



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-3929/1
MDE:amn

2023 SENATE BILL 888

January 5, 2024 - Introduced by Senators HUTTON and STROEBEL, cosponsored by Representatives MAXEY, MICHALSKI, BODDEN, ALLEN, MURPHY, NEYLON, O'CONNOR, PENTERMAN, RETTINGER and SCHMIDT. Referred to Committee on Shared Revenue, Elections and Consumer Protection.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to repeal* 20.115 (1) (r), 100.26 (9), 100.30 and 100.33 (1) (g); *to*
2 *renumber* 100.51 (1) (a) and 951.10 (1); *to amend* 100.201 (2) (h) 5., 100.264
3 (2) (intro.), 100.33 (1) (c), 100.33 (1) (h), 100.51 (6) (a), 134.04 (1), 139.39 (3),
4 814.04 (intro.) and 951.10 (2); and *to create* 100.33 (1) (em), 100.51 (1) (ag) and
5 951.10 (1g) of the statutes; **relating to:** eliminating minimum markup
6 requirements and the prohibition on sales below cost.

Analysis by the Legislative Reference Bureau

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

This state’s Unfair Sales Act 1) prohibits below-cost sales of any merchandise, if the sale is intended to induce the purchase of other merchandise or divert trade unfairly from a competitor; and 2) requires a “minimum markup” (a specified amount over the cost of the merchandise to the seller) to be added to sales of motor vehicle fuel, tobacco products, fermented malt beverages, liquor, or wine.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

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

SENATE BILL 888**SECTION 1**

1 **SECTION 1.** 20.115 (1) (r) of the statutes is repealed.

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

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

8 **SECTION 3.** 100.26 (9) of the statutes is repealed.

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

10 100.264 **(2)** SUPPLEMENTAL FORFEITURE. (intro.) If a fine or a forfeiture is
11 imposed on a person for a violation under ch. 136 or 707 or s. 100.16, 100.17, 100.171,
12 100.174, 100.18, 100.182, 100.183, 100.195, 100.20, 100.203, 100.205, 100.207,
13 100.209, 100.21, ~~100.30~~(3), 100.313, 100.315, 100.35, 100.44, 100.46, 100.52,
14 100.525, 100.55, 100.57, 100.65, 134.71, 134.72, 134.73, 134.87, 344.574, 344.576 (1),
15 (2), or (3) (a) or (b), 344.577, or 344.578, or a provision of ch. 704 or 846 for which the
16 department has rule-making, investigation, or enforcement authority, or a rule
17 promulgated under one of those sections, chapters, or provisions, the person shall be
18 subject to a supplemental forfeiture not to exceed \$10,000 for that violation if the
19 conduct by the defendant, for which the violation was imposed, was perpetrated
20 against an elderly person or disabled person and if the court finds that any of the
21 following factors is present:

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

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

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

4 **SECTION 7.** 100.33 (1) (em) of the statutes is created to read:

5 100.33 (1) (em) “Retail sale” and “sale at retail” mean a transfer for valuable
6 consideration, made in the ordinary course of trade or in the usual conduct of a
7 retailer’s business, of title to tangible personal property to the purchaser for
8 consumption or use other than resale or further processing or manufacturing.

9 **SECTION 8.** 100.33 (1) (g) of the statutes is repealed.

10 **SECTION 9.** 100.33 (1) (h) of the statutes is amended to read:

11 100.33 (1) (h) “Sales Sale at wholesale” ~~has the meaning given in s. 100.30 (2)~~
12 (i) includes any transfer for valuable consideration made in the ordinary course of
13 trade or in the usual conduct of a wholesaler’s business, of title to tangible personal
14 property to the purchaser for purposes of resale or further processing or
15 manufacturing.

16 **SECTION 10.** 100.51 (1) (a) of the statutes is renumbered 100.51 (1) (ar).

17 **SECTION 11.** 100.51 (1) (ag) of the statutes is created to read:

18 100.51 (1) (ag) “Average posted terminal price” means the average posted rack
19 price, as published by a petroleum price reporting service, at which motor vehicle fuel
20 is offered for sale at the close of business on the determination date by all refiners
21 and wholesalers of motor vehicle fuel at a terminal plus any excise, sales, or use taxes
22 imposed on the motor vehicle fuel or on its sale, any cost incurred for transportation,
23 and any other charges that are not otherwise included in the average posted rack
24 price. In this paragraph, “average” means the arithmetic mean.

25 **SECTION 12.** 100.51 (6) (a) of the statutes is amended to read:

SENATE BILL 888**SECTION 12**

1 100.51 (6) (a) A motor fuel grantor that provides gasoline to a motor fuel dealer
2 under a motor fuel dealership agreement shall offer gasoline to the motor fuel dealer
3 that is not blended with ethanol and that is suitable for subsequent blending with
4 ethanol and for resale. For purposes of this subsection, gasoline that is not blended
5 with ethanol is not suitable for subsequent sale if the price charged for the unblended
6 gasoline by the motor fuel grantor does not fairly reflect the average posted terminal
7 price, ~~as defined in s. 100.30 (2) (a).~~

8 **SECTION 13.** 134.04 (1) of the statutes is amended to read:

9 134.04 (1) No person, firm, or corporation engaged in any enterprise in this
10 state shall by any method or procedure directly or indirectly by itself or through a
11 subsidiary agency owned or controlled in whole or in part by such person, firm, or
12 corporation, sell or procure for sale or have in its possession or under its control for
13 sale to its employees or any person any article, material, product, or merchandise of
14 whatsoever nature not of the person's, firm's, or corporation's production or not
15 handled in the person's, firm's, or corporation's regular course of trade, excepting
16 meals, candy bars, cigarettes, and tobacco for the exclusive use and consumption of
17 such employees of the employer, and excepting tools used by employees in said
18 enterprise and such specialized appliances and paraphernalia as may be required in
19 said enterprise for the employees' safety or health and articles used by employees or
20 other persons which insure better sanitary conditions and quality in the
21 manufacture of food or food products. The provisions of this subsection shall not
22 apply to lumber producers, loggers, and dealers nor to any cooperative association
23 organized under ch. 185 or 193. ~~This section shall not be construed as authorizing~~
24 ~~the sale of any merchandise at less than cost as defined in s. 100.30.~~

25 **SECTION 14.** 139.39 (3) of the statutes is amended to read:

