



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1031/1
MCP:amn

2019 BILL

1 **AN ACT** *to amend* 100.30 (2) (am) 2., 100.30 (2) (c) 2., 100.30 (3) and 134.04 (1);
2 and *to create* 100.30 (2) (ck) and 100.30 (6) (a) 10. of the statutes; **relating to:**
3 regulating the sale of prescription drugs and other merchandise below cost.

Analysis by the Legislative Reference Bureau

This bill eliminates the prohibition on below-cost sales of prescription drugs and certain other types of merchandise under the Unfair Sales Act.

This state's Unfair Sales Act, also known as the "minimum markup" law, 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. There is no minimum markup requirement for sales of prescription drugs.

Under this bill, the prohibition on below-cost sales does not apply to prescription drugs or to any merchandise other than groceries, motor vehicle fuel, tobacco products, fermented malt beverages, liquor, or wine. The bill does not affect the minimum markup requirements under current law for sales of motor vehicle fuel, tobacco products, fermented malt beverages, liquor, or wine.

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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:

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

2 100.30 (2) (am) 2. With respect to the sale of ~~merchandise other than cigarettes~~
3 ~~or other tobacco products, fermented malt beverages, intoxicating liquor or wine, or~~
4 ~~motor vehicle fuel~~ groceries, “cost to retailer” means the invoice cost of the
5 merchandise to the retailer, or replacement cost of the merchandise to the retailer,
6 whichever is lower, less all trade discounts except customary discounts for cash, plus
7 any excise taxes imposed on such merchandise or the sale thereof other than excise
8 taxes collected by the retailer, and any cost incurred for transportation and any other
9 charges not otherwise included in the invoice cost or the replacement cost of the
10 merchandise as herein set forth.

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

12 100.30 (2) (c) 2. With respect to the sale of ~~merchandise other than cigarettes~~
13 ~~or other tobacco products, fermented malt beverages, intoxicating liquor or wine, or~~
14 ~~motor vehicle fuel~~ groceries, “cost to wholesaler” means the invoice cost of the
15 merchandise to the wholesaler, or the replacement cost of the merchandise to the
16 wholesaler, whichever is lower, less all trade discounts except customary discounts
17 for cash, plus any excise taxes imposed on the sale thereof prior to the sale at retail,
18 and any cost incurred for transportation and any other charges not otherwise
19 included in the invoice cost or the replacement cost of the merchandise as herein set
20 forth.

21 **SECTION 3.** 100.30 (2) (ck) of the statutes is created to read:

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1 100.30 (2) (ck) "Groceries" means food or beverage items, other than fermented
2 malt beverages or intoxicating liquor or wine.

3 **SECTION 4.** 100.30 (3) of the statutes is amended to read:

4 100.30 (3) ILLEGALITY OF LOSS LEADERS. Any sale of ~~any item of merchandise~~
5 either cigarettes or other tobacco products, fermented malt beverages, intoxicating
6 liquor or wine, motor vehicle fuel, or groceries by a retailer, wholesaler, wholesaler
7 of motor vehicle fuel or refiner, at less than cost as defined in this section with the
8 intent or effect of inducing the purchase of other merchandise or of unfairly diverting
9 trade from a competitor, impairs and prevents fair competition, injures public
10 welfare and is unfair competition and contrary to public policy and the policy of this
11 section. Such sales are prohibited. Evidence of any sale of ~~any item of merchandise~~
12 cigarettes or other tobacco products, fermented malt beverages, intoxicating liquor
13 or wine, motor vehicle fuel, or groceries by any retailer, wholesaler, wholesaler of
14 motor vehicle fuel or refiner at less than cost as defined in this section shall be prima
15 facie evidence of intent or effect to induce the purchase of other merchandise, or to
16 unfairly divert trade from a competitor, or to otherwise injure a competitor.

17 **SECTION 5.** 100.30 (6) (a) 10. of the statutes is created to read:

18 100.30 (6) (a) 10. The merchandise sold is a prescription drug, as defined in s.
19 450.01 (20).

20 **SECTION 6.** 134.04 (1) of the statutes is amended to read:

21 134.04 (1) No person, firm or corporation engaged in any enterprise in this
22 state shall by any method or procedure directly or indirectly by itself or through a
23 subsidiary agency owned or controlled in whole or in part by such person, firm or
24 corporation, sell or procure for sale or have in its possession or under its control for
25 sale to its employees or any person any article, material, product or merchandise of

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1 whatsoever nature not of the person's, firm's or corporation's production or not
2 handled in the person's, firm's or corporation's regular course of trade, excepting
3 meals, candy bars, cigarettes and tobacco for the exclusive use and consumption of
4 such employees of the employer, and excepting tools used by employees in said
5 enterprise and such specialized appliances and paraphernalia as may be required in
6 said enterprise for the employees' safety or health and articles used by employees or
7 other persons which insure better sanitary conditions and quality in the
8 manufacture of food or food products. The provisions of this subsection shall not
9 apply to lumber producers, loggers and dealers nor to any cooperative association
10 organized under ch. 185 or 193. This section shall not be construed as authorizing
11 the sale of ~~any merchandise~~ cigarettes or other tobacco products, fermented malt
12 beverages, intoxicating liquor or wine, motor vehicle fuel, or groceries at less than
13 cost as defined in s. 100.30.

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(END)