



State of Wisconsin  
2023 - 2024 LEGISLATURE

LRB-1665/P1  
JAM:skw

DOA:.....Hutter, BB0456 - Repeal of the minimum markup law as it applies to sale of motor vehicle fuel

**FOR 2023-2025 BUDGET -- NOT READY FOR INTRODUCTION**

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

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*Analysis by the Legislative Reference Bureau*

**COMMERCE AND ECONOMIC DEVELOPMENT**

**COMMERCE**

***Eliminating minimum markup requirement for the sale of motor vehicle fuel***

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

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. The 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.

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

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

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

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

~~replacement cost of the motor vehicle fuel, plus a markup of 9.18 percent of that amount to cover a proportionate part of the cost of doing business; or the average posted terminal price at the terminal located closest to the retail station plus a markup of 9.18 percent of the average posted terminal price to cover a proportionate part of the cost of doing business; whichever is greater.~~

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

d. In the case of a retail sale of motor vehicle fuel by a refiner at a place other than a retail station, the refiner's lowest selling price to other retailers or to wholesalers of motor vehicle fuel on the date of the refiner's retail sale, less all trade discounts except customary discounts for cash, plus any excise, sales or use taxes imposed on the motor vehicle fuel or on its sale and any cost incurred for transportation and any other charges not otherwise included in the invoice cost of the motor vehicle fuel ~~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 3 percent of the cost to the retailer as set forth in this subd. 1m. d.~~

e. In the case of a retail sale of motor vehicle fuel by a person other than a refiner at a place other than a retail station, the invoice cost of the motor vehicle fuel to the retailer within 10 days prior to the date of the sale, or the replacement cost of the motor vehicle fuel, whichever is lower, less all trade discounts except customary discounts for cash, plus any excise, sales or use taxes imposed on the motor vehicle fuel or on its sale and any cost incurred for transportation and any other charges not otherwise included in the invoice cost or the replacement cost of the motor vehicle fuel ~~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 3 percent of the cost to the retailer as set forth in this subd. 1m. e.~~

**SECTION 2.** 100.30 (2) (c) 1g. of the statutes is amended to read:

100.30 (2) (c) 1g. With respect to the wholesale sale of motor vehicle fuel by a refiner, “cost to wholesaler” means the refiner’s lowest selling price to other retailers or to wholesalers of motor vehicle fuel on the date of the refiner’s wholesale sale, less all trade discounts except customary discounts for cash, plus any excise, sales or use taxes imposed on the motor vehicle fuel or on its sale and any cost incurred for transportation and any other charges not otherwise included in the invoice cost of the motor vehicle fuel, ~~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 3 percent of the cost to the wholesaler as set forth in this subdivision.~~

**SECTION 3.** 100.30 (2) (c) 1r. of the statutes is amended to read:

100.30 (2) (c) 1r. With respect to the wholesale sale of motor vehicle fuel by a person other than a refiner, “cost to wholesaler” means the invoice cost of the motor

vehicle fuel to the wholesaler of motor vehicle fuel within 10 days prior to the date of the sale or the replacement cost of the motor vehicle fuel, whichever is lower, less all trade discounts except customary discounts for cash, plus any excise, sales or use taxes imposed on the motor vehicle fuel or on its sale and any cost incurred for transportation and any other charges not otherwise included in the invoice cost or the replacement cost of the motor vehicle fuel ~~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 3 percent of the cost to the wholesaler as set forth in this subdivision.~~

(END)