

1985 Assembly Bill 219

Date of enactment: April 29, 1986  
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## 1985 Wisconsin Act 313

AN ACT to repeal 100.30 (5) (c); to renumber and amend 100.30 (2) (a) and 100.30 (2) (c); to amend 20.445 (1) (j), 100.30 (2) (d) to (i) and (L), 100.30 (2m) (b), 100.30 (4) and (5) (intro.), 100.30 (5) (b), 100.30 (6) (a) 7 and (b), 139.34 (5) and 168.12 (1), (3) and (5); to repeal and recreate 100.30 (5) (a); and to create 20.115 (1) (im), 100.30 (2) (a) 2, 100.30 (2) (c) 1. b and 2, 100.30 (2) (L) 2, 100.30 (6) (c) and 100.30 (6) (c) of the statutes, relating to the petroleum inspection fee, the administration and enforcement of the unfair sales provisions, sales by certain cigarette dealers and making an appropriation.

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

SECTION 1. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

	<u>1985-86</u>	<u>1986-87</u>
<b>20.115 Agriculture, trade and consumer protection, department of</b>		
(1 ) FOOD AND TRADE REGULATION		
(im) Unfair sales act enforcement	66,000	66,000

SECTION 2. 20.115 (1) (im) of the statutes is created to read:

20.115 (1) (im) *Unfair sales act enforcement.* The amounts in the schedule for the administration and enforcement of the unfair sales act under s. 100.30. All moneys transferred from s. 20.445 (1) (j) shall be credited to this appropriation.

SECTION 3. 20.445 (1) (j) of the statutes, as affected by 1985 Wisconsin Act 29, is amended to read:

20.445 (1) (j) *Safety and building operations.* The amounts in the schedule for the purposes of subchs. I,

II, III and IV of ch. 101, chs. 145 and 168 and ss. 236.12 (2) (a), 236.13 (1) (d) and (2m) and 236.335. All moneys received under ch. 145 and ss. 101.19, 101.63 (9), 101.73 (12), 101.82 (4), 168.12 and 236.12 (7) shall be credited to this appropriation. From the amounts received under s. 168.12, \$66,000 shall be transferred to the appropriation under s. 20.115 (1) (im) in each fiscal year.

SECTION 3m. 100.30 (2) (a) of the statutes is renumbered 100.30 (2) (a) 1 and amended to read:

100.30 (2) (a) 1. Cost With respect to the sale of cigarettes or other tobacco products, fermented malt

beverages, intoxicating liquor or wine, or motor vehicle fuel, "cost to retailer" means the invoice cost of the merchandise to the retailer within 30 days prior to the date of sale, or replacement cost of the merchandise to the retailer, whichever is lower, less all trade discounts except customary discounts for cash, plus any excise taxes imposed on such merchandise or the sale thereof other than excise taxes collected by the retailer, 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, to which shall be added a markup to cover a proportionate part of the cost of doing business, which markup, in the absence of proof of a lesser cost, shall be 6% of the cost to the retailer as herein set forth.

SECTION 3p. 100.30 (2) (a) 2 of the statutes is created to read:

100.30 (2) (a) 2. With respect to the sale of merchandise other than cigarettes or other tobacco products, fermented malt beverages, intoxicating liquor or wine, or motor vehicle fuel, "cost to retailer" means the invoice cost of the merchandise to the retailer, or replacement cost of the merchandise to the retailer, whichever is lower, less all trade discounts except customary discounts for cash, plus any excise taxes imposed on such merchandise or the sale thereof other than excise taxes collected by the retailer, 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 4. 100.30 (2) (c) of the statutes is renumbered 100.30 (2) (c) 1. a and amended to read:

100.30 (2) (c) 1. a. "Cost With respect to the sale of cigarettes or other tobacco products, fermented malt beverages, intoxicating liquor or wine, or motor vehicle fuel, "cost to wholesaler" means, except as provided in subd. 1. b, the invoice cost of the merchandise to the wholesaler within 30 days prior to the date of sale, 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, to which shall be added, except for sales at wholesale between wholesalers, a markup to cover a proportionate part of the cost of doing business, which markup, in the absence of proof of a lesser cost, shall be 3% of the cost to the wholesaler as herein set forth.

SECTION 5m. 100.30 (2) (c) 1. b and 2 of the statutes are created to read:

100.30 (2) (c) 1. b. For every person holding a permit as a distributor as defined in s. 139.30 (3) or as a multiple retailer as defined in s. 139.30 (8), with respect to that portion of the person's business which involves the purchase and sale of cigarettes "cost to

wholesaler" means the cost charged by the cigarette manufacturer, disregarding any manufacturer's discount or any discount under s. 139.32 (5), plus the amount of tax imposed under s. 139.31. Except for a sale at wholesale between wholesalers, a markup to cover a proportionate part of the cost of doing business shall be added to the cost to wholesaler. In the absence of proof of a lesser cost, this markup shall be 3% of the cost to wholesaler as set forth in this subparagraph.

2. With respect to the sale of merchandise other than cigarettes or other tobacco products, 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 6. 100.30 (2) (d) to (i) and (L) of the statutes are amended to read:

100.30 (2) (d) "Replacement cost" means the cost computed as specified in par. (a) or (c) at which the merchandise sold could have been bought by the seller retailer or wholesaler at any time within 30 days prior to the date of sale if bought in the same quantity as the seller's retailer's or wholesaler's last purchase of the said merchandise.

(e) "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 ~~making~~ selling both sales at retail and sales at wholesale, such term shall be applied only to the retail portion of such business.

(f) "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 ~~such~~ that merchandise or that wholesaler, the terms "cost to retailer" and "cost to wholesaler" as defined in pars. (a) and (c) shall both be applied, including the markup requirements.

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

(h) "Sell at retail", "sales at retail" and "retail sale" mean any transfer for a valuable consideration, made in the ordinary course of trade or in the usual prosecution of the seller's retailer's business, of title to tangible personal property to the purchaser for

consumption or use other than resale or further processing or manufacturing.

(i) "Sell at wholesale", "sales at wholesale" and "wholesale sales" include any transfer for a valuable consideration made in ordinary course of trade or the usual conduct of the ~~seller's wholesaler's~~ business, of title to tangible personal property to the purchaser for purposes of resale or further processing or manufacturing.

(L) "Wholesaler" includes every person holding a permit as a multiple retailer under s. 139.30 (8) and every person engaged in the business of making sales at wholesale within this state, but, in except as follows:

1. In the case of a person engaged in the business of making selling both sales at wholesale and sales at retail, such term shall be applied "wholesaler" applies only to the wholesale portion of such that business.

SECTION 7. 100.30 (2) (L) 2 of the statutes is created to read:

100.30 (2) (L) 2. In the case of a person holding a permit as a multiple retailer as defined in s. 139.30 (8), "wholesaler" applies to that portion of the person's business involving the purchase and sale of cigarettes and to any wholesale portion of that person's business.

SECTION 8. 100.30 (2m) (b) of the statutes is amended to read:

100.30 (2m) (b) ~~Any person who sells at retail and retailer who also sells to other retailers shall use the invoice cost to other retailers in computing the selling price at retail under sub. (1) (a); and if such person that retailer is a manufacturer or producer, both sub. (1) (a) 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. (1) (a) and (c).~~

SECTION 9. 100.30 (4) and (5) (intro.) of the statutes are amended to read:

100.30 (4) PENALTIES. ~~Any retailer who, with the intent or effect of inducing the purchase of other merchandise or of unfairly diverting trade from a competitor or otherwise injuring a competitor, sells at retail any item of merchandise at less than cost to the retailer as defined in this section; or any wholesaler who, with intent or effect of inducing the purchase of other merchandise or of unfairly diverting trade from a competitor or otherwise injuring a competitor, sells at wholesale any item of merchandise at less than cost to the wholesaler as defined in this section, shall be fined~~ For any violation of sub. (3), the department or a district attorney may commence an action on behalf of the state to recover a forfeiture of not less than \$50, nor more than \$500 for the first offense violation and not less than \$200 nor more than \$1,000 \$2,500 for the 2nd and each subsequent offense, or, for each offense,

~~imprisoned not less than one month nor more than 6 months or both violation.~~

(5) (title) SPECIAL REMEDIES. (intro.) In addition to the penalties under sub. (4), both of the following remedies apply for a violation of sub. (3):

SECTION 10. 100.30 (5) (a) of the statutes is repealed and recreated to read:

100.30 (5) (a) The department may issue a special order as provided in s. 93.18 against a retailer or wholesaler requiring the retailer or wholesaler 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 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 11. 100.30 (5) (b) of the statutes is amended to read:

100.30 (5) (b) ~~The department or a district attorney may bring an action to enjoin violations a violation of this section without being compelled to allege or prove that an adequate remedy at law does not exist. An action under this paragraph may be commenced and prosecuted by the department or a district attorney, in the name of the state, in any circuit court, either in the county where the offense occurred or in Dane county, without being compelled to allege or prove that an adequate remedy at law does not exist, notwithstanding s. 801.50.~~

SECTION 12. 100.30 (5) (c) of the statutes is repealed.

SECTION 13. 100.30 (6) (c) of the statutes is created to read:

100.30 (6) (c) No person may claim the exemption under par. (a) 7 if that person holds a permit under subch. II of ch. 139.

SECTION 14. 100.30 (6) (a) 7 and (b) of the statutes are amended to read:

100.30 (6) (a) 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 seller retailer or wholesaler in the form of an advertisement, proof of sale or receipted purchase.

(b) No person retailer or wholesaler may claim the exemptions under par. (a) 1 to 4 if he or she limits or otherwise restricts the quantity of such merchandise which can be purchased by any buyer or if he or she fails to conspicuously disclose the reason for such sale in all advertisements relating thereto and on a label or tag on such merchandise or on a placard where the merchandise is displayed for sale.

SECTION 15. 100.30 (6) (c) of the statutes is created to read:

100.30 (6) (c) No retailer or wholesaler may claim the exemption under par. (a) 7 if that wholesaler or retailer holds a permit under subch. II of ch. 139.

SECTION 16. 139.34 (5) of the statutes is amended to read:

139.34 (5) The ownership and operation of a any retail outlet ~~shall~~ does not preclude a person from receiving a permit as a distributor or jobber. ~~No permit shall be issued to a person who owns or operates such a retail outlet unless a substantial part of his, if more than 50% of that person's sales of cigarettes are at wholesale to retailers, vending machine operators or multiple retailers neither owned, controlled nor operated by that person.~~

SECTION 17. 168.12 (1), (3) and (5) of the statutes are amended to read:

168.12 (1) The department shall demand and receive within 2 weeks after demand, from the owner or other person for whom it inspects any petroleum product, an inspection fee at a rate prescribed by the department by rule for each 50 gallons from which the sample was taken. In addition to the inspection fee, the department shall charge a fee for each 50 gallons from which a sample was taken in an amount to be prescribed by the department by rule that would annually generate \$66,000. Such fees shall be a lien on the products so inspected.

(3) No ~~inspection~~ fee ~~shall~~ may be charged on a petroleum product that is shipped by a person from

storage at a refinery, marine terminal, pipeline terminal, pipeline tank farm or place of manufacture in this state to a person for storage at another refinery, marine terminal, pipeline terminal, pipeline tank farm or place of manufacture in this state.

(5) No ~~inspection~~ fee ~~shall~~ may be charged on a commingled or blended petroleum product when such commingling or blending is approved by the inspector as a satisfactory means of disposing of contaminated or substandard products.

SECTION 18. **Nonstatutory provisions; position authorization for administration and enforcement of the unfair sales act.** The authorized FTE positions for the department of agriculture, trade and consumer protection are increased by 2.0 PRO positions on the effective date of this SECTION, to be funded from the appropriation under section 20.115 (1) (im) of the statutes, for the purpose of performing the responsibilities assigned to the department under section 100.30 of the statutes.

SECTION 19. **Effective dates.** (1) Except as provided in subsection (2), this act takes effect on the day following publication.

(2) The treatment of sections 20.115 (1) (im), 20.445 (1) (j) and 168.12 (1), (3) and (5) of the statutes and SECTION 18 of this act take effect on the first day of the 2nd month commencing after publication.