



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-3145/1  
MDK:wlj

## 2015 SENATE BILL 371

November 6, 2015 – Introduced by Senators VUKMIR, DARLING, NASS and STROEBEL, cosponsored by Representatives J. OTT, MURPHY, BRANDTJEN, CRAIG, HUTTON, JACQUE, KLEEFISCH, KOOYENGA, KREMER, PETERSEN, SKOWRONSKI and ALLEN. Referred to Committee on Economic Development and Commerce.

\*\*\*AUTHORS SUBJECT TO CHANGE\*\*\*

1     **AN ACT to repeal** 20.115 (1) (r), 100.26 (9) and 100.30; **to renumber and amend**  
2             951.10 (2); **to amend** 100.201 (2) (h) 5., 100.264 (2) (intro.), 100.33 (1) (c), 100.51  
3             (6) (a), 134.04 (1), 139.39 (3) and 814.04 (intro.); **to repeal and recreate** 100.33  
4             (1) (g) and 100.33 (1) (h); and **to create** 951.10 (2) (a) of the statutes; **relating**  
5             **to:** the minimum price of merchandise sold at wholesale or retail.

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### *Analysis by the Legislative Reference Bureau*

This bill repeals the Unfair Sales Act, also called the minimum markup law, which prohibits wholesale and retail sales of merchandise at a price below the cost of the merchandise to the seller. For motor vehicle fuels, tobacco products, and alcoholic beverages, the Unfair Sales Act includes formulas for calculating the cost to the seller that add minimum markups from 3 to 9.18 percent to cover a portion of the seller's cost of doing business.

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:*

6             **SECTION 1.** 20.115 (1) (r) of the statutes is repealed.

**SENATE BILL 371****SECTION 2**

1           **SECTION 2.** 100.201 (2) (h) 5. of the statutes is amended to read:

2           100.201 (2) (h) 5. This paragraph shall also apply applies to any retailer who  
3 owns, operates or otherwise contracts for, directly or indirectly, facilities for  
4 manufacturing or processing any selected dairy product, ~~and to the cost of a selected~~  
5 ~~dairy product, as defined in this paragraph, shall be added both the wholesale and~~  
6 ~~retail markup as provided in s. 100.30.~~

7           **SECTION 3.** 100.26 (9) of the statutes is repealed.

8           **SECTION 4.** 100.264 (2) (intro.) of the statutes is amended to read:

9           100.264 (2) SUPPLEMENTAL FORFEITURE. (intro.) If a fine or a forfeiture is  
10 imposed on a person for a violation under s. 100.16, 100.17, 100.18, 100.182, 100.183,  
11 100.20, 100.205, 100.207, 100.21, ~~100.30 (3),~~ 100.35, 100.44 or 100.46 or a rule  
12 promulgated under one of those sections, the person shall be subject to a  
13 supplemental forfeiture not to exceed \$10,000 for that violation if the conduct by the  
14 defendant, for which the violation was imposed, was perpetrated against an elderly  
15 person or disabled person and if the court finds that any of the following factors is  
16 present:

17           **SECTION 5.** 100.30 of the statutes is repealed.

18           **SECTION 6.** 100.33 (1) (c) of the statutes is amended to read:

19           100.33 (1) (c) “Plastic container” means an individual, separate, rigid plastic  
20 bottle, can, jar or carton, except for a blister pack, that is originally used to contain  
21 a product that is the subject of a sale at retail sale, ~~as defined under s. 100.30 (2) (h).~~

22           **SECTION 7.** 100.33 (1) (g) of the statutes is repealed and recreated to read:

23           100.33 (1) (g) “Sale at retail” means any transfer for a valuable consideration,  
24 made in the ordinary course of trade or in the usual prosecution of the retailer’s

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1 business, of title to tangible personal property to the purchaser for consumption or  
2 use other than resale or further processing or manufacturing.

3 **SECTION 8.** 100.33 (1) (h) of the statutes is repealed and recreated to read:

4 100.33 (1) (h) "Sale at wholesale" includes any transfer for a valuable  
5 consideration made in ordinary course of trade or the usual conduct of the  
6 wholesaler's business, of title to tangible personal property to the purchaser for  
7 purposes of resale or further processing or manufacturing.

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

9 100.51 (6) (a) A motor fuel grantor that provides gasoline to a motor fuel dealer  
10 under a motor fuel dealership agreement shall offer gasoline to the motor fuel dealer  
11 that is not blended with ethanol and that is suitable for subsequent blending with  
12 ethanol and for resale. ~~For purposes of this subsection, gasoline that is not blended~~  
13 ~~with ethanol is not suitable for subsequent sale if the price charged for the unblended~~  
14 ~~gasoline by the motor fuel grantor does not fairly reflect the average posted terminal~~  
15 ~~price, as defined in s. 100.30 (2) (a).~~

16 **SECTION 10.** 134.04 (1) of the statutes is amended to read:

17 134.04 (1) No person, firm or corporation engaged in any enterprise in this  
18 state shall by any method or procedure directly or indirectly by itself or through a  
19 subsidiary agency owned or controlled in whole or in part by such person, firm or  
20 corporation, sell or procure for sale or have in its possession or under its control for  
21 sale to its employees or any person any article, material, product or merchandise of  
22 whatsoever nature not of the person's, firm's or corporation's production or not  
23 handled in the person's, firm's or corporation's regular course of trade, excepting  
24 meals, candy bars, cigarettes and tobacco for the exclusive use and consumption of  
25 such employees of the employer, and excepting tools used by employees in said

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1 enterprise and such specialized appliances and paraphernalia as may be required in  
2 said enterprise for the employees' safety or health and articles used by employees or  
3 other persons which insure better sanitary conditions and quality in the  
4 manufacture of food or food products. The provisions of this subsection shall not  
5 apply to lumber producers, loggers and dealers nor to any cooperative association  
6 organized under ch. 185 or 193. ~~This section shall not be construed as authorizing~~  
7 ~~the sale of any merchandise at less than cost as defined in s. 100.30.~~

8 **SECTION 11.** 139.39 (3) of the statutes is amended to read:

9 139.39 (3) The secretary may suspend or revoke the permit of any permittee  
10 who violates ss. ~~100.30 or~~ 139.30 to 139.44 or any rules adopted under sub. (1). ~~The~~  
11 ~~secretary shall revoke the permit of any permittee who violates s. 100.30 3 or more~~  
12 ~~times within a 5-year period.~~

13 **SECTION 12.** 814.04 (intro.) of the statutes is amended to read:

14 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.195 (5m)  
15 (b), ~~100.30 (5m)~~, 106.50 (6) (i) and (6m) (a), 115.80 (9), 767.553 (4) (d), 769.313,  
16 802.05, 814.245, 895.035 (4), 895.044, 895.443 (3), 895.444 (2), 895.445 (3), 895.446  
17 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51 (2) (b), and 995.10 (3), when  
18 allowed costs shall be as follows:

19 **SECTION 13.** 951.10 (2) of the statutes is renumbered 951.10 (2) (b) and  
20 amended to read:

21 951.10 (2) (b) No retailer, ~~as defined in s. 100.30 (2) (e)~~, may sell, offer for sale,  
22 barter or give away living baby rabbits, baby chicks, ducklings or other fowl under  
23 2 months of age in any quantity less than 6 unless in the business of selling these  
24 animals for agricultural, wildlife or scientific purposes.

25 **SECTION 14.** 951.10 (2) (a) of the statutes is created to read:

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1           951.10 (2) (a) In this subsection, “retailer” includes every person engaged in the  
2           business of making sales at retail within this state, but, in the case of a person  
3           engaged in the business of selling both at retail and at wholesale, such term shall be  
4           applied only to the retail portion of such business.

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(END)