From: christopher.connor@wisconsin.gov <christopher.connor@wisconsin.gov>
Sent: Sunday, February 17, 2019 1:25:11 PM
To: Potts, Andrew - DOA
Cc: Potts, Andrew - DOA; Connor, Christopher B - DOA; Connor, Christopher B - DOA
Subject: LRB Draft Number 19-1986_P2

We have received an LRB draft for DOA Tracking Code BB0342

LRB Topic: Unfair Sales Act

LRB Draft Number: 19-1986_P2

Drafter: MCP

Drafting Attorney: Mary Pfotenhauer
Phone: (608) 266-6778
E-mail: Mary.Pfotenhauer@legis.wisconsin.gov

The document can be found in the Stat Language site on SharePoint:
https://doa.sbo.wisconsin.gov/statutes/Shared%20Documents/19-1986_P2.pdf

Please Note: All new drafts are marked "OUT" and Final = "No" by default. Please update these fields in this record and related drafts as soon as you know if they are "IN" or Final.

Thanks,

Chris



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1986/P3
MCP:wlj

DOA:.....Potts, BB0342 - Unfair Sales Act

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** the budget.

Analysis by the Legislative Reference Bureau
COMMERCE AND ECONOMIC DEVELOPMENT

COMMERCE

1. *Minimum markup for motor vehicle fuel*

Under current law, the Unfair Sales Act 1) prohibits below-cost sales of any merchandise if the sale is intended to induce the purchase of other merchandise or divert trade unfairly from a competitor; and 2) requires a "minimum markup" (a specified amount over the cost of the merchandise to the seller) to be added to sales of motor vehicle fuel, tobacco products, fermented malt beverages, liquor, or wine. The required minimum markup for motor vehicle fuel is 3, 6, or 9.18 percent of the cost of the fuel to the seller, depending on whether the fuel is sold by a retailer or a wholesaler and whether the fuel is sold from a retail station. This bill exempts sales of motor vehicle fuel from the minimum markup requirement under the Unfair Sales Act.

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.** 100.30 (2) (am) 1m. a., b., c., d. and e. and (c) 1g. and 1r. of the
2 statutes are amended to read:

3 100.30 (2) (am) 1m. a. In the case of the retail sale of motor vehicle fuel by a
4 refiner at a retail station owned or operated either directly or indirectly by the
5 refiner, the refiner's lowest selling price to other retailers or to wholesalers of motor
6 vehicle fuel on the date of the refiner's retail sale, less all trade discounts except
7 customary discounts for cash, plus any excise, sales or use taxes imposed on the
8 motor vehicle fuel or on its sale and any cost incurred for transportation and any
9 other charges not otherwise included in the invoice cost of the motor vehicle fuel, ~~plus~~
10 ~~a markup of 9.18 percent of that amount to cover a proportionate part of the cost of~~
11 ~~doing business; or the average posted terminal price at the terminal located closest~~
12 ~~to the retail station plus a markup of 9.18 percent of the average posted terminal~~
13 ~~price to cover a proportionate part of the cost of doing business; whichever is greater.~~

14 b. In the case of the retail sale of motor vehicle fuel by a wholesaler of motor
15 vehicle fuel, who is not a refiner, at a retail station owned or operated either directly
16 or indirectly by the wholesaler of motor vehicle fuel, the invoice cost of the motor
17 vehicle fuel to the wholesaler of motor vehicle fuel within 10 days prior to the date
18 of sale, or the replacement cost of the motor vehicle fuel, whichever is lower, less all
19 trade discounts except customary discounts for cash, plus any excise, sales or use
20 taxes imposed on the motor vehicle fuel or on its sale, and any cost incurred for
21 transportation and any other charges not otherwise included in the invoice cost or
22 replacement cost of the motor vehicle fuel, ~~plus a markup of 9.18 percent of that~~
23 ~~amount to cover a proportionate part of the cost of doing business; or the average~~
24 ~~posted terminal price at the terminal located closest to the retail station plus a~~

1 markup of 9.18 percent of the average posted terminal price to cover a proportionate
2 part of the cost of doing business; whichever is greater.

3 c. In the case of the retail sale of motor vehicle fuel by a person other than a
4 refiner or a wholesaler of motor vehicle fuel at a retail station, the invoice cost of the
5 motor vehicle fuel to the retailer within 10 days prior to the date of sale, or the
6 replacement cost of the motor vehicle fuel, whichever is lower, less all trade discounts
7 except customary discounts for cash, plus any excise, sales or use taxes imposed on
8 the motor vehicle fuel or on its sale and any cost incurred for transportation and any
9 other charges not otherwise included in the invoice cost or the replacement cost of
10 the motor vehicle fuel, ~~plus a markup of 6 percent of that amount to cover a~~
11 ~~proportionate part of the cost of doing business; or the average posted terminal price~~
12 ~~at the terminal located closest to the retailer plus a markup of 9.18 percent of the~~
13 ~~average posted terminal price to cover a proportionate part of the cost of doing~~
14 ~~business; whichever is greater.~~

15 d. In the case of a retail sale of motor vehicle fuel by a refiner at a place other
16 than a retail station, the refiner's lowest selling price to other retailers or to
17 wholesalers of motor vehicle fuel on the date of the refiner's retail sale, less all trade
18 discounts except customary discounts for cash, plus any excise, sales or use taxes
19 imposed on the motor vehicle fuel or on its sale and any cost incurred for
20 transportation and any other charges not otherwise included in the invoice cost of
21 the motor vehicle fuel ~~to which shall be added a markup to cover a proportionate part~~
22 ~~of the cost of doing business, which markup, in the absence of proof of a lesser cost,~~
23 ~~shall be 3 percent of the cost to the retailer as set forth in this subd. 1m. d.~~

24 e. In the case of a retail sale of motor vehicle fuel by a person other than a refiner
25 at a place other than a retail station, the invoice cost of the motor vehicle fuel to the

1 retailer within 10 days prior to the date of the sale, or the replacement cost of the
2 motor vehicle fuel, whichever is lower, less all trade discounts except customary
3 discounts for cash, plus any excise, sales or use taxes imposed on the motor vehicle
4 fuel or on its sale and any cost incurred for transportation and any other charges not
5 otherwise included in the invoice cost or the replacement cost of the motor vehicle
6 fuel to which shall be added a markup to cover a proportionate part of the cost of doing
7 business, which markup, in the absence of proof of a lesser cost, shall be 3 percent
8 of the cost to the retailer as set forth in this subd. 1m. e.

9 (c) 1g. With respect to the wholesale sale of motor vehicle fuel by a refiner, "cost
10 to wholesaler" means the refiner's lowest selling price to other retailers or to
11 wholesalers of motor vehicle fuel on the date of the refiner's wholesale sale, less all
12 trade discounts except customary discounts for cash, plus any excise, sales or use
13 taxes imposed on the motor vehicle fuel or on its sale and any cost incurred for
14 transportation and any other charges not otherwise included in the invoice cost of
15 the motor vehicle fuel, to which shall be added a markup to cover a proportionate part
16 of the cost of doing business, which markup, in the absence of proof of a lesser cost,
17 shall be 3 percent of the cost to the wholesaler as set forth in this subdivision.

18 1r. With respect to the wholesale sale of motor vehicle fuel by a person other
19 than a refiner, "cost to wholesaler" means the invoice cost of the motor vehicle fuel
20 to the wholesaler of motor vehicle fuel within 10 days prior to the date of the sale or
21 the replacement cost of the motor vehicle fuel, whichever is lower, less all trade
22 discounts except customary discounts for cash, plus any excise, sales or use taxes
23 imposed on the motor vehicle fuel or on its sale and any cost incurred for
24 transportation and any other charges not otherwise included in the invoice cost or
25 the replacement cost of the motor vehicle fuel to which shall be added a markup to

1 cover a proportionate part of the cost of doing business, which markup, in the absence
2 of proof of a lesser cost, shall be 3 percent of the cost to the wholesaler as set forth
3 in this subdivision.

4 (END)