February 25, 2019 – Introduced by Senators STROEBEL, CRAIG, KAPENGA, KOOYENGA, BERNIER, JACQUE and DARLING, cosponsored by Representatives OTT, HUTTON, KUGLITSCH, SORTWELL, NEYLON, BRANDTJEN and DUCHOW. Referred to Committee on Economic Development, Commerce and Trade.

AN ACT to repeal 20.115 (1) (r), 100.26 (9), 100.30 and 100.33 (1) (g); to renumber 100.51 (1) (a) and 951.10 (1); to amend 100.201 (2) (h) 5., 100.264 (2) (intro.), 100.33 (1) (c), 100.33 (1) (h), 100.51 (6) (a), 134.04 (1), 139.39 (3), 814.04 (intro.) and 951.10 (2); and to create 100.33 (1) (em), 100.51 (1) (ag) and 951.10 (1g) of the statutes; relating to: eliminating minimum markup requirements and the prohibition on sales below cost.

Analysis by the Legislative Reference Bureau

This bill repeals the Unfair Sales Act, also known as the “minimum markup” law.

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.

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Section 1. 20.115 (1) (r) of the statutes is repealed.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Section 3. 100.26 (9) of the statutes is repealed.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 ch. 136 or 707 or s. 100.16, 100.17, 100.171, 100.174, 100.18, 100.182, 100.183, 100.195, 100.20, 100.203, 100.205, 100.207, 100.209, 100.21, 100.30 (3), 100.313, 100.315, 100.35, 100.44, 100.46, 100.52, 100.525, 100.55, 100.57, 100.65, 134.71, 134.72, 134.73, 134.87, 344.574, 344.576 (1), (2), or (3) (a) or (b), 344.577, or 344.578, or a provision of ch. 704 or 846 for which the department has rule-making, investigation, or enforcement authority, or a rule promulgated under one of those sections, chapters, or provisions, 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 retail sale, as defined under s. 100.30 (2) (h).

Section 7. 100.33 (1) (em) of the statutes is created to read:

100.33 (1) (em) “Retail sale” and “sale at retail” mean a transfer for valuable consideration, made in the ordinary course of trade or in the usual conduct of a 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) (g) of the statutes is repealed.

Section 9. 100.33 (1) (h) of the statutes is amended to read:

100.33 (1) (h) “Sale at wholesale” has the meaning given in s. 100.30 (2) and includes any transfer for valuable consideration made in the ordinary course of trade or in the usual conduct of a wholesaler’s business, of title to tangible personal property to the purchaser for purposes of resale or further processing or manufacturing.

Section 10. 100.51 (1) (a) of the statutes is renumbered 100.51 (1) (ar).

Section 11. 100.51 (1) (ag) of the statutes is created to read:

100.51 (1) (ag) “Average posted terminal price” means the average posted rack price, as published by a petroleum price reporting service, at which motor vehicle fuel is offered for sale at the close of business on the determination date by all refiners and wholesalers of motor vehicle fuel at a terminal plus any excise, sales, or use taxes imposed on the motor vehicle fuel or on its sale, any cost incurred for transportation, and any other charges that are not otherwise included in the average posted rack price. In this paragraph, “average” means the arithmetic mean.

Section 12. 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 13. 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 14. 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 15. 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 16. 951.10 (1) of the statutes is renumbered 951.10 (1r).

SECTION 17. 951.10 (1g) of the statutes is created to read:

951.10 (1g) In this section, “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.

SECTION 18. 951.10 (2) of the statutes is amended to read:

951.10 (2) 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.