

STATE SENATOR
Leah Vukmir

Senate Committee on Agriculture, Small Business and Tourism

Wednesday, February 14, 2018

Senate Bill 263

Chairman Moulton and committee members, thank you for hearing Rep. Ott's and my bill today. Senate Bill 263 repeals portions of Wisconsin's antiquated minimum markup law. For too long, consumers have had to suffer unnaturally high prices because of interference in the market.

This bill specifically repeals the prohibition of selling prescription drugs and merchandise below cost. Unlike previous versions we've offered, this bill does not remove the minimum markup requirement on motor vehicle fuel, tobacco products, liquor, wine, or groceries. This will create savings for our seniors purchasing medications and for parents buying back to school supplies for their children or participating in Black Friday door busters.

The minimum markup law was enacted in the 1930s after the Great Depression. At the time, the law was passed to protect small retailers from being pushed out by large box retailers. The law was designed to stop the practice of "predatory pricing."

However, a report published by the Wisconsin Institute on Law and Liberty last May examined national data and found no evidence to support this practice. In fact, they found no evidence to support the claim that repealing a state's minimum markup law would even reduce the number of small businesses. States without minimum markup laws have just as many small businesses as states with mandatory markups.

The minimum markup law is purely government interference in the free market. It prohibits businesses from offering lower prices to consumers, and it limits competition. It also removes business's ability to offer special sales such as seasonal sales, grand opening sales, and removes a unique tool to attract customers with below cost sales.

Repealing this law to allow businesses to function freely and save consumers money is a no-brainer. Government's interference has once again harmed customers and stifled business. It is time to repeal this archaic law and let consumers reap the rewards of lower prices.

Thanks for allowing me to testify today. I am happy to answer any questions you may have.

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Chairman Moulton and Committee Members,

Thank you for holding a hearing on Senate Bill 263. This bill would repeal a part of the Unfair Sales Act, commonly known as the minimum-markup law. Significantly, this bill would repeal the part of the law that keeps prescription drug prices artificially high. Wisconsin is in the minority of states that still overcharge those who need prescription drugs. Senior citizens, those on fixed income, and lower income individuals are especially victimized by this law. This bill removes part of this archaic law in favor of free market competition. SB 263 is at least a start toward addressing the sky high health care and prescription drug costs.

In the past few years' health care costs have continued to increase and there is no sign of relief in sight. Since 2007 middle-class families' spending on health care has increased 25%. Health care has become an increasingly larger portion of a middle class family's expenses. Name brand prescription drugs have increased in cost more than threefold between 2006 and 2015. Senior Care Drug Expenditures have increased exponentially since 2012.

Leaving the Unfair Sales Act in place will only continue to hurt our elderly, disabled, and low income citizens. SB 263 allows the drugs to be sold at a fair price that will help offset the increasing costs of healthcare. Exempting prescription drugs from this outdated law would provide relief to consumers. As policymakers we seek to help seniors and other citizens afford their prescriptions.

This reform is long overdue. Government should not be dictating prices for essential products, making them more expensive. With prescription drug prices rising faster than health care and inflation in other developed countries, it is time for Wisconsin's Legislature to act. Please join me in support of Senate Bill 263.



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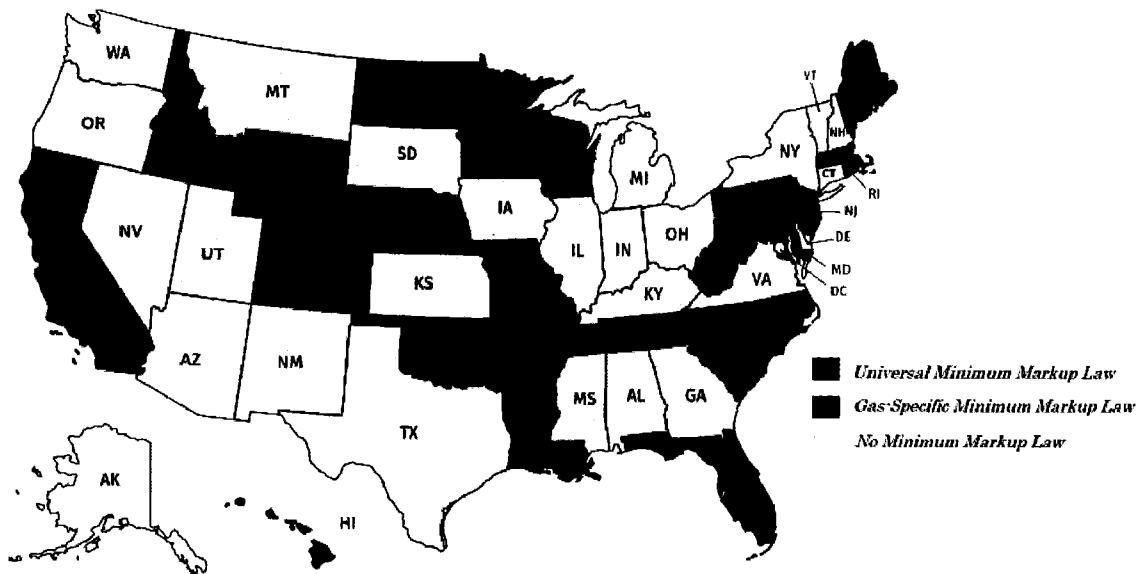
Dear Chairman Moulton and members of the Committee on Agriculture, Small Business and Tourism,

Thank you for the opportunity to submit testimony on SB 263. We are submitting this testimony to make you aware of our research on the topic of minimum markup, why the current law is a problem, and its cost to the Wisconsin economy. Copies of our research are available at our website, will-law.org and upon request. We appear before you for informational purposes.

An Overview of Minimum Markup Law in Wisconsin

The Unfair Sales Act was originally enacted in the 1930s. During that time, many states tried to ward off economic collapse by barring businesses from selling goods below cost. The idea was that minimum markups would soften price competition and keep companies afloat. Laws such as these remain in place in 24 states around the country.

Figure 1. Minimum Markup Laws throughout the United States



The largest problem with these laws from an economic perspective is that predatory pricing, which such laws aim to prevent, has rarely been observed. And it could rarely succeed were it tried. The hypothesis is that a well-heeled competitor could lower its prices, drive smaller competitors out of the market, and then, with the field cleared, raise prices to an even higher level, reaping exorbitant profit. But that strategy won't work unless the predator can also create some sort of barrier that prevents new competitors from entering the market when they see the incumbents earning sizeable profits. If there are no barriers to entry, the predator's "excess" profit will bring the competition that has been driven out – if not the same competitors – right back in.

Absent assistance from the government, predatory pricing has generally proven to be an untenable strategy (Isaac and Smith 1985). Even in a market like retail gasoline, which requires some significant capital investment, keeping competitors out is especially difficult when there is money to be made. If a gas station were to be driven out of a market by cut-throat prices that are subsequently raised, there is nothing to stop another owner from buying the pumps and running his own station. Economists call such markets contestable. The only way for cut-throat competition to keep new entrants out of the market is to maintain prices so low that no one has the incentive to enter. But this defeats the purpose of the predatory scheme in the first place, as the idea must be to eventually raise prices and recover any losses from selling below cost. It means that the evil to which the Unfair Sales Act was directed won't happen. Despite the skepticism of economists, it was important to empirically test claims about the impact of minimum markup laws on competition.

Our Study

We partnered with Ike Brannon, a Cato Institute Fellow and former chief economist for the House Energy and Commerce Committee. We took advantage of the variation in the presence of minimum markup laws to create a natural experiment on their impact.

Using a rigorous econometric analysis of data from all 50 states, we conducted an extensive analysis of the effect of minimum markup laws on the number of small business retailers and the number of gas stations in a state. Quite simply, we found that minimum markup laws do not achieve their stated purpose. Among the key findings: Minimum markup laws have no effect on the number of small business retailers in a state. Once appropriate controls are included, the presence of a minimum markup law does not increase (or decrease) the number of small businesses in a state. General minimum markup laws have no effect on the number of gas stations in a state. In an analysis that includes 20 years of national data, the presence of a minimum markup law does not increase (or decrease) the number of gas stations in a state. Gasoline-specific minimum markup laws have no effect on the number of gas stations in a state. Even in states that have minimum markup laws that apply exclusively to gas stations, no effect of the laws was found on the number of gas stations in an analysis of 20 years of data.

Real-word Impact of Minimum Markup Law

Minimum Markup laws are not just something to be debated by economists. Our study confirms what we all see by observation. Wisconsin looks like other states. We do not have more or fewer "Mom and Pop" stores than other states. What we do have is a law that compels consumers to pay

more than they otherwise would have to pay. The "four dollar" prescription specials offered elsewhere are unavailable here. We have legislation that means Wisconsin consumers can often buy goods less expensively by simply crossing the border. We have legislation that "protects" consumers from the scourge of lower prices.

This has real world impacts on the ability of Wisconsinites to purchase the goods that they want and need. These problems are even more serious when it comes to prescription drugs. It is fundamentally unfair for the state government to make it more difficult for people to purchase the drugs they may need for their very survival. Our research has shown that these laws do not have their intended effect of increasing marketplace competition. In the absence of that evidence, minimum markup laws serve as little more than a barrier to competition that hurts consumers. In the case of prescription drugs, this could be the difference between life and death.

Sincerely,

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AB359 / SB263 Exempting pharmaceuticals and general merchandise from the Unfair Sales Act

What does the bill do? The bill allows below cost sales of prescription drugs and general merchandise. This puts Wisconsin retailers on the same playing field as they are in other states AND most importantly, with online retailers.

What is the Unfair Sales Act? The Unfair Sales Act, passed in 1939, requires businesses to offer prices to consumers above their cost and prohibits loss leaders, a common retail practice.¹ The Federal Trade Commission, a federal agency charged with protecting consumers, has opined that Wisconsin's Unfair Sales Act is anti-consumer and anti-competitive and should be repealed.

"We believe that the Wisconsin Unfair Sales Act is contrary to the public interest because, by prohibiting sales below cost, it unnecessarily restrains competition. The minimum markup provisions further restrain competition and appear to have no countervailing benefits to consumers. Apparently, the Act is intended to protect small retailers and wholesalers, but does so at the expense of consumers. For all of the above reasons, the staff of the Federal Trade Commission urges that Wisconsin repeal its Unfair Sales Act by passing SB 140."
Federal Trade Commission letter to WI State Senator John Norquist, dated April 22, 1987

Why is the bill necessary? The Unfair Sales Act that passed in 1939 required businesses to offer prices to consumers above their cost. The law today is an unnecessary market impediment that just makes it more difficult for Wisconsin retailers to do business here. It continues to become more and more irrelevant and the will of state government agencies to enforce it has all but disappeared.

When Meijer, a regional grocery chain, opened its doors in Wisconsin they found an unfriendly environment. Meijer officials said they've never encountered this type of situation in any other state where it operates. In a statement to WISN 12 News, a Meijer spokesman said:

"This is a bit peculiar for us. We are not accustomed to regulations that limit our customers' ability to save money when they shop with us."

What effect does the law have on consumers? As a result of this outdated law, Wisconsin customers often pay more than customers in other states for prescription drugs, and also during popular promotions such as back-to-school and during the holidays when customers are seeking to stretch their dollars. The 1939 law makes it more difficult for Wisconsin retailers to compete with online sellers at a time when the retail economy is quickly moving to the Internet. Exempting pharmaceuticals and general merchandise would remove an obstacle placed by a protectionist government from the 1930s that doesn't exist in the majority of other states and most important, that doesn't apply to online commerce where this law is irrelevant and unenforceable. Further, it forces multi-state retailers to either run separate advertisements that reflect higher Wisconsin prices, or have disclaimers showing that Wisconsin is excluded from their deals.

"FTC staff stated that the Act likely leads to significantly higher prices for consumers. Unlike federal antitrust law, the Act protects individual competitors, not competition, and discourages pro-competitive price cutting. In particular, the Act subjects vendors to civil liability - including treble damages and a substantial fine per violation - for cutting prices even if there is no likelihood of harm to competition, and even if the vendors have no intent to engage in anticompetitive conduct. The staff also explained that the Act is unnecessary, both because scholarly studies indicate that anticompetitive below-cost pricing happens infrequently and because existing federal antitrust laws already prohibit anticompetitive below-cost pricing."
Federal Trade Commission Cover Memo to State Rep Shirley Krug, dated Oct 16, 2003

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

October 15, 2003

Shirley Krug
State Representative
12th Assembly District
Post Office Box 8952
Madison, WI 53708

Re: Wisconsin's Unfair Sales Act

Dear Representative Krug:

The staffs of the Federal Trade Commission's Bureau of Competition, Bureau of Economics, and Office of Policy Planning are pleased to respond to your request for comments on Wisconsin's Unfair Sales Act.⁽¹⁾ The Act prohibits the retail sale of motor fuel below a statutory definition of "cost," where "cost" includes a minimum markup "to cover a proportionate amount of the cost of doing business." The Act provides for fines and private actions against violators.

In your letter of May 14, 2003, you asked us four questions about the Act. Your questions, and a summary of our answers, appear below:

- **Does the law harm consumers by significantly raising prices to consumers?**

Most likely yes. Minimum markup laws likely deter pro-competitive price cutting and can ultimately lead to higher prices for consumers. They can prevent efficient vendors from passing on savings to consumers, and they can discourage entry from new competitors that may be more efficient. Moreover, when compared to other states with similar laws, the Act exacerbates these problems by employing one of the steepest minimum markups on retail fuel sales in the country.

- **Does the current Wisconsin law duplicate existing protections against "predatory pricing" found in the federal antitrust law?**

The federal antitrust laws deal specifically with below-cost pricing that has a reasonable prospect or dangerous probability of leading to monopoly. The FTC, the Department of Justice's Antitrust Division, state attorneys general, and private parties can sue under these laws in response to anticompetitive below-cost pricing. The Act, however, does more than duplicate these protections; it exceeds them in ways that do not benefit

consumers. Federal law prohibits pricing that could harm competition and consumers, not just competitors, whereas the Act prohibits pricing that could harm competitors even if there is no harm to consumers.

- **Does the current Wisconsin law discourage or encourage competitive pricing?**

Current Wisconsin law discourages competitive pricing. The Act forbids below-statutory cost price cutting that has the intent or effect of diverting trade from a competitor. Thus, unlike federal antitrust law, the Act focuses on harm to competitors rather than harm to competition. In fact, the Act subjects vendors to civil liability - including treble damages and a \$5,000 fine per violation - for cutting prices even if there is no likelihood of harm to competition, such as if they price below statutory cost on a single occasion, and even if the vendors have no intent to engage in anticompetitive conduct. Furthermore, the Act defines "cost" in a way that lacks a firm economic foundation and likely leads to higher prices. As a result, many vendors likely avoid pro-competitive price-cutting altogether.

- **Are there any scholarly studies or court decisions in recent years that address the effect of "below-cost" pricing in relation to the creation of monopolies?**

Yes. Because low prices benefit consumers, consumers are harmed by "below-cost" pricing only if, because of low prices, a dominant competitor is able later to raise prices to supracompetitive levels. Economic studies, legal studies, and court decisions indicate that below-cost pricing that leads to monopoly occurs infrequently. Below-cost sales of motor fuel that lead to monopoly are especially unlikely.

For these reasons, we believe that Wisconsin's Unfair Sales Act likely harms consumers and restricts competition. Moreover, at best, the Act is unnecessary because the federal antitrust laws already protect against predatory pricing.

Interest and Experience of the Federal Trade Commission

The FTC is charged by statute with preventing unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.⁽²⁾ Under this statutory mandate, the Commission seeks to identify business practices that impede competition or increase costs without offering countervailing benefits to consumers. In particular, Commission staff have often assessed the competitive impact of regulations and business practices in the petroleum industry. In recent years, the Commission has investigated, among others, the mergers of several diversified energy companies: Chevron and Texaco; Exxon and Mobil; BP and Amoco; petroleum refiners Valero Energy and Ultramar Diamond Shamrock; and the combination of the refining and marketing businesses of Shell, Texaco, and Star Enterprises.⁽³⁾

The Commission and its staff have also investigated, conducted workshops, and commented on proposed regulations regarding motor fuel pricing. In 2001, the Commission completed investigations of spikes in reformulated gasoline prices in several Midwestern states,⁽⁴⁾ and of gasoline price increases in West Coast markets.⁽⁵⁾ In the last two years, the Commission held two public conferences to examine factors that affect prices of refined petroleum products in the

United States.(6) Commission staff also filed public comments with the Environmental Protection Agency concerning "boutique fuel" regulations.(7) On many occasions, Commission staff has offered comments on proposed state laws covering various aspects of gasoline sales, including laws that would ban sales of motor fuels below cost.(8)

Analysis of Wisconsin's Unfair Sales Act

The Unfair Sales Act prohibits vendors from selling motor fuel below a statutory definition of "cost":

Any sale of any item of merchandise . . . at less than cost as defined in this section with the intent or effect of inducing the purchase of other merchandise or of unfairly diverting trade from a competitor, impairs and prevents fair competition ... Such sales are prohibited. Evidence of any sale of any item of merchandise by any [vendor] at less than cost as defined in this section shall be prima facie evidence of intent or effect to induce the purchase of other merchandise, or to unfairly divert trade from a competitor, or to otherwise injure a competitor.

Wis. Stat. Ann. § 100.30(3) (West 2003). The Act defines "cost" in several ways depending on the vendor, although none of the definitions focus solely on the vendor's own costs. In general, the Act defines "cost" with reference to the greater of (1) the vendor's invoice or replacement cost (adjusted for various factors such as transportation costs and taxes), or (2) the "average posted terminal price" at the terminal nearest the retail sale in question, plus a minimum markup of 3%, 6%, or 9.18% to "cover a proportionate part of the cost of doing business." The Act provides for both fines of up to \$5,000 per violation, and private causes of action with treble damages or \$2,000 per violation, whichever is greater. The Act permits a handful of exceptions, including ones for clearance sales and meeting the competition.

We believe that, if followed by retailers, the Act restricts competition and likely leads to higher prices for consumers. Unlike federal antitrust law, the Act aims to protect individual competitors, not competition, thereby discouraging pro-competitive price-cutting. Moreover, the Act defines "cost" in a way that lacks a firm economic foundation and likely leads to significantly higher prices. Finally, we believe that the Act is unnecessary, both because scholarly studies and court decisions indicate that anticompetitive below-cost pricing happens infrequently, and because the federal antitrust laws already prohibit anticompetitive below-cost pricing.

A. Anticompetitive below-cost pricing is already illegal under federal antitrust law

i. Antitrust law protects consumers, not competitors

The federal antitrust laws are fundamental to national economic policy and our free market system. The antitrust laws ensure that markets remain competitive, efficient, and dynamic. Under these laws, both the FTC and the Department of Justice's Antitrust Division may bring enforcement actions against anticompetitive below-cost pricing. The federal government has launched several predatory pricing investigations and predatory unilateral conduct cases during the past several years.(9) In addition, private plaintiffs and state attorneys general have the right

to bring predatory pricing cases. Under Section 4 of the Clayton Act, any person who has been injured in his business or property as a result of conduct forbidden by the antitrust laws can seek treble damages for that injury.⁽¹⁰⁾ State attorneys general, acting as *parens patriae*, also may bring such actions.

Although anticompetitive below-cost pricing is illegal, the United States Supreme Court has cautioned that antitrust law should not prevent pro-competitive price-cutting. Congress designed the antitrust laws for "the protection of competition, not competitors."⁽¹¹⁾ In other words, the federal antitrust laws promote and maintain legitimate, vigorous price competition, irrespective of how individual competitors may fare. Vigorous price competition allows consumers to reap the benefits of lower prices, greater variety, and higher quality goods and services. In several important antitrust decisions, the Court has been absolutely clear that consumer welfare is the linchpin of the antitrust laws, and that as a general matter, low prices are "a boon to consumers."⁽¹²⁾

ii. Only prices below the price-cutter's cost can be predatory

The Supreme Court has directly addressed low-pricing strategies. In *Brooke Group v. Brown & Williamson Tobacco Corp.*, the leading case in this area, the Court expressly held that a defendant does not violate the federal antitrust laws by cutting prices merely because the low prices decrease a competitor's profits. "Low prices benefit consumers regardless of how those prices are set."⁽¹³⁾ To be unlawful, the low prices must, at a minimum, be predatory. "[S]o long as they are above predatory levels, [low prices] do not threaten competition . . . We have adhered to this principle regardless of the type of antitrust claim involved."⁽¹⁴⁾ The Court noted that "[we] have rejected elsewhere the notion that above-cost prices that are below general market levels or the costs of a firm's competitors inflict injury to competition cognizable under the antitrust laws."⁽¹⁵⁾

The Court has defined predatory pricing, in turn, as "pricing below an appropriate measure of [the defendant's] cost for the purpose of eliminating competitors in the short run and reducing competition in the long run."⁽¹⁶⁾ Although the Court has not stated what the appropriate measure of cost should be, prominent antitrust scholars and several federal circuit courts have concluded that the price-cutter's marginal costs, or a close proxy such as average variable costs, should be the yardstick.⁽¹⁷⁾

It is critical to note that, whatever measure of cost is chosen, the pertinent comparison is to the price-cutter's costs, not to some external benchmark, such as a rival's costs, which does not necessarily reflect the costs actually incurred by the price-cutting firm itself. "To hold that the antitrust laws protect competitors from the loss of profits due to such price competition would, in effect, render illegal any decision by a firm to cut prices in order to increase market share."⁽¹⁸⁾

iii. Not all below-cost pricing harms consumers

By itself, below-cost pricing does not violate the federal antitrust laws. Under federal law, below-cost pricing must also injure or threaten to injure consumers, and consumers are injured by below-cost pricing only if sustained above-cost prices occur later:

[T]he short-run loss is definite, but the long-run gain depends on successfully neutralizing the competition. Moreover, it is not enough simply to achieve monopoly power, as monopoly pricing may breed quick entry by new competitors eager to share in the excess profits. The success of any predatory scheme depends on maintaining monopoly power for long enough both to recoup the predator's losses and to harvest some additional gain.⁽¹⁹⁾

Thus, even if a below-cost pricing strategy succeeds in temporarily reducing the number of competitors, the price-cutter must keep competitors from returning after it tries to raise prices again: "The second prerequisite to holding a competitor liable under the [federal] antitrust laws for charging low prices is a demonstration that the competitor had a reasonable prospect, or, under § 2 of the Sherman Act, a dangerous probability, of recouping its investment in below-cost prices."⁽²⁰⁾ Otherwise, the below-cost pricing strategy, which requires that the firm incur losses on every sale, will not succeed. When a firm fails to recoup short-run losses (from sales at below-cost prices) in the long run, consumers enjoy a windfall. And without harm to consumers, an antitrust violation does not occur. "[U]nsuccessful predation is in general a boon to consumers . . . That below-cost pricing may impose painful losses on its target is of no moment to the antitrust laws if competition is not injured."⁽²¹⁾

B. Scholarly studies and court decisions suggest that predatory below-cost pricing happens infrequently

In recent years, many scholars have studied anticompetitive below-cost pricing. In an exhaustive discussion, Frank Easterbrook, now sitting on the U.S. Court of Appeals for the Seventh Circuit, noted that "[s]tudies of many industries find little evidence of profitable predatory practices in the United States or abroad. These studies are consistent with the result of litigation; courts routinely find that there has been no predation."⁽²²⁾

Other analyses largely confirm Easterbrook's conclusion. A leading textbook on industrial organization economics notes that "[g]iven all the problems in identifying predatory pricing, it is not surprising that economists and lawyers have found few instances of successful price predation in which rivals are driven out of business and prices then rise. Although predation is frequently alleged in lawsuits, careful examination of these cases indicates that predation in the sense of pricing below cost usually did not occur."⁽²³⁾ Predation sometimes occurs,⁽²⁴⁾ but not nearly as frequently as claimed.⁽²⁵⁾

The Supreme Court has endorsed this scholarship. Because it is difficult to profit from anticompetitive below-cost pricing, the Supreme Court has observed that "there is a consensus among commentators that predatory pricing schemes are rarely tried, and even more rarely successful."⁽²⁶⁾ Therefore, the Court has emphasized the need to take great care to distinguish between procompetitive price cutting and anticompetitive predation because "cutting prices in order to increase business often is the very essence of competition . . ."⁽²⁷⁾

C. Past studies show that anticompetitive below-cost sales of motor fuels are especially unlikely

Several studies suggest that anticompetitive below-cost pricing is especially unlikely in gasoline retailing. During the past two decades, many government agencies have investigated laws to prevent anticompetitive below-cost pricing of motor fuels. The issue originally arose in the 1980s, when various parties expressed concern that major oil companies were selling gasoline below cost to drive independent stations out of business. Numerous states considered enacting legislation to ban below-cost pricing of motor fuel. The U.S. Department of Energy (USDOE) comprehensively investigated these allegations.

In 1984, USDOE released a final report to Congress examining whether vertically integrated refiners were "subsidizing" their retail gasoline operations in a way that was predatory or anticompetitive. The study relied on extensive pricing data and internal oil company documents. USDOE found no evidence of predation or anticompetitive subsidization. Instead, the agency concluded that the decline in the overall number of retail outlets and intensified competition among gasoline marketers resulted from decreased consumer demand for gasoline in some areas and a continuing trend toward the use of more efficient, higher-volume retail outlets.(28)

Several states have conducted their own studies. In 1987, Arizona's Joint Legislative Study Committee recommended no new legislation to restrict the pricing of motor fuels in Arizona. "The marketplace for petroleum products is very competitive in Arizona," the Committee concluded.(29) Similarly, in 1986, the Washington State Attorney General studied whether refiners were subsidizing company-owned service stations in an anticompetitive manner. Washington gathered information on the practices of all eight of the major companies in the state for a three-year sample period. The Washington study found that lessee-dealers paid essentially the same prices as company-owned stations more than 99% of the time.(30)

More recently, in 2000, the Commonwealth of Pennsylvania studied a variety of proposals for bills affecting retail gasoline sales in the state. The report extensively analyzed "sales below cost" laws and declined to recommend that Pennsylvania enact one. In fact, the Pennsylvania study raised significant doubts about the theory that gasoline retailers were engaging in anticompetitive below-cost pricing, and it warned that a "sales below cost" law could harm consumers:

Unfortunately, such laws may serve to deter, rather than enhance, competition. The reason for such deterrence is that it may open up firms who engage in low, but non-predatory, pricing to litigation. Seeing the threat of litigation, such firms may change strategy and charge consumers higher prices.(31)

Competitors will, of course, often complain that the competition charges prices that are "too low." Competitors have an incentive to do so if they believe such complaints will lead to legislation that will allow them to charge higher prices. To date, however, no systematic study has produced evidence that predatory pricing is a significant problem in retail gasoline markets.

D. The Unfair Sales Act likely restricts competition and harms consumers

We believe that, if followed by retailers, the Act likely restricts competition and leads to higher prices for consumers. In several critical respects the Act, which was first enacted in the 1930s,

breaks from federal antitrust law and prohibits conduct that benefits consumers. In particular, the Act protects competitors, not competition, and the Act defines "cost" in a way that lacks a firm economic foundation and discourages pro-competitive price-cutting. Moreover, we believe that the Act is unnecessary, both because scholarly studies and court decisions indicate that anticompetitive below-cost pricing happens infrequently, and because the federal antitrust laws already prohibit anticompetitive below-cost pricing.

i. The Act protects competitors, not competition

Unlike federal antitrust law, the Act protects competitors, not competition. The Act states that "any sale" below-statutory cost with the intent or effect of "unfairly diverting trade from a competitor" impairs and prevents "fair competition." Accordingly, the Act bans all below-statutory cost sales that take business from a single competitor, even if those sales result in lower prices for consumers.⁽³²⁾

For these reasons, the Act likely discourages pro-competitive price-cutting. The Act subjects a vendor to liability for pricing below the statutory definition of cost on a single occasion if a single competitor is hurt, even if there is no danger that the vendor would be able to recoup its lost profits, and even if there are dozens of other competitors in the relevant market. Moreover, because the Act imposes liability if there is an intent or effect to divert business from a competitor, a vendor could be held liable for pricing below statutory cost inadvertently, even on a single occasion. Similarly, the Act prohibits pro-competitive below-cost pricing, such as special promotions or below-cost pricing that may accompany the launch of a new retail outlet. The penalties include a fine of up to \$5,000 and private litigation that could result in treble damages or a \$2,000 penalty *per violation*, whichever is greater.

In all these situations, there is no risk to consumers of monopolization or any other anticompetitive effects, because there is no risk that the vendor could later recoup its losses. The risk of damages and a substantial civil penalty, however, likely deter vendors from cutting prices. Likewise, the mere threat of litigation may deter vendors from selling gasoline at prices that are legal and above cost, but low enough to prompt complaints from competitors.

ii. The Act defines "cost" to include a minimum markup

In addition, the Act defines "cost" in a manner inconsistent with most antitrust precedent and economic and legal literature. The Act defines "cost" to include costs other than average variable costs, including a minimum markup of 3%, 6%, or 9.18%, depending on the vendor's identity and location. The markup's stated purpose is "to cover a proportionate part of the cost of doing business."

The minimum markup most likely leads to significantly higher prices for Wisconsin's consumers. In the first place, if vendors have a lower "cost of doing business" than the minimum markup percentage, the Act prevents those vendors from passing on the savings to consumers. Some efficient vendors may have a "cost of doing business" less than 6% or 9.18%, while other vendors may prefer to adopt lower prices and increase their profits through greater volume. The Act prevents these vendors from offering lower prices, with no benefits to consumers. Instead,

the minimum markup simply protects the profit margins of vendors, efficient and inefficient alike. One study found that, when penalties for violating the Act were increased in 1998, the average markup of retail gasoline increased by two to three cents per gallon.⁽³³⁾ This study is consistent with a growing body of empirical economic research from the past two decades that has assessed the impact of state "sales below cost" laws on retail gasoline prices. Most studies find these laws raise gasoline prices or leave them unchanged.⁽³⁴⁾

Moreover, the Act discourages entry by new participants that may be more efficient. Some potential entrants, including those with alternative station formats, may have lower average fixed costs per gallon than older stations, and these competitors could pass on their lower costs to consumers. The Act discourages such potential competitors from ever competing in the marketplace.

The Act exacerbates these problems by employing one of the steepest minimum markups on retail fuel sales in the country. A few other states have minimum markup provisions specifically targeting motor fuel retail sales, but the highest outside Wisconsin is typically 6%.⁽³⁵⁾ Wisconsin's minimum markup of 9.18% exceeds that rate by more than 50%. Furthermore, the Act's use of the 9.18% measure - as well as the 3% and 6% measures - appears completely arbitrary. FTC staff could locate no support for these measures from any authority on competition policy, including Supreme Court precedent, federal antitrust law, basic economic theory, or empirical studies. In fact, the minimum markup percentages do not, as the Act suggests they should, accurately reflect a "proportionate part of the cost of doing business." Because the Act ties operating costs to the wholesale price, the dollar value of the minimum markup rises if wholesale prices rise. Operating costs, however, generally do not increase with increases in the wholesale price. For example, rent is an operating cost that does not vary with the wholesale price. Nevertheless, when wholesale prices rise, the Act increases the amount of money consumers have to pay for a "proportionate part of the cost of doing business," even if those costs remain unchanged. This link likely leads to even higher retail prices, with no attendant benefits for consumers or competition.

iii. The Act defines "cost" by reference to other competitors' costs

The Act defines "cost" in another way that discourages pro-competitive price-cutting. Although the Act's definition of "cost" varies with the location and identity of the vendor, the Act typically defines "cost" to include the greater of (1) the vendor's invoice or replacement cost (adjusted for various factors such as transportation costs and taxes), or (2) the "average posted terminal price" at the terminal nearest the retail sale in question, plus a minimum markup. As a result, the Act defines "cost" in a way that focuses not on the price-cutter's cost, but on the "average" costs faced by the price-cutter's competitors.

This standard directly contravenes established antitrust doctrine. The federal courts, basic economic principles, and virtually all prominent antitrust scholars agree that the relevant measure of cost should be that of the vendor, not its competitors. If the vendor has lower costs than its competitors and prices at or above those costs, consumers will benefit from the vendor's greater efficiency. Predatory pricing can only occur when vendor prices are below some measure of its own costs, even if those prices are below its rivals' costs.

Furthermore, the "average posted terminal price" may not accurately reflect the prices available to vendors. For example, the average posted terminal price does not reflect discounts that jobbers and retailers may receive. A jobber or retailer who negotiates a lower price cannot legally pass on that price to consumers. Vendors sometimes negotiate volume-based discounts, but under the law's definition of cost, such vendors may be unable to put gasoline on sale at the end of the month to achieve volume-based savings. Consumers most likely pay higher prices as a result.

Timing presents another problem. A vendor may decide, for procompetitive reasons, to charge a lower price based on the cost of gasoline when purchased, rather than the current average posted terminal price. As a result, if the average posted terminal price subsequently increases, a vendor could violate the law by selling gasoline above its own costs, but below subsequent prices. There is no consumer benefit to punishing vendors in this situation.

Inversions present yet another problem. Jobbers and retailers usually pay a higher price for branded than for unbranded gasoline; inversions occur when the unbranded price for gasoline exceeds the branded price. When gasoline supplies are tight, the unbranded price rises and can surpass average branded prices (and implicit branded wholesale prices paid by lessee-dealers and company operated outlets). In this situation, branded stations could violate the proposed law during a price inversion, even if the vendors charged prices that exceeded their actual costs.

Finally, the terminal at which a retailer's marginal cost of a gallon of gasoline is lowest may not be "the terminal closest to the retail station." For example, if a retailer has lower laid-in costs from a different, more distant terminal, it will be more profitable for him to buy gas at that terminal.

iv. The Act is unnecessary

Aside from the problems with the Act's definitions and focus, the Act is simply unnecessary. The Act addresses a problem, anticompetitive below-cost pricing, that is already covered by the federal antitrust laws, and that is unlikely to occur in any event. Given the strong stance of the Supreme Court in favor of low prices and the care the Court has devoted to explaining the types of price cutting that are illegal under the antitrust laws, Wisconsin's Act is not necessary to protect consumers.

Conclusion

For these reasons, the FTC's Office of Policy Planning, Bureau of Competition, and Bureau of Economics believe that Wisconsin's Unfair Sales Act harms competition. The Act addresses a problem that is unlikely to occur. To the extent that anticompetitive below-cost pricing is a danger in the retail gasoline market, federal antitrust laws are sufficient to address the problem. Moreover, we believe that the Act most likely deters pro-competitive price-cutting and causes some vendors to raise their prices, to the detriment of Wisconsin's consumers.

Respectfully submitted,

Susan A. Creighton, Director
Bureau of Competition

Luke M. Froeb, Director
Bureau of Economics

Todd J. Zywicki, Director
Office of Policy Planning

Endnotes:

1. Wis. Stat. Ann. § 100.30 (West 2003). This letter expresses the views of the FTC's Bureau of Competition, Bureau of Economics, and Office of Policy Planning. The letter does not necessarily represent the views of the Commission or of any individual Commissioner. The Commission has, however, voted to authorize us to submit these comments.

2. Federal Trade Commission Act, 15 U.S.C. § 45.

3. *See Chevron Corp.*, Docket C-4023 (decision and order 2002); *Exxon Corp.*, Docket C-3907 (decision and consent order 2001); *British Petroleum Co. p.l.c.*, Docket C-3868 (decision and order 1999); *Valero Energy Corp.*, Docket C-4031 (decision and order 2002); *Shell Oil Co.*, Docket C-3803 (decision and order 1998). All of these orders are available at the FTC's website.

4. FTC, Final Report, Midwest Gasoline Price Investigation (Mar. 29, 2001), at <http://www.ftc.gov/os/2001/03/mwgasrpt.htm>.

5. *FTC Closes Western States Gasoline Investigation*, FTC Press Release (May 7, 2001), at <http://www.ftc.gov/opa/2001/05/westerngas.htm>.

6. *FTC to Hold Public Conference/Opportunity for Comment on U.S. Gasoline Industry*, FTC Press Release (July 12, 2001), at <http://www.ftc.gov/opa/2001/07/gasconf.htm>; *FTC to Hold Second Public Conference on the U.S. Oil and Gasoline Industry in May 2002*, FTC Press Release (Dec. 21, 2001), at <http://www.ftc.gov/opa/2001/12/gasconf.htm>.

7. FTC Staff comments, *Study of Unique Gasoline Fuel Blends, Effects on Fuel Supply and Distribution and Potential Improvements*, EPA 420-P-01-004, Public Docket No. A-2001-20 (Jan. 30, 2002), at <http://www.ftc.gov/be/v020004.pdf>.

8. *See* Letter from Todd Zywicki, Director, FTC Office of Policy Planning, et al., to Eliot Spitzer, Attorney General of New York (July 24, 2003), at <http://www.ftc.gov/be/nymfmpa.pdf>; Letter from Zywicki, et al., to Roy Cooper, Attorney General of North Carolina (May 19, 2003), at <http://www.ftc.gov/os/2003/05/ncclattorneygeneralcooper.pdf>; *Competition and the Effects of Price Controls in Hawaii's Gasoline Market: Before the State of Hawaii, J. Hearing House Comm. On Energy and Environmental Protection et al.*, (Jan. 28, 2003) (testimony of Jerry Ellig, Deputy Director, FTC Office of Policy Planning) at <http://www.ftc.gov/be/v030005.shtm>; Letter from R. Ted Cruz, Director, FTC Office of Policy Planning, et al., to Gov. George E. Pataki of

New York (Aug. 8, 2002) at <http://www.ftc.gov/be/v020019.pdf>; Letter from Joseph J. Simons, Director, FTC Bureau of Competition, and R. Ted Cruz to Hon. Robert F. McDonnell, Commonwealth of Virginia House of Delegates (Feb. 15, 2002) at <http://www.ftc.gov/be/V020011.htm>. See also Letter from Ronald B. Rowe, Director for Litigation, FTC Bureau of Competition, to Hon. David Knowles, California State Assembly (May 5, 1992); Prepared Statement of Claude C. Wild III, Director, FTC Denver Regional Office, before the State, Veterans, and Military Affairs Committee of the Colorado State Senate (Apr. 22, 1992); Letter from Claude C. Wild III, Director, FTC Denver Regional Office, to Hon. Bill Morris, Kansas State Senate (Feb. 26, 1992); Letter from Claude C. Wild III, Director, FTC Denver Regional Office, to David Buhler, Executive Director, Utah Department of Commerce (Jan. 29, 1992); Letter from Thomas B. Carter, Director, FTC Dallas Regional Office, to Hon. W.D. Moore, Jr., Arkansas State Senate (Mar. 22, 1991); Letter from Jeffrey I. Zuckerman, Director, FTC Bureau of Competition, to Hon. Jennings G. McAbee, Chairman, Other Taxes and Revenues Subcomm., Ways and Means Comm., South Carolina House of Representatives (May 12, 1989). All of these letters are on file at the FTC.

9. One notable example is *United States v. Microsoft*, 253 F.3d 34 (D.C. Cir.), *cert. denied*, 534 U.S. 952 (2001).

10. 15 U.S.C. § 15.

11. *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488 (1977) (quoting *Brown Shoe Co. v. United States*, 370 U.S. 294, 320 (1962)).

12. *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 224 (1993). See also *Atlantic Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328 (1990); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986).

13. *Brooke Group*, 509 U.S. at 223 (quoting *Atlantic Richfield*, 495 U.S. at 340).

14. *Id.* (quoting *Atlantic Richfield*, 495 U.S. at 340).

15. *Id.* (citing *Atlantic Richfield*, 495 U.S. at 340).

16. *Cargill, Inc. v. Monfort of Colorado, Inc.*, 479 U.S. 104, 117 (1986).

17. See *Kelco Disposal, Inc. v. Browning-Ferris Indus.*, 845 F.2d 404, 407 (2d Cir. 1988), *aff'd on other grounds*, 492 U.S. 257 (1989) (finding that "[p]rices that are below reasonably anticipated marginal cost, and its surrogate, reasonably anticipated average variable cost . . . are presumed predatory"); *MCI Communications Corp. v. AT&T*, 708 F.2d 1081, 1122-23 (7th Cir. 1983) (holding that no predatory intent can be presumed from prices at or above long run incremental cost); *International Air Indus. v. American Excelsior Co.*, 517 F.2d 714, 724 (5th Cir. 1975) (holding that plaintiff must show that "either (1) a competitor is charging a price below his average variable cost . . . or (2) the competitor is charging a price below its short-run, profit-maximizing price and barriers to entry are great enough to enable the discriminator to reap the benefits of predation before new entry is possible"); P. Areeda and H. Hovenkamp, *Antitrust*

Law ¶ 724; Phillip Areeda and Donald Turner, *Predatory Pricing and Related Practices under Section 2 of the Sherman Act*, 88 Harv. L. Rev. 697 (1975). In *Brooke Group*, the parties both agreed that average variable cost should be the appropriate measure.

18. *Brooke Group*, 509 U.S. at 223 (quoting *Cargill*, 479 U.S. at 116).

19. *Matsushita Elec.*, 475 U.S. at 589.

20. *Brooke Group*, 509 U.S. at 224.

21. *Id.* at 224, 226.

22. Frank H. Easterbrook, *Predatory Strategies and Counterstrategies*, 48 U. Chi. L. Rev. 263, 313-14 (1981) (citations omitted).

23. Dennis W. Carlton and Jeffrey M. Perloff, *Modern Industrial Organization* 342 (3d ed. 2000).

24. See Jeffrey Church and Roger Ware, *Industrial Organization: A Strategic Approach* 659 (2000).

25. P. Areeda and H. Hovenkamp, *Antitrust Law* ¶ 723a (2d ed. 2002) ("as the Supreme Court has observed, although competitors allege predation frequently, it is probably quite uncommon").

26. *Matsushita Elec.*, 475 U.S. at 589.

27. *Id.* at 594.

28. USDOE, *Deregulated Gasoline Marketing: Consequences for Competition, Competitors, and Consumers* (Mar. 1984); Dr. James B. Delaney and Dr. Robert N. Fenili, U.S. Dep't of Energy, *Final Report: The State of Competition in Gasoline Marketing* (Jan. 1981).

29. Final Report to the Arizona Joint Legislative Study Committee on Petroleum Pricing and Marketing Practices and Producer Retail Divorcement 35 (Dec. 1988).

30. Final Report to the Washington State Legislature on the Attorney General's Investigation of Retail Gasoline Marketing 14 (Aug. 12, 1987).

31. Commonwealth of PA. Legislative Budget and Finance Comm., *Factors Affecting Motor Fuel Prices and the Competitiveness of PA's Motor Fuels Market, A Report in Response to H.R. 451*, 35 (Oct. 2000).

32. *Gross v. Woodman's Food Mkt., Inc.*, 655 N.W.2d 718, 737 (Wis. Ct. App. 2002) (holding that the Act "prohibits a sale at less than statutory cost if there is either the intent or effect of injuring a competitor").

33. James Brannon and Frank Kelly, *Pumping Up Gas Prices in Wisconsin: The Effects of the Unfair Sales Act on Retail Gasoline Prices in Wisconsin*, 12 Wisconsin Policy Research Inst. Rep. No. 7 (1999).

34. See, e.g., Rod Anderson and Ronald Johnson, *Antitrust and Sales-Below-Cost Laws: The Case of Retail Gasoline*, 14 Rev. of Ind. Org. 189, 203 (1999); Robert Fenili and William Lane, *Thou Shalt Not Cut Prices! Sales-Below-Cost Laws for Gas Stations*, 9 Regulation 31, 32-32 (Sept./Oct. 1985). One study, currently in draft form, finds that these laws increase gasoline prices initially and lower them (relative to pre-enactment levels) in subsequent years. The authors, however, do not fully report the statistical significance of the price changes in subsequent years. See M. Skidmore, J. Peltier, and J. Alm, "Do Motor Fuel Sales-Below-Cost Laws Lower Prices?," unpublished manuscript, University of Wisconsin-Whitewater. Many of the studies suffer from methodological problems that make it unclear whether they are measuring the impact of sales below cost laws or something else. The most carefully-controlled study, conducted by a senior economist in the FTC's Bureau of Economics, found that the laws had no effect on retail prices. Michael G. Vita, "Regulatory Restrictions on Vertical Integration and Control: The Competitive Impact of Gasoline Divorcement Policies," 18 J. of Reg. Econ. 217, 217-233 (2000). One possible explanation for these varied findings is that such laws are often difficult to enforce or are enforced unevenly. Therefore, the mere existence of such a law may have only a limited effect on retail gasoline prices. Vigorous and sustained enforcement, however, could significantly chill competition and increase retail gasoline prices.

35. See, e.g., Minn. Stat. Ann. § 325D.01, 325D.04 (lesser of 6% or 8 cents).



Wisconsin's Unfair Sales Act

Message: The Unfair Sales Act protects consumers by protecting competition. The ability of larger companies to sell motor fuel below cost threatens the viability of independent and family-owned businesses as competition is eliminated. ***The loss of local business equates to the loss of local jobs.*** Currently our industry operates 3,000 stations and supports 50,000 jobs statewide.

Background: For over 70 years, the Unfair Sales Act has promoted competition among businesses by prohibiting unfair marketing practices. The law does not allow products to be sold below cost in an attempt to reduce or eliminate competition. The law does not guarantee any retailer a profit, but it does establish a level playing field for all businesses to fairly compete.

Issue: Wisconsin's petroleum marketers are fiercely competitive, surviving on slim margins to provide quality products and services to consumers. Gas prices in Wisconsin reflect the cost of crude oil and closely track the national average price of gas. A repeal of the law may result in a loss of businesses and jobs all around Wisconsin.

- The Unfair Sales Act keeps jobs in Wisconsin. The law has been the rule for generations of family businesses, allowing them to hire and expand in their local communities. Studies show the total number of gasoline outlets is greater in states with fair marketing laws that do not allow for products to be sold below cost.
- Wisconsin rarely deviates by more than a few cents per gallon from the national average gas price. Wisconsin stations consistently operate on smaller margins than stations in other states.
- Minnesota repealed their version of the Unfair Sales Act in 1995 and saw a rise in gas prices. The law was reinstated in 2001.
- Higher courts have found the law constitutional 11 times. The most recent case, *Flying J vs DATCP* was decided by the 7th Circuit Court of Appeals in September 2010. Wisconsin's law was once again found clearly constitutional and the court found there to be no collusion among gasoline retailers.
- Opponents claim federal antitrust provisions already protect smaller businesses, making the law unnecessary. However these types of cases often cost hundreds of thousands of dollars and take many years to litigate, making the process inaccessible to small businesses.

Action Requested: Please support Wisconsin's Unfair Sales Act. Please **OPPOSE** any effort to modify or weaken this important law.



One Voice. One Vision.

TO: Senate Committee on Agriculture, Small Business, and Tourism

FROM: Matthew Mabie, RPh
Owner, Forward Pharmacy
President-Elect, Pharmacy Society of Wisconsin

DATE: February 14, 2018

SUBJECT: **Opposition to Senate Bill 263**

Thank you, Chairman Moulton and members of the Senate Committee on Agriculture, Small Business, and Tourism for the opportunity to testify against Senate Bill 263. My name is Matt Mabie and I am the president-elect of the Pharmacy Society of Wisconsin, as well as the owner of Forward Pharmacy in Cottage Grove.

Every month, Wisconsin pharmacists dispense nearly 6 million prescriptions to the patients they serve. Every day, Wisconsin pharmacists are confronted face to face with the reality that some of our patients have a difficult time paying for their medications. The good news is that the vast majority of Wisconsinites have some form of insurance coverage for their prescription medications and, in most cases, they are only responsible for making a co-payment for the medication, not paying for the entire cost.

Respectfully, I would like to inform the committee why I, and the Pharmacy Society of Wisconsin, oppose the repeal of the Unfair Sales Act. This law is in place to keep predatory pricing practices from developing. As you know, predatory pricing is when a business purposefully sells a product below cost in an effort to grab market share and drive out competition. The idea of a short-term consumer gain, in exchange for a long term stable business environment, has been something that Wisconsin policymakers have wisely turned down when it has been proposed in the past.

Claims of savings for patients by proponents of SB 362 are unsubstantiated. Because 95% of Wisconsin consumers have prescription drug insurance, pharmacies are contracted with the insurance company. Very rarely do pharmacists "sell" prescription drugs directly to the consumer in the traditional sense.

Wisconsin pharmacists understand and are sympathetic to the plight of Wisconsin health consumers, young and old, who may be having a difficult time paying for their prescription medications—those without prescription drug coverage and those with coverage who have difficulty making their copayment. Pharmacists are on the frontline of this issue; they are the professionals who have to look the patients in the eyes when financial concerns are raised.

But, SB 362 is not the cure-all for high prescription drug costs as being portrayed by some of the bill's supporters. The medications that pharmacies are going to sell below cost – for example, as a \$4 generic – are not the medications for which some patients have difficulty paying. Passing this law will not reduce the cost of a medication from 20, 50 or 100 dollars to \$4. That doesn't happen in other states without an Unfair Sales Act and it won't happen in Wisconsin. Business doesn't work

that way. The evidence disputes the millions of dollars of saving being touted by proponents and we ask you to request documented data from anyone making such claims.

Furthermore, prescription medications are not a commodity and they should not be treated as such. Prescription medications are healthcare products that are heavily regulated by both state and federal agencies. They are uniquely prescribed and dispensed for individuals. The fact that prescription drugs are not available to consumers other than through licensed healthcare providers is testament to their unique role in healthcare – certainly more than a commodity that could be bought here or there.

Pharmacists strive to hold down costs and deliver a valuable service for all patients. But, I want to emphasize that the price of a medication is only one consideration that pharmacists use to hold down costs.

Pharmacists are the healthcare providers with the expertise in pharmacology and we regularly work with our patients and their physicians to suggest other therapies that can have the same results but at a lower price.

Let me provide an example: A patient presents a prescription at the pharmacy for Avapro (irbesartan), a medication used to treat high blood pressure. There are advantages to using this medication over other medications, but it is an expensive medication relative to some other high blood pressure medications. If a patient does not have insurance, and even in some cases when they do, pharmacists will assess a patient's ability to routinely pay for this medication – after all, the medication is used to treat high blood pressure, not cure it, so they will be taking it until something better comes along. If a patient has concern about the price of Avapro and would prefer to begin treatment with something less expensive, a pharmacist might call the physician and recommend a different high blood pressure medication, often one that is generically available, such as enalapril. Although doses vary by patients, and therefore so do the relative costs, the change in therapy in this example would result in the dispensing of a medication that costs about \$100 less each month for a patient paying out of pocket for the medication, and likely \$20-30 less in monthly co-payments for a patient with insurance.

We encourage all patients to work with their pharmacists and discuss the medications they are taking. PSW strongly discourages consumers from shopping around in order to receive a particular medication solely based on price. Buying a medication at one pharmacy and buying another medication from a pharmacy across town or over the internet leads to a patient splitting up their prescription drug record—creating the possibility for drug interactions and other healthcare complications. Patients should always receive all of their medications from one pharmacy.

Wisconsin pharmacy providers strive to perform a consultation for every prescription they dispense – this has been a practice standard in Wisconsin for more than thirty years. Patient consultations have been documented to save costs to patients but, more importantly, consultations improve the health outcomes of the patient by improving their understanding of the medications they are taking. Prior to dispensing a prescription drug and as part of the consultation process, Wisconsin pharmacists review all the medications previously dispensed for that patient. During this review the pharmacist may notice duplications of therapy or find contraindications in medications that could have serious implications for the patient. An incomplete prescription drug record impedes the pharmacist's ability to fully consult the patient on their medication therapies.

Current law simply says that a pharmacy cannot sell below their invoice cost for a particular drug. If a pharmacy pays \$25 for a drug, you would expect it would need to set the sales price to allow for their costs to be recovered, at a minimum. That is how business works. And, ultimately a profit must be made in order to stay in business. However, there are some businesses that could use the changes proposed by this bill to sell below their cost for a period of time, at the expense of other pharmacies in the area. Not only is this bad for the stability of the pharmacy business environment but, by their nature, loss leaders encourage consumers to shop around and, in this case, fractionate their treatment amongst multiple pharmacy providers.

A community pharmacy, whether it be an independent or a chain, is in business primarily to dispense prescription medications. These businesses provide a safe and usually convenient method for consumers to receive needed medications. Yes, some pharmacies also sell other items, but their primary business is the dispensing of medications.

We believe it is vitally important to Wisconsin's consumers and the healthcare system infrastructure that prescription medications be dispensed and sold in a professional manner. Selling below cost, for any business, would only be temporary and likely supported through higher prices associated with the sale of other products. In either case, consumers would be hurt and Wisconsin's professional pharmacy practices, in place to serve the citizens of the state, would be jeopardized.

Thank you again for the opportunity to testify.

To: Senate Committee on Agriculture, Small Business and Consumer Protection

From: Janet Fritsch, RPh
Owner, Corner Drug Hometown Pharmacy

Date: February 14, 2018

Re: **Testimony in Opposition to Senate Bill 263**

Thank you, Chairman Moulton, for the opportunity to provide testimony in opposition to Senate Bill 263.

For the past 70+ years, the Unfair Sales Act has provided regulation prohibiting sales below cost. This law was passed in 1939 after the Great Depression to protect small business growth in the marketplace. It is not intended to guarantee that the business profits on the sale of the commodity. The law comprises of general merchandise and includes prescription medications.

There have been multiple attempts to repeal the Unfair Sales Act with the claim that stores aren't able to offer consumers lower prices compared to states without such regulation. Senate Bill 263 calls for the repeal of Wisconsin's Unfair Sales Act on sales of prescription drugs.

As a small community pharmacy owner, I have substantial concerns that mega-retailers would be able force out local businesses, such as mine, due to their ability to sell pharmaceuticals below cost, eliminating competition in the marketplace. These retailers are able to use pharmaceuticals as loss leaders and make up for the loss in revenue on prescription drugs through their other product sales. As a small business owner, this is not something that I can do.

As a healthcare provider, I also have substantial concerns regarding patients splitting up their medical record. For example, a patient may see that one medication they take is available as a \$4 generic at one pharmacy. The patient will then fill that medication at that pharmacy, yet keep their other prescriptions at their home pharmacy. This splits up the medical record and results in pharmacists not knowing what drugs patients are taking. Because I no longer have a complete medical record for my patient, I am unaware of potential duplicative therapies or dangerous drug interactions.

Purchasing a prescription drug is not the same as purchasing a traditional commodity. When you pick up your medication at that pharmacy, you're not only purchasing the product, you're also purchasing the service that goes with that. I do not dispense a drug without using my years of experience and education to dispense that drug. The drug that you get, because of the service that you get with, it is not the same in every place and can't really be compared that way. I've been a pharmacist and a business owner in Baraboo for more than twenty-five years and the experience and the care for my patients in my store and my community is not the same as what someone gets somewhere else. I am not asking as a business owner for special treatment. I am in favor of competition and I have had other drug stores in Baraboo as long as I have been in Baraboo. I am asking that you realize that dispensing medication is not the same thing as buying a pack of gum.

As a small business owner and a healthcare provider, I have substantial concerns regarding Senate Bill 263 and I ask you to oppose this legislation. Thank you.

Retail Prescription Program Drug List



Price Matters

- Our \$4 prescriptions have saved our customers over \$3 billion.
- The program is available to everyone, no membership required.



New Men's Health Category

- More affordable options for men
- \$9 Finasteride for 30 tablets



Convenience

- The Walmart App is the easiest way to transfer and refill your prescriptions
- Get text messages to keep track of your prescription (Text ENROLL to 45500)
- Walmart Pay saves you time at the check-out counter



Free Home Delivery

- Mailed right to your home, no matter where you live.
- Free 2-day shipping
- Find out more at Walmart.com/pharmacy

\$4, 30-day \$10, 90-day

Allergies & Cold and Flu

Benzonatate 100mg cap	14	42
Loratadine 10mg tab	30	90
Promethazine DM syrup	120ml	360ml

Antibiotic Treatments

Amoxicillin 125mg/5ml susp (80ml bottle)†	1	3
Amoxicillin 125mg/5ml susp (100ml bottle)†	1	3
Amoxicillin 125mg/5ml susp (150ml bottle)†	1	3
Amoxicillin 200mg/5ml susp (50ml bottle)†	1	3
Amoxicillin 200mg/5ml susp* (75ml bottle)†	1	3
Amoxicillin 200mg/5ml susp* (100ml bottle)†	1	3
Amoxicillin 250mg/5ml susp (80ml bottle)†	1	3
Amoxicillin 250mg/5ml susp (100ml bottle)†	1	3

\$9/30-day

Amoxicillin 250mg/5ml susp (150ml bottle)†	1	3
Amoxicillin 400mg/5ml susp (50ml bottle)†	1	3
Amoxicillin 400mg/5ml susp* (75ml bottle)†	1	3
Amoxicillin 400mg/5ml susp* (100ml bottle)†	1	3
Amoxicillin 250mg cap	30	90
Amoxicillin 500mg cap	30	90
Cephalexin 250mg cap	28	84
Cephalexin 500mg cap	30	90
Ciprofloxacin 250mg tab	14	42
Ciprofloxacin 500mg tab*	20	60
Penicillin VK 250mg tab	28	84
Penicillin VK 125mg/5ml susp (100ml bottle)†	1	3
SMZ-TMP 400mg-80mg tab	28	84
SMZ-TMP DS 800mg-160mg tab	20	60

\$4, 30-day \$7, 90-day

Arthritis & Pain

Allopurinol 100mg tab	30	90
Allopurinol 300mg tab	30	90
Acetaminophen 10mg tab*	30	90
Cyclobenzaprine 5mg tab	30	90
Cyclobenzaprine 10mg tab	30	90
Dexamethasone 0.5mg tab	30	90
Dexamethasone 0.75mg tab	12	36
Dexamethasone 4mg tab	6	18
Diclofenac DR 75mg tab*	60	180
Ibuprofen 100mg/5ml susp*	120ml	360ml
Ibuprofen 400mg tab	90	270
Ibuprofen 600mg tab*	60	180
Ibuprofen 800mg tab	30	90
Indomethacin 25mg cap*	60	180
Meloxicam 7.5mg tab	30	90
Meloxicam 15mg tab	30	90
Naproxen 375mg tab*	60	180
Naproxen 500mg tab*	60	180

Asthma

Albuterol 2mg tab*	90	270
Albuterol 4mg tab*	60	180
Albuterol 2mg/5ml syrup	120ml	360ml
Ipratropium 0.02% nebulizer soln* (25x2.5ml vials)† 1	1	3

Cholesterol

Lovastatin 10mg tab	30	90
Lovastatin 20mg tab*	30	90

Prescription Program includes up to a 30-day supply for \$4 and a 90-day supply for \$10 of some covered generic drugs at commonly prescribed dosages. Higher dosages cost more. Prices for some drugs covered by the Prescription Program may be higher in some states, including but not necessarily limited to, CA, HI, MN, MT, PA, TN, WI, and WY. Prices may also vary in some states. For important information regarding Walmart's Patient accessibility program, including the availability of language interpretive services, please see the last page.

† Prepackaged drugs are covered only in unit sizes specified on Drug List (back page) other restrictions may apply. See Program Details or your Walmart Pharmacist for details.

*4, 30-day *90, 90-day

Diabetes		
Glimepiride 1mg tab	30	90
Glimepiride 2mg tab	30	90
Glimepiride 4mg tab	30	90
Glipizide 5mg tab	30	90
Glipizide 10mg tab*	60	180
Glyburide 2.5mg tab	30	90
Glyburide 5mg tab (blue)	30	90
Glyburide 5mg tab (green)	30	90
Glyburide, micronized 3mg tab	30	90
Glyburide, micronized 6mg tab	30	90
Metformin 500mg tab	60	180
Metformin 850mg tab	60	180
Metformin 1000mg tab*	60	180
Metformin 500mg ER tab*	60	180

Antifungal Medications		
Fluconazole 150mg tab	1	3
Nystatin cream* (15gm tube)†	1	3
Nystatin cream* (30gm tube)†	1	3
Terbinafine 250mg tab*	30	90

Antacid/Heart Acid Health		
Famotidine 20mg tab	60	180
Lactulose syrup*	236ml	708ml
Metoclopramide 10mg tab	60	180
Metoclopramide syrup	60ml	180ml
Promethazine 25mg tab*	12	36
Promethazine plain syrup*	120ml	360ml
Ranitidine 150mg tab*	60	180
Ranitidine 300mg tab*	30	90

Antibiotics & Eye Care		
Erythromycin op. ointment (3.5gm tube)†*	1	3
Gentak 0.3% op. soln	5	15
Gentamicin 0.3% op. soln (5ml bottle)†	1	3
Levobunolol 0.5% op soln (5ml bottle)†*	1	3

9/30-day		
Neomycin/Polymyxin/Dexamethasone 0.1% op. ointment (3.5gm tube)†	1	3
Neomycin/Polymyxin/Dexamethasone 0.1% op. susp (5ml bottle)†	1	3

Polymyxin Sulfate/TMP op. soln* (10ml bottle)	1	3
Timolol Maleate 0.25% op. soln (5ml bottle)†	1	3
Timolol Maleate 0.5% op soln (5ml bottle)†	1	3
Tobramycin 0.3% op. soln (5ml bottle)†	1	3

Heart Health & Blood Pressure		
Atenolol 25mg tab	30	90
Atenolol 50mg tab	30	90
Atenolol 100mg tab*	30	90
Benazepril 5mg tab	30	90
Benazepril 10mg tab	30	90
Benazepril 20mg tab	30	90
Benazepril 40mg tab	30	90
Bisoprolol-HCTZ 2.5mg-6.25mg tab	30	90
Bisoprolol-HCTZ 5mg-6.25mg tab	30	90
Bisoprolol-HCTZ 10mg-6.25mg tab	30	90
Carvedilol 3.125mg tab	60	180
Carvedilol 6.25mg tab	60	180
Carvedilol 12.5mg tab	60	180
Carvedilol 25mg tab	60	180
Clonidine 0.1mg tab	30	90
Clonidine 0.2mg tab	30	90
Enalapril HCTZ 5mg-12.5mg tab*	30	90
Furosemide 20mg tab	30	90
Furosemide 40mg tab	30	90
Furosemide 80mg tab	30	90
Guanfacine 1mg tab	30	90
Hydralazine 10mg tab	30	90
Hydralazine 25mg tab	30	90
Hydrochlorothiazide (HCTZ) 12.5mg cap	30	90
Hydrochlorothiazide (HCTZ) 25mg tab	30	90
Hydrochlorothiazide (HCTZ) 50mg tab	30	90
Indapamide 1.25mg tab	30	90
Indapamide 2.5mg tab	30	90
Isosorbide Mononitrate 30mg ER tab*	30	90
Isosorbide Mononitrate 60mg ER tab*	30	90
Lisinopril-HCTZ 10mg-12.5mg tab	30	90
Lisinopril HCTZ 20mg-12.5mg tab*	30	90
Lisinopril HCTZ 20mg-25mg tab*	30	90
Lisinopril 2.5mg tab	30	90
Lisinopril 5mg tab	30	90

Prescription Program includes up to a 30-day supply for \$4 and a 90-day supply for \$10 of some covered generic drugs at commonly prescribed dosages. Higher dosages cost more. Prices for some drugs covered by the Prescription Program may be higher in some states, including but not necessarily limited to, CA, HI, MN, MT, PA, TN, WI, and WY. Prices may also vary in some states. For important information regarding Walmart's Patient accessibility program, including the availability of language interpretive services, please see the last page.

† Prepackaged drugs are covered only in unit sizes specified on Drug List (back page) other restrictions may apply. See Program Details or your Walmart Pharmacist for details.

	30-day	90-day
Lisinopril 10mg tab	30	90
Lisinopril 20mg tab	30	90
Methyldopa 250mg tab*	60	180
Metoprolol Tartrate 25mg tab.	60	180
Metoprolol Tartrate 50mg tab	60	180
Metoprolol Tartrate 100mg tab*	60	180
Sotalol HCL 80mg tab*	30	90
Spirolactone 25mg tab*	30	90
Triamterene-HCTZ 75mg-50mg tab	30	90
Triamterene-HCTZ 37.5mg-25mg tab	30	90
Verapamil 80mg tab.	30	90
Verapamil 120mg tab	30	90
Warfarin 1mg tab	30	90
Warfarin 2mg tab	30	90
Warfarin 2.5mg tab	30	90
Warfarin 3mg tab	30	90
Warfarin 4mg tab	30	90
Warfarin 5mg tab*	30	90
Warfarin 6mg tab	30	90
Warfarin 7.5mg tab	30	90
Warfarin 10mg tab.	30	90

Men's Health

	9/30-day
Finasteride 5mg	30

Mental Health

Amitriptyline 10mg tab	30	90
Amitriptyline 25mg tab*	30	90
Amitriptyline 50mg tab*	30	90
Amitriptyline 75mg tab*	30	90
Amitriptyline 100mg tab*	30	90
Benzotropine 2mg tab	30	90
Bupirone 5mg tab	60	180
Bupirone 10mg tab*	60	180
Citalopram 20mg tab	30	90
Citalopram 40mg tab	30	90
Fluoxetine 10mg cap*	30	90
Fluoxetine 10mg tab*	30	90
Fluoxetine 20mg cap*	30	90
Fluoxetine 40mg cap*	30	90

Haloperidol 0.5mg tab	30	90
Haloperidol 1mg tab.	30	90
Haloperidol 2mg tab	30	90
Haloperidol 5mg tab	30	90
Lithium Carbonate 300mg cap	90	270
Nortriptyline 10mg cap*	30	90
Nortriptyline 25mg cap*	30	90
Paroxetine 10mg tab*	30	90
Paroxetine 20mg tab*	30	90
Prochlorperazine 10mg tab	30	90
Trazodone 50mg tab	30	90
Trazodone 100mg tab	30	90
Trazodone 150mg tab*	30	90
Trihexyphenidyl 2mg tab	60	180

Skin Conditions

Hydrocortisone 1% cream (28.35-30g tube)†	1	3
Hydrocortisone 2.5% cream (30gm tube)†	1	3
Silver Sulfadiazine 1% cream* (50gm tube)†	1	3
Triamcinolone 0.1% cream (15gm tube)†	1	3
Triamcinolone 0.1% cream (80gm tube)†	1	3
Triamcinolone 0.1% ointment (15gm tube)†	1	3
Triamcinolone 0.1% ointment (80gm tube)†	1	3
Triamcinolone 0.5% cream (15gm tube)†	1	3

Thyroid Conditions

	9/30-day	24/90-day
Levothyroxine 25mcg tab	30	90
Levothyroxine 50mcg tab.	30	90
Levothyroxine 75mcg tab.	30	90
Levothyroxine 88mcg tab.	30	90
Levothyroxine 100mcg tab	30	90
Levothyroxine 112mcg tab.	30	90
Levothyroxine 125mcg tab	30	90
Levothyroxine 137mcg tab	30	90
Levothyroxine 150mcg tab	30	90
Levothyroxine 175mcg tab*	30	90
Levothyroxine 200mcg tab*	30	90

Prescription Program includes up to a 30-day supply for \$4 and a 90-day supply for \$10 of some covered generic drugs at commonly prescribed dosages. Higher dosages cost more. Prices for some drugs covered by the Prescription Program may be higher in some states, including but not necessarily limited to, CA, HI, MN, MI, PA, TN, WI, and WY. Prices may also vary in some states. For important information regarding Walmart's Patient accessibility program, including the availability of language interpretive services, please see the last page.

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\$4, 30-day \$10, 90-day

~~Acyclovir 200mg cap* 30 90~~ *\$9 \$24*

Maternal & Nutritional Health

Folic Acid 1mg tab. 30 90
~~Mag 64 64mg tab* 60 180~~ *\$9 \$24*
 Magnesium Oxide 400mg tab 30 90
~~Prenatal Plus qty 30* 30 90~~ *\$9 \$24*

Women's Health

Estradiol 0.5mg tab 30 90
 Estradiol 1mg tab 30 90
~~Estradiol 2mg tab* 30 90~~ *\$9 \$24*
~~Medroxyprogesterone Acetate 2.5mg tab* 30 90~~ *\$9 \$24*
~~Medroxyprogesterone Acetate 5mg tab* 30 90~~ *\$9 \$24*
~~Medroxyprogesterone Acetate 10mg tab* 10 30~~ *\$9 \$24*

Oral Contraceptives \$9, 28-day

Levonorgestrel/Ethinyl Estradiol 28
 Kurvelo 28
 Norethindrone USP 0.35mg. 28
 Enskyce 28
 Jencycla 28
 Pirmella 1/35 28
 Pirmella 7/7/7 28
 Sprintec 28
 Tri-Sprintec 28

\$9, 30-day \$24, 90-day

Alendronate SOD 35mg tab. 4 12
 Alendronate SOD 70mg tab 4 12
 Clomiphene 50mg tab 5 15

Other Medical Conditions

Chlorhexidine Gluconate 0.12% soln (473ml bottle)* 1 3
~~Megestrol 20mg tab* 30 90~~ *\$9 \$24*
~~Prednisone 2.5mg tab* 30 90~~ *\$9 \$24*
~~Prednisone 5mg tab* 30 90~~ *\$9 \$24*

Prescription Program includes up to a 30-day supply for \$4 and a 90-day supply for \$10 of some covered generic drugs at commonly prescribed dosages. Higher dosages cost more. Prices for some drugs covered by the Prescription Program may be higher in some states, including but not necessarily limited to, CA, HI, MN, MT, PA, TN, WI, and WY. Prices may also vary in some states. For important information regarding Walmart's Patient accessibility program, including the availability of language interpretive services, please see the last page.

† Prepackaged drugs are covered only in unit sizes specified on Drug List (back page) other restrictions may apply. See Program Details or your Walmart Pharmacist for details.

Walmart Prescription Program Details

1. Walmart's Prescription Program (the "Program") is available at all Walmart and Neighborhood Market pharmacies in the United States ("Walmart Retail Pharmacies"), except in North Dakota, as set forth below in Sections 3 and 4. The Program is also available through Walmart Mail Service ("Walmart Mail Service"), as set forth below in Section 5.
2. The Program applies only to certain generic drugs at commonly prescribed dosages. Higher dosages cost more. You may obtain a list of generic drugs and dosages covered under the Program at Walmart Retail Pharmacies (the "Retail Drug List") and through Walmart Mail Service (the "Mail Service Drug List") on Walmart.com or at Walmart Retail Pharmacies. The Retail Drug List and Mail Service Drug List may change and also may vary by state. Not all formulations of a drug (for example, enteric-coated, extended or timed release formulations) are covered under the Program. Program pricing not available when a covered drug is dispensed as part of a compound.
3. Under the Program at Walmart Retail Pharmacies, \$4 is the price for up to a 30-day supply of certain covered generic drugs at commonly prescribed dosages (the "\$4 Retail Program"). \$10 is the price of a 90-day supply of certain covered generic drugs at commonly prescribed dosages (the "\$10 Retail Program"). Not all drugs covered by the \$4 Retail Program are covered by the \$10 Program. Prices for quantities between a 30-day supply and a 90-day supply of drugs covered by both the \$4 Retail Program and \$10 Retail Program are prorated based on the \$4 Program price, but will not exceed \$10. Prices for quantities greater than a 90-day supply of drugs covered by the \$10 Retail Program are prorated based on the \$10 Program price. Prorated pricing is not available under the Program for prepackaged drugs. For pricing policies relating to prepackaged drugs (such as tubes, vials or bottles), see Section 6.
4. Under the Program at Walmart Retail Pharmacies, \$9 is the price for up to a 30-day supply of certain women's health and other covered generic drugs at commonly prescribed dosages (the "\$9 Retail Program"). \$24 is the price for a 90-day supply of certain women's health and other covered generic drugs at commonly prescribed dosages (the "\$24 Retail Program"). Not all drugs covered by the \$9 Retail Program are covered by the \$24 Retail Program. Prices for quantities between a 30-day supply and a 90-day supply of drugs covered by both the \$9 Program and \$24 Retail Program are prorated based on the \$9 Program price, but will not exceed \$24. Prices for quantities greater than a 90-day supply of drugs covered by the \$24 Retail Program are prorated based on the \$24 Program price. Prorated pricing is not available under the Program for prepackaged drugs. For pricing policies relating to prepackaged drugs, see Section 6.
5. Under the Program through Walmart Mail Service, \$10 is the price for mail delivery of a 90-day supply of certain generic drugs at commonly prescribed dosages ("\$10 Mail Service Program"). \$24 is the price for mail delivery of certain women's health and certain other covered drugs at commonly prescribed dosages (\$24 Mail Service Program"). Not all drugs covered by the \$10 Retail Program are covered by the \$10 Mail Service Program; not all drugs covered by the \$24 Retail Program are covered by the \$24 Mail Service Program. See Mail Service Drug List for a list of drugs covered by the \$10 Mail Service Program and \$24 Mail Service Program. Walmart Mail Service covers both initial fills and refills. Delivery of covered drugs is available only through Walmart Mail Service and is not available at Walmart and Neighborhood Market retail pharmacies. Delivery under the Program through Walmart Mail Service is limited to U.S. addresses by First-Class Mail; expedited delivery is also available for an additional charge. Some health plans do not cover Walmart Mail Service or 90-day supplies. Prices for quantities greater than a 90-day supply of drugs covered by the \$10 Mail Service Program and the \$24 Mail Service Program are prorated based on the \$10 and \$24 Program price, respectively. Prices for quantities less than a 90-day supply are not prorated under either the \$10 Mail Service Program or the \$24 Mail Service Program. Prorated pricing is not available under the Program for prepackaged drugs. For pricing policies relating to prepackaged drugs, see Section 6.
6. Prepackaged drugs are covered under the Program only in the unit sizes specified on the Retail Drug List and Mail Service Drug List. Prepackaged drugs are dispensed based on the quantities prescribed and unit sizes in stock at the dispensing pharmacy. Unit sizes not specified on the Retail Drug List or Mail Service Drug List are not covered under the Program. Multi-unit purchases are charged at a per unit price, based on the price per unit size dispensed, unless otherwise specified. Prepackaged drugs dispensed in unit sizes not specified on the Retail Drug List and Mail Service Drug List may be priced higher, even if equivalent quantities of the drug are available in specified unit sizes. Prorated pricing is not available under the Program for prepackaged drugs.
7. Prices of certain drugs covered by the Program may be higher in some states, as noted on the Retail Drug List and Mail Service Drug List.
8. Program pricing may be limited to select manufacturers of a covered drug and is available as long as supplies from such manufacturers are in stock at the dispensing pharmacy.
9. You may pay less or more than the Program price, depending on the terms of your health plan. Prescriber permission may be required to change a 30-day prescription to a 90-day prescription. Certain plans, including government-funded programs, may not cover a 90-day supply.
10. For purchases made at Walmart Retail Pharmacies, prescriptions must initially be filled in person, and refills must be picked up in store. There are no substitutions. Purchases made through Walmart Mail Service may be ordered at Walmart Retail Pharmacies, by phone or through Walmart.com.
11. These Program Details are subject to change without advance notice. Changes to these Program Details may be made only in writing.

Accessibility & Non-Discrimination

Walmart is committed to making its healthcare services accessible to all seeking to use them and provides auxiliary aids and services, including language assistance services, to patients at no cost. Walmart will not discriminate on the basis of race, color, national origin, sex, age, or disability and will not retaliate against anyone who raises a complaint of discrimination.

Complaints or Grievances

To raise a complaint or initiate a grievance regarding healthcare accessibility or discrimination, please contact your local Walmart pharmacy, vision center or care clinic. You also have the right to raise concerns or to initiate a formal accessibility or discrimination grievance by contacting either (1) the office of Walmart's Vice President, US Ethics & Compliance (1-800-WM-Ethic or ethics@walmart.com) or (2) the Office of Civil Rights, U.S. Dept. Health & Human Services (1-800-368-1019 or OCRComplaint@hhs.gov).

English Translation: Interpreter Services are available at no cost. Please visit your local Walmart for assistance.

Arabic عربي خدمات الترجمة الفورية متاحة دون تكلفة. برجاء زيارة فرع Walmart المحلي للمساعدة.	Haitian Creole kreyòl ayisyen Gen Sèvis entèprèt ki disponib gratis. Tanpri, ale nan Walmart lokal ou a pou w jwenn èd.	Romanian Serviciile de interpretariat sunt disponibile gratuit. Pentru asistență, vizitați magazinul Walmart local.	Română
Burmese မြန်မာ ဝတ်ဆင်မှုအကူအညီအတွက် အခမဲ့ ဝတ်ဆင်မှု အကူအညီ နေရာရှိသည်။ မြန်မာနိုင်ငံရှိ အများစုရှိ Walmart များတွင် အကူအညီ ရရှိနိုင်ပါသည်။	Japanese 日本人 通訳サービスは無料でご利用いただけます。サービスの利用については、最寄りのWalmartサイトを訪ねてください。	Russian Русский Переводческие услуги оказываются бесплатно. Пожалуйста, обратитесь за помощью в ближайший магазин Walmart.	
Chinese Cantonese 漢語廣東話 Walmart 尋求協助 - 請前往您當地的 Walmart 尋求協助。	Korean 한국어 통역 서비스를 무료로 이용하실 수 있습니다. 지원을 받으시려면 지역 Walmart에 방문해 주십시오.	Somali Adeegyoada Turjumaanka waxaa lagu heli karaa kharash la'aan. Fadlan booqo Walmart kaaga maxaaliga ah wixii caawimo ah.	Af Soomaali
Chinese Mandarin 汉语普通话 翻译服务免费提供。请访问您当地的 Walmart 寻求帮助。	Polish polski Usługi tłumacza dostępne są bez żadnych kosztów. Aby uzyskać pomoc proszę odwiedzić lokalny Walmart.	Spanish Español Los servicios de interpretación están disponibles de manera gratuita. Visite la tienda Walmart local para recibir ayuda.	
Farsi فارسی خدمات مترجم بدون هیچ هزینه ای در دسترس می باشد. برای کمک لطفاً به شعبه محلی Walmart خود مراجعه کنید.	Portuguese (Brazil) Português (Brasil) Serviços de Interprete estão disponíveis gratis. Por favor, visite seu Walmart local para assistência.	Swahili Kiswahili Huduma za tafsiri zipo bila malipo. Tafadhali tembelea Walmart iliyo karibu nawe kwa usaidizi.	
French français Des services d'interprètes sont disponibles sans frais. Rendez-vous dans votre Walmart local pour obtenir de l'aide.	Punjabi ਪੰਜਾਬੀ ਟੋਲਡ ਸੇਵਾਵਾਂ ਮੁਫਤ ਉਪਲਬਧ ਹਨ। ਕਿਰਪਾ ਕਰਕੇ ਸਹਾਇਤਾ ਲਈ ਆਪਣੇ ਸਥਾਨਕ Walmart ਵਿਖੇ ਪਹੁੰਚੋ।	Vietnamese Tiếng Việt Dịch Vụ Thông Dịch có sẵn miễn phí. Vui lòng đến Walmart tại địa phương của bạn để được hỗ trợ.	

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Main Street Businesses

for fair competition



*We, the undersigned associations,
support maintaining Wisconsin's
Unfair Sales Act, as is.*

Cooperative Network

Kwik Trip

Midwest-SouthEastern Equipment
Dealers Association

National Federation of
Independent Businesses

Outdoor Advertising
of Wisconsin

Pharmacy Society of Wisconsin

U.S. Venture

Wisconsin Beer Distributors
Association

Wisconsin Grocers Association

Wisconsin Petroleum Marketers &
Convenience Store Association

Wisconsin Propane Gas Association

Wisconsin Restaurant Association

Wisconsin Towns Association

Water Quality Association
of Wisconsin

Wisconsin's Unfair Sales Act Protects Consumers

To: Members of the Senate Committee on Ag., Small Business, and
Tourism

From: Main Street Businesses for Fair Competition

Date: February 14, 2018

Re: Do not support SB 263

The members of The Main Street Businesses for Fair Competition coalition request the members of the Senate Committee on Ag., Small Business, and Tourism not support Senate Bill 263 authored by Senator Vukmir and Rep. Jim Ott. This proposal seeks to substantially weaken Wisconsin's Unfair Sales Act and threaten thousands of small businesses across the state.

The ability of larger companies to sell products below cost threatens the viability of independent and family-owned businesses headquartered in our hometown communities. Laws that prohibit sales below cost, such as Wisconsin's Unfair Sales Act, protect markets, lead to more overall competition and thus lower overall prices.

Small Business is the backbone of Wisconsin's economy. We provide more than half the jobs in the state and most of the new jobs in any given year and we are the economic engine that keeps Wisconsin moving.

The Unfair Sales Act does not guarantee any retailer a profit nor does it guarantee a business will succeed. What the law does do is give locally owned Main Street businesses the ability to compete on a level playing field with large, out of state based retailers.

When businesses compete fairly, consumers win. And that's what keeps Wisconsin's economy growing.

We ask that you consider the many small business owners in your district, the role they play in those communities and in Wisconsin's economy. **We ask that you do not support Senator Vukmir's and Rep J. Ott's bill, SB 263, to repeal significant portions of Wisconsin's Unfair Sales Act.**