

WPRI
SPECIAL
REPORT
2016

Putting the Squeeze on Consumers



Real-World Impacts of Wisconsin's

**Minimum
Markup Law**

President's Note

Wisconsin's minimum markup law, a relic of the Great Depression that tells retailers and wholesalers where to set their prices, has been on the books for 77 years.

Many consumers are only vaguely aware of it — a fact that opponents of the law say is likely responsible for its long lifespan.

We're Wisconsinites, proud of our history and so often politely accepting of the status quo. We don't always ask a lot of questions. Except here at WPRI, we can't help but ask just one: If this law that sets minimum government-mandated prices for a broad array of goods did not already exist, how many legislators in Madison would consider proposing such a thing today?

It's easy to understand how it was born back in the Depression. It was born out of fear and conformity. It was modeled on legislation pushed by a national group of food and grocery interests trying to protect themselves from competition during an unprecedented economic calamity. There wasn't enough money to go around, and the law guaranteed that a certain percentage flowed to them.

Some grocers and gas retailers still love the law, and it's easy to see why. They continue to be direct beneficiaries — much to the chagrin of competitors, consumers and even the Federal Trade Commission.

Previous WPRI analyses of the minimum markup law have focused on trying to determine how much money the law costs consumers each and every year. This time, we're taking a different tack.

Yes, we provide synopses of various studies on the issue and include excerpts of key FTC

findings over the years. Minimum markup laws discourage competition, protect small retailers and wholesalers at the expense of consumers, appear arbitrary and are basically unnecessary, the FTC has found.

But we also tell the real-life stories of the people and businesses directly affected. We look at how small businesses are thriving throughout America — even in states without markup laws like the one in Wisconsin. We document how the state has taken a go-easy approach to enforcement — and saddled small businesses with the hassles and costs. And, while we try to assiduously avoid politics, we remind legislators that there was a time that the debate over this law was not in any way defined by which side of the aisle one sat on.

We encourage legislators to debate the issue once again. And we encourage consumers to speak up and ask questions as well. Why does this law still exist? Who benefits, and who suffers? Are the retailers who adhere to the law being taken advantage of because others do not? Why don't prosecutors enforce it? What would happen if they did?

We invite you to find some answers in the pages that follow and hope that, in the end, you'll ask just one other question a businessman by the name of Krist Atanasoff voices here in our special report: Is a law designed to prevent a businessman from selling a product at a price cheaper than his competitors "really the American way?"

Mike Nichols
WPRI President

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Founded in 1987, the Wisconsin Policy Research Institute is a non-profit, non-partisan 501(c)(3) guided by the belief that free markets, individual initiative, limited and efficient government and educational opportunity are keys to economic prosperity and human dignity.

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8

Purchase \$

4.78

Gallons

2.442

NOTICE
NO SMOKING
STOP ENGINE

Point
Speedpass
Here



Speedpass

OK



SAVE MONEY ON GAS BY
SHOPPING AT PIGGLY WIGGLY!
They save even more by joining
the Piggly Wiggly Club

Regular

87

Special

89

Super+

93



A WPRI Special Report:

Fault lines in the business battle over

Wisconsin's minimum markup law

Supporters cite protection for small businesses; opponents say the free market benefits consumers

Wisconsin's minimum markup law, officially the Unfair Sales Act, was enacted on June 3, 1939, as a way to help stem a flood of small-business bankruptcies during the Great Depression.

The original law required a 2% markup at wholesale and a 6% markup at retail on all merchandise sold in Wisconsin (the wholesale markup was later boosted

By Tom Tolan

Tom Lynn photo

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**“You repeal this law, you are going to have price wars.
You repeal this law, you are going to have collateral damage.”**

— **Brandon Scholz**, president and CEO of the Wisconsin Grocers Association, which supports the minimum markup law

to 3%). There was a fear that large retailers could employ “predatory pricing” to drive down prices until they ran smaller competitors out of business and then raise prices again. Requiring the markups was intended to prevent this practice, which the law still calls “a form of deceptive advertising and an unfair method of competition in commerce.”

The Unfair Sales Act underwent minor legislative changes several times over the years — and a major change in 1986. That year, the Legislature removed most merchandise from the markup provisions.

Markup provisions were kept in place, though, for motor vehicle fuel, tobacco and alcohol — and the markup on gasoline was tweaked in 1997 to essentially be 9.18% above the “average posted terminal price,” something a federal judge once called a “proxy for wholesale costs.”

The result is that today, general merchandise cannot be sold below cost by retailers or wholesalers in the Badger State without violating the law. Gas, tobacco and alcohol must be marked up to amounts specified by formulas in state statute.

Plenty of businesses — though not all — have lined up in favor of the law mandating that both they and their competitors charge a government-determined minimum price that allows everyone to make a profit on certain commodities.

‘Devastation’ predicted

Brandon Scholz, president and CEO of the Wisconsin Gro-

cers Association, says that without the minimum markup law, there would be more price-slashing by national chains, undercutting the prices of the local grocery store. When the local store closes because of lost business, the national chain would then boost its prices — the “predatory pricing” scenario. That would hurt, not help, consumers, Scholz says.

“You repeal this law, you are going to have price wars. You repeal this law, you are going to have collateral damage. This isn’t the Yellow Brick Road here. This is devastation in the marketplace.”

Matt Hauser, president of the Wisconsin Petroleum Marketers & Convenience Store Association, makes a similar argument. “Critics of the law are looking for a solution to a problem that doesn’t exist” and the law “preserves competition” that benefits the consumer, he says.

Wal-Mart is among the businesses that have long been on the other side of the issue.

The retail giant, wanting to install gas pumps at its stores back in 2001, tried to get legislatures to repeal markup laws in seven states that year, including Wisconsin.

Wal-Mart seemed to get a leg up when then-Senate Majority Leader Chuck Chvala, a Democrat, tacked repeal onto that year’s state budget bill, according to a 2001 article in the Wall Street Journal that described a bipartisan repeal effort. But lobbying from independent stations and the Petroleum Marketers group — much better known in Madison than Wal-Mart’s lobbyists — got it removed, the Journal reported.

The Petroleum Marketers association remains very active on the issue today.

Denise Thomas, who with her husband, Steve, owns two

The Unfair Sales Act

- ▶ **General merchandise** may not be sold below cost by wholesalers or retailers.
- ▶ **Alcohol and tobacco** products may not be sold below cost. The definition of “cost” includes a presumptive 3% markup by wholesalers and 6% markup by retailers.
- ▶ **Motor vehicle fuel** must be marked up 9.18% above the “average posted terminal price.”
- ▶ **Exceptions** are made for matching a competitor’s price, clearance and liquidation sales and sale of perishables and damaged goods.
- ▶ The law does not apply to **services**.

Source: Wisconsin Department of Agriculture, Trade and Consumer Protection website



Tom Lynn photo

Motorists fill up their tanks in Wauwatosa. In Wisconsin, motor vehicle fuel must be marked up 9.18% above the "average posted terminal price."

convenience stores in the Manitowoc area and who is board treasurer of the group, tells of a competitor who sold gas below cost a few years ago and drove a rival convenience store out of business.

"I have been defending the Unfair Sales Act since we went into business" in 1997, she says, "because I strongly believe it's there for a reason." That reason? "To protect the consumer by giving them a choice of where to buy their fuel from and to protect independent owners."

Scholz points to the Daniels Foods Sentry in Whitewater that closed last year, putting more than 50 people out of work. Store officials blamed the decision on being unable to compete with a nearby Wal-Mart. Such situations would happen more if minimum markup is repealed, he says.

While the law protects at least some business owners from their competitors who want a market free from government price regulation, many disagree with the claim that it protects consumers. The Federal Trade Commission has repeatedly determined that minimum markup laws — and

"Ultimately these sorts of laws are protecting retailers, to the detriment of consumers."

— **Lisa Nelson**,
in-house lobbyist for Wal-Mart, which opposes the minimum markup law

Wisconsin's, in particular — do just the opposite. (See story on *FTC opinions on Page 18.*)

Consumers lose out

Wal-Mart, which continues to support repeal of the law, agrees that such mandates are not only unusual, they are ultimately harmful to consumers.

Lisa Nelson, an in-house lobbyist for Wal-Mart, points out that consumers in Illinois get better deals on Black Friday and during back-to-school sales than do Wisconsin consumers — all because of

the Unfair Sales Act. "Ultimately these sorts of laws are protecting retailers, to the detriment of consumers," she says.

Some portray the fight in the business sector as a battle between smaller, independent businesses and big-box retailers. But some of the independents that support the law are fairly large, and some of the opponents are relatively small.

Take TEAM Oil Travel Center in Spring Valley, which Tony Huppert owns with his wife, son and daughter-in-law. The

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Tom Lynn photo

business includes eight BP pumps and a convenience store, along with an automated car wash, a credit union, a Subway sandwich shop, a liquor store and a culvert business. It employs 35 people in 1,300-population Spring Valley in northwestern Wisconsin, Huppert says.

He favors the minimum markup law. When the Legislature talks about repealing the law, it stresses him out. “Every time the law comes up, I go to Madison, and all the way down there I’ve got chest pains,” he says.

Kwik Trip, which has hundreds of locations in Wisconsin, is also a supporter of the law.

Meanwhile, there have long been smaller Wisconsin businesses that favor repeal.

In a 2007 case involving a Merrill gas station owner in northern Wisconsin, state Department of Agriculture, Trade and Consumer Protection officials informed the station that competitors were complaining about his two-cent-per-gallon discount to senior citizens and a three-cent-per-gallon discount to local sports boosters.

Facing a possible fine of as much as \$2,500 for every gallon of gas sold below the minimum markup, the station owner, Raj Bhandari, stopped offering the discounts. He then sued, unsuccessfully arguing that the minimum markup law was unconstitutional.

Price war disputed

One of the 16 co-sponsors of a current bill to repeal mini-

mum markup has, in fact, been a small business owner himself. Rep. David Murphy (R-Greenville) says he has firsthand experience to dispute the argument that national chains swoop in and close local stores.

He ran a feed and grain business. When a national firm opened near his, he feared a price war would develop to push him out of business. It never happened.

“Large national businesses don’t cherry-pick locations,” Murphy says. “It’s a mentality of big corporations that they don’t give up profit margins. Every location they have is a profit center. Shareholders look at this. They don’t want locations that are losing money.”

Murphy acknowledges a concern of the Grocers Association’s Scholz, who worries that companies have built a business model on a law that has been around since 1939.

“Truthfully, it’s their best argument,” Murphy says. “You have to weigh that against personal freedom and the rights of the consumer.”

About the only thing both sides can agree on: If the minimum markup law is to be repealed, it’s clear now that it won’t be done by judges. Legislators will have to change it at the state Capitol.

Tom Tolan is a Milwaukee freelance writer. He was a reporter and editor at The Milwaukee Journal and the Milwaukee Journal Sentinel for 24 years. Greg Pearson, a freelance writer and former Milwaukee Journal Sentinel copy editor, contributed to this story.

Federal judge voids law in 2009; appeals court revives it the next year

By Greg Pearson

A court battle nearly a decade ago over Wisconsin's minimum markup law was triggered by the law's effect on gasoline prices.

In December 2006, Lotus Business Group of Kenosha, operator of the Lotus Travel Center in DeForest, filed a complaint in Milwaukee County Circuit Court against Flying J Inc., which operates several gas stations in Wisconsin. The complaint said Utah-based Flying J sold fuel below the requirements of the minimum markup law on a number of occasions in 2006.

According to court documents in the case, Flying J argued against the law, saying "the burden on interstate commerce is excessive because companies are forced to surrender competitive advantages." The company also argued that Wisconsin's "minimum markup provisions are not linked to actual costs and create high profits for inefficient gasoline retailers."

In October 2007, U.S. District Magistrate Judge William Callahan dismissed the Lotus complaint, saying the State of Wisconsin was not actively supervising its minimum markup law.

Soon after Callahan's ruling, the state Department of Agriculture, Trade and Consumer Protection initiated enforcement action against Flying J for offering discounted prices, violating

the law. Flying J sued the state to halt any action.

Flying J declined comment for this story, but in its lawsuit, filed in January 2008, it said, "The threat of state enforcement of the statute against Flying J (let alone the threat of additional lawsuits against Flying J by private parties alleging violations under the statute) has created a chilling effect on competition in the pricing of motor fuels in Wisconsin."



Randa

On Feb. 11, 2009, Federal Judge Rudolph Randa ruled on Flying J's suit, saying the minimum markup law violated the federal Sherman Act, an antitrust statute aimed at enhancing competitiveness. Wisconsin's attorney general at the time, Republican J.B. Van Hollen, decided not to appeal

Randa's ruling. Democratic Gov. Jim Doyle, a longtime opponent of the law, also declined to appeal.

With the state taking no action, the Wisconsin Petroleum Marketers & Convenience Store Association asked to intervene in the case, a request that was granted by the U.S. Court of Appeals for the Seventh Circuit. "They are the statute's direct beneficiaries, as shown by the fact that the statute authorizes them to sue to enforce it against price cutters if they can prove injury," the appeals court's ruling on intervention said.

On Sept. 3, 2010, the appeals court overturned Randa's decision, reinstating Wisconsin's minimum markup law. The appeals court decision said there was a lack of evidence of price collusion: "We cannot find on the face of the statute any compelled or authorized conduct that constitutes a violation of federal antitrust law."

With court decisions upholding the markup law, opponents have looked to the Legislature for a remedy.

Greg Pearson is a freelance writer and former Milwaukee Journal Sentinel copy editor.

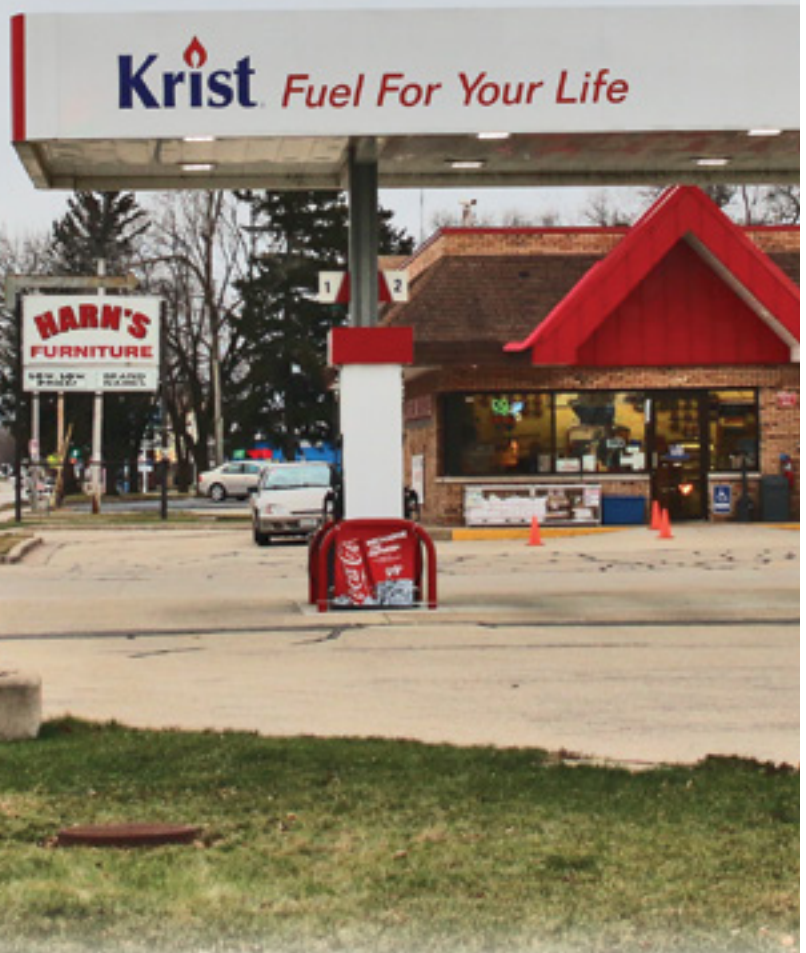
Utah-based Flying J Inc. sued the State of Wisconsin in 2008 to halt enforcement action over discounted prices.



File photo



Filing complaints a daily routine



Robert Helf photo

MINIMUM MARKUP LAW

Krist Oil owner says markup law hampers his ability to compete in Wisconsin

By Ken Wysocky

In 2014, the state Department of Agriculture, Trade and Consumer Protection received 2,373 complaints alleging violations of Wisconsin's minimum markup law, which prohibits businesses from selling products at prices below their wholesale cost. The majority of those complaints — 1,670, or slightly more than 70% — were filed by just one business: Michigan-based Krist Oil Co.

In fact, an analysis of DATCP data from 2014 — the latest year for which statistics were made available — shows that gasoline retailers are virtually the only businesses that proactively use the law; they filed 2,361 complaints, or a whopping 99.5% of all 2014 filings.

And among them, no one comes close to protagonist-in-chief Krist Atanasoff, the owner of Krist Oil. Krist operates 33 independent convenience-store gas stations in northcentral and northeastern Wisconsin and more than 70 overall in Wisconsin, Michigan and Minnesota.

A self-described brawler who says he relishes a good fight, Atanasoff wields the law like a legal cudgel as he attempts to expand further into Wisconsin.

What's his motivation? The answer is two-fold: Filing a complaint against a competitor and a Notice of Meeting Competition form not only allows him to match that retailer's price, it also protects him against any retaliatory legal action.

"At the advice of my attorney, I protect myself from my competitors by filing a complaint and a meeting-competition form, which allows me to match competitors' prices" even if they're below the minimum markup, he explains. "If I drop my price to

match a competitor and don't file those forms, competitors can say I'm cutting prices (below the minimum markup level), and they can sue me. I'm very, very careful about conforming to the law."

As an example, Atanasoff cites an instance in which a big-box retailer was selling gas in Wausau for \$3.22 per gallon,

while surrounding competitors were selling at \$3.28 — even though the minimum markup price that day was \$3.30. So he electronically filed a complaint and a meeting-competition form with DATCP, which allowed him to match the \$3.22 price while providing immunity against competitors' claims of violating the law.



“I can probably buy gas 8 to 10 cents per gallon cheaper than my competitors, but the law prevents me from selling it cheaper than my competitors do. Is that really the American way?”

**— Krist Atanasoff,
owner of Krist Oil**

Love-hate relationship

Yet ironically enough, as willing as he is to use it, Atanasoff vehemently opposes the minimum markup law, which treats retail sale of gasoline separately from other goods; it mandates that gas stations price fuel at 9.18% above the “average posted terminal price,” or APTP.

An independent oil-price-survey company calculates that terminal price each day, according to DATCP. The average posted terminal price is based on the average price at a regional distribution facility (also called a “terminal”) that sells fuel to at least three refiners or wholesalers.

The bottom line: No matter how cheaply retailers can purchase gasoline on the wholesale market, they must mark up their fuel by a mandated rate. That's why the minimum legal price of gas in the same geographic markets tends to be the same, regardless of the wholesale price, industry observers say.

That's one of the things that rankles Atanasoff most about the law. He points out

that his company, founded decades ago by his grandfather, Krist Atanasoff, in Caspian, Mich., is built on a business model that allows him to compete effectively — except in Wisconsin. “I run a very, very efficient business,” he says. “We’re a fully independent, integrated oil company.

“I’ve got our costs down because I own my own trucks — 31 of them, going 24/7. I also own my own ground and my own gas stations and don’t pay any distributors or franchise fees,” he continues. “My son is in the construction business, so he builds my gas stations. I can come in and put up new stations for less and bring in fuel for less; my costs of doing business are lower. I can probably buy gas 8 to 10 cents per gallon cheaper than my competitors, but the law prevents me from selling it cheaper than my competitors do. Is that really the American way?”

Moreover, Atanasoff contends that the law forces consumers to pay artificially high prices, something that would not occur in a free market. As evidence, he notes that gasoline prices on the Michigan side of Menominee, which straddles the state line, are routinely lower than on the Wisconsin side of the city.

“If I want to give gas away on the Michigan side, I can do that,” he says. “Abolishing the law would be good for consumers ... government should not be involved in setting prices. This law was originally designed to protect the little guy from the big predators, but now they’re putting a spin on it ... using it to keep little old me out of the market.”

Interestingly enough, Atanasoff’s competitors don’t respond in kind to his complaints; competitors filed only 49 complaints against Krist Oil in 2014.

Widespread complaints

Certain retailers have borne the brunt of Krist Oil’s aggressive approach. In 2014, Krist filed 177 complaints against nearly a dozen Holiday Companies gas stations throughout northern Wisconsin, from Superior to Eagle River to Marinette. Krist filed another 60 complaints

against a Phillips 66 station owned by the Ho-Chunk Nation in Wittenberg. It filed 43 more complaints against Stiles Junction Food & Fuel LLC in Lena. In Green Bay, a Shell station owned by Titledown Oil Corp., headquartered in Green Bay, was the subject of 42 complaints — and 24 more were filed against Shell stations owned by Rhinelander-based Trig’s T.A. Solberg Co. The list goes on and on.

Most of those companies declined to comment for this story about the minimum markup law as well as Atanasoff’s tactics. But Karen Thompson, who owns just one gas station — the aforementioned Stiles Junction Food & Fuel in Lena

— spoke in favor of the minimum markup law. She says it protects small gas station owners from getting undercut on price by larger companies with far more purchasing power.

“Without the law, the big guys would take everything (prices) down to nothing and make it very hard to compete,” Thompson says. “It’s already hard to compete. If there’s free rein like that, your Wal-Marts and Kwik Trips will undercut the little guys. Don’t get me wrong — it’s great that they can do that; they’ve done well for themselves. But by the same token, there are a lot of mom-and-pop operations out there that are struggling.”

As for Atanasoff lodging so many complaints against her station, Thompson says a few of them were valid but that those violations occurred on days when she was not at work and no one at the station changed the prices to reflect the minimum markup.

“He’s very aggressive,” she says of Atanasoff. “One of his trucks drives through my parking lot every morning (to check her gas prices). What did I ever do to him? He has 60-some gas stations, and I have one. I don’t pick on anybody; I’m just trying to run a business.”

On the other hand, Thompson acknowledges that generally speaking, most gas station owners don’t follow the law. At one point, she says, DATCP officials told her to check

“Every time I change my prices, I fax a note to the state, telling them what (price) I’m moving to, just to cover my butt. It might change two or three times a week ... The state says we need to follow the prices of the stations closest to us ... it’s a silly game.”

— Karen Thompson,
owner of Stiles Junction
Food & Fuel in Lena

Michigan-based Krist Oil filed 70% of the total number of gas-sale complaints in Wisconsin in 2014. A Krist Oil station in Neenah is shown here.



Robert Helf photo

competitors' prices every day to be sure she's not violating the law.

"I watch the Kwik Trip to the east of me and another guy down the road, and my husband drives through Oconto Falls every day, so I know the prices there, too," she notes. "Now every time I change my prices, I fax a note to the state, telling them what (price) I'm moving to, just to cover my butt. It might change two or three times a week, depending on how volatile the market is.

"The state says we need to follow the prices of the stations closest to us ... it's a silly game," she adds.

In response, DATCP spokesman Bill Cosh says the agency does not tell retailers how to price their fuel. "DATCP does offer guidance to retailers that choose to exercise the meeting-competition exception regarding filing Notices of Meeting Competition and maintaining documentation, such as price surveys," he said in an email.

Complaints consume time and effort

Serving as a one-man, minimum-markup enforcer in northern Wisconsin comes at a cost. Atanasoff says every store manager is responsible for checking competitors' prices daily. "That's life," he says. "It's what we do. We file complaints seven days a week — it's a real pain."

He estimates that filing so many complaints costs him about \$100,000 a year in salaries, benefits and sundry administrative costs.

"In my office, I have four people that take care of Wisconsin and less than one full-time person that handles things in Michigan — and most of our business is based in Michigan," Atanasoff says. "I've even got people working weekends to watch the prices and file complaints. It's very expensive to do business in Wisconsin because of all these crazy rules."

When asked why he just doesn't file fewer complaints, he explains that without them, it would be difficult to stay in business. "I'm an independent — I don't have a big oil company behind me," he says.

Adding insult to injury, the minimum markup law is rarely enforced, Atanasoff and other detractors say.

The law says that violators can be fined \$50 to \$500 for a first violation and \$200 to \$2,500 for each subsequent violation. But according to DATCP data, the department took enforcement action in the form of warning letters to gas station owners just 60 times in 2014, compared to 2,361 complaints. "The state enforces the minimum markup law as they see fit," Atanasoff says. (*See story on enforcement on Page 24.*)

But despite all the business headaches the minimum markup law causes, Atanasoff says he has no intention of leaving Wisconsin or changing his tactics. "Krist is here to stay," he says. "I'm not going away ... I'll fight to the death. That's the kind of guy I am."

Ken Wysocky of Whitefish Bay is a veteran freelance journalist and editor.

Consumers say free market, not government, should dictate prices

By Louann Schoenberg

For Shelley Weise, price beats brand or convenience when it comes to buying gas.

“We purchase gas wherever we can get the best deal. We are not loyal to a brand,” says Weise, who lives in southeastern Walworth County, a few miles from the Wisconsin-Illinois border.

If gas were cheaper in Illinois, she would drive there to buy it, she says.

Jack Bruss, of Elm Grove, pays little attention to gas prices. “I tend to stop wherever I am when I need gas, and I hardly ever look at the price before I stop.”

The two may approach buying gas differently, but both see Wisconsin’s Unfair Sales Act — which, among other things, adds about 2% extra to what consumers pay at the pump — as irrelevant in today’s marketplace.

Supporters of the Unfair Sales Act, known as the minimum markup law, say consumers ultimately pay more when there is less competition. Those who want it repealed say the free market should determine prices and that consumers pay more for gas and other

Small businesses can flourish without markup law, some say

goods because of the law.

Bruss would like to see the law repealed. He thinks it is ineffective, probably burdensome to many businesses and costs taxpayers too much to maintain.

“I don’t think the government should be trying to ‘save’ one type of business from another,” he says. “I believe a free-market environment is far more important than protecting businesses that can’t find a way to be competitive.”

Repealing the law would benefit consumers, he says. “Lower prices and unfettered competition help almost everybody.”

While not advocating repeal, Weise doubts there are few stand-alone gas stations or other small businesses today in need of the law’s intended protections.

Tom Lynn photo

Shoppers load their vehicles at the Meijer in Wauwatosa. Michigan-based Meijer entered the Wisconsin market in 2015.



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Paying more at the pump

Vehicle gas purchases make up about 5% of consumer spending, and the average American household spent \$1,817 for motor fuel in 2015, according to the U.S. Energy Information Administration.

The mandated markup on gas, according to a 2008 Wisconsin Policy Research Institute analysis, adds about 2% to the cost of gas over the natural or typical (for profit) markup.

(See story on WPRI studies on Page 17.)

The average retail price of regular unleaded gas was about \$2 per gallon in the state in late November, according to the AAA. At that price, the additional 2% was about 3 cents per gallon — more for midgrade, premium and diesel. The retail price of gas in Wisconsin also includes 51.3 cents per gallon in federal and state taxes.

Weise and her husband average a combined 35,000 miles a year on their two vehicles driving to work, shopping, traveling and chauffeuring their children to activities. She estimates the additional 2% because of the minimum markup would cost her family \$75 in 2015. While that may not seem like much, Weise would rather put that money toward something else.

In recent years when gas was \$4 per gallon, the additional cost was more than 7 cents a gallon.

Is Weise concerned a repeal of the law would harm independent stand-alone gas stations? “Honestly, no,” she says. “From what I have been told by station owners, gas is not where they even make their money — it’s on the grocery items the customer comes in to buy.”

According to a 2015 National Association of Convenience Stores survey, most of the profit made by gas retailers does come from products other than gasoline. The NACS report says that after expenses, a retailer makes about 3 to 5 cents per gallon sold, which accounts for 36% of profit. The remaining profit comes from additional purchases made by gas customers who come inside the store.

Business and consumer realities

Gary Kraeger, of Wind Lake, says the minimum markup law is unnecessary. Federal law covers predatory pricing and monopolies, he notes. And in reality, no business is going to sell below cost just to crush its competition even if it was legal, he says.

The government’s only involvement in retail pricing, he says, should be to make it illegal to sell below cost, with limited exceptions such as going-out-of-business liquidations.

He doubts mandated minimum markups do any good. To make his case, he points to the service industry. “There is no minimum markup on services, and bigger service companies aren’t coming in and undercutting smaller service companies. Great Clips isn’t doing \$4 haircuts to drive out Betsy’s Bouffants,” he says.

Like many consumers, Joseph Mark, of Stevens Point, balances costs by shopping at both small and large retailers and online. For him, convenience and quality usually take precedence over price.

The minimum markup law, he says, is probably unnecessary.

“Although it may have helped small business owners for some time, a law that’s been around that long has most likely been ‘worked around’ by larger retailers already” and probably isn’t actually protecting mom-and-pop stores as originally intended, he says.

Small businesses, he says, have other attributes and develop strategies to establish their niches and help them compete with larger retailers.

“They are already dealing with the difference of running a small vs. large business. I think their involvement in the community, as well as their direct connections help, along with customer service and product knowledge.”

Before forming an opinion about the minimum markup law, he says, he needs to see more research on its pros and cons from Wisconsin and other states.

Doreen Hennig sees the merits of both sides of the minimum markup debate but also doubts its protections apply to many businesses these days.



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Hennig, of Ridgeland, about a 50-minute drive northwest of Eau Claire, sometimes buys gas from regional convenience store chains and shops at national retailers — if she's in places such as Eau Claire or Menomonie. But she usually patronizes small businesses near her community.

"We live a good distance from bigger towns and cities. It doesn't pay to drive there for a few items or gas. So I buy close to where I live, a small town, at local businesses," she says.

Views from the road

At gas stations in Janesville, Sun Prairie, New Berlin, Black River Falls and Eau Claire in late November, the few motorists willing to linger and chat about the minimum markup said they didn't know enough about the law, its impact and

how prices here compare with those in other states to say whether it should be repealed, changed or left as is.

And with gas prices at their lowest levels in years — about \$2 for regular unleaded — the savings that might result from a repeal didn't seem a big concern. A woman at the Stop-N-Go on Racine St. in Janesville in mid-November put it this way: "I suppose I'd be more interested if gas was still \$3 or \$4" per gallon.

The Flying J in Black River Falls — which was part of an ultimately unsuccessful 2009 challenge of the law — was charging \$2.02 for regular unleaded on the day before Thanksgiving, as were its competitors clustered nearby, just off of I-94. A young man traveling from Eau Claire to Madison for the holiday said he found this — the same price at competing stations — typical in most cities and towns.

"With or without the law," he thinks gas stations try to keep prices as low as possible. In this era when people can check phone apps and online for the cheapest prices on gas and other products, and many stores price match, "consumers already have the upper hand," he says.

“There is no minimum markup on services, and bigger service companies aren't coming in and undercutting smaller service companies. Great Clips isn't doing \$4 haircuts to drive out Betsy's Bouffants.”

— Gary Kraeger, of Wind Lake

AAA favors free market

Nick Jarmusz, director of public affairs for AAA Wisconsin, says the AAA believes that the free market should determine the pump price for gasoline. "It is both unfair and unnecessary to require that consumers pay a 'minimum markup' for fuel," he says.

AAA Wisconsin is not actively involved in the current effort to repeal the minimum markup law, Jarmusz says.

The organization is part of the AAA federation, the self-described motoring group that provides consumers with factual information and unbiased perspective. The AAA — with 55.6 million members in the United States and Canada — advocates for consumer rights and safety improvements. It also tracks and compares state and national gas prices with its Daily Fuel Gauge Report. It has no involvement in the regulation or sale of gasoline.

Meijer prompts complaints

When Meijer, a Michigan-based grocery store and super center chain, made its debut into the Wisconsin market last June, it faced complaints that it was selling products below cost at its Kenosha and Grafton stores, the first to open. Meijer also has stores in Oak Creek and Wauwatosa.

Julie Berres, shopping at the Kenosha Meijer store a few days before Thanksgiving, wasn't bothered by those complaints. She finds Meijer has quality products at competitive prices.

Berres splits her grocery dollars between large chains and small specialty stores. Though it may cost her more, she shops at Tenuta's Delicatessen & Liquors, an Italian market in Kenosha, and O&H Bakery (known for its Danish pastries) in Racine when looking for something she can't find at bigger stores like Meijer, she says.

She was confident small businesses like those would survive and consumers would still have choices if the markup law were repealed. Referring to Tenuta's, which has been in business since 1950, she says, "People have been going there forever and will keep going there."

Laura, a Kenosha woman in her 20s, was also shopping at Meijer that day. With young children and limited time available, she prefers shopping at retailers that offer one-stop shopping. The Kenosha Meijer also has a gas station, an added convenience for her.

"I shop at whatever store gives me what I need at the best price," she says.

Bruss has shopped at the Meijer in Wauwatosa and found its prices good. He prefers, though, to shop at smaller, specialized stores where he can get in and out quickly, even if it

FTC: Most studies find that markup laws raise gas prices if they are enforced

Estimating the exact, aggregate impact of minimum markup laws on consumers' wallets in 2016 would be exceedingly difficult — if not impossible — given variables such as fluctuating gasoline prices, lack of rigorous enforcement and widespread circumvention of the law.

A 1999 WPRI study by two economists, "Pumping Up Gas Prices in Wisconsin," estimated that the cost to consumers at that time was an additional two to three cents per gallon — or a total of at least \$50 million per year at a time when gas was between \$1 and \$1.50 per gallon.

A 2004 study by two economics professors at Marquette University estimated that the markup law added between 1.3 and 1.8 cents per gallon, or about \$40 million per year at a time when gas cost an average of \$1.87 per gallon. That study was funded by a group calling itself the Coalition for Lower Gas Prices and included AAA and Wal-Mart.

The Wisconsin Petroleum Marketers & Convenience Store Association — perhaps the primary supporter of the law — funded a study in 2001 that came to a very different conclusion. Professors James Peltier and Mark Skidmore reported finding that Minnesota consumers paid almost two cents more per gallon than Wisconsin consumers after that state temporarily repealed its minimum markup law.

The Petroleum Marketers study called the 1999 WPRI study done by professors Ike Brannon and Frank Kelly "misleading and irresponsible in terms of the actual benefits such laws provide consumers."

The Federal Trade Commission had a different perspective. In a 2003 letter to Democratic state Rep. Shirley Krug, the commission said that the 1999 WPRI study "was consistent with a growing body of empirical research from the past two decades that has assessed the impact of 'sales

below cost' laws on retail gasoline prices" and that "most studies find these laws raise gasoline prices or leave them unchanged."

A footnote contained in that letter was critical of the Skidmore-Peltier study and added that minimum markup laws in general can "significantly chill competition and increase retail gasoline prices if they are enforced."

The footnote:

"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."

— WPRI staff

means paying more.

"Price is important, but it is not everything. Good businesses with good people can find a way to thrive in a free market."

As for the complaints, Bruss says: "I think it's ridiculous that a business can be cited by the government for com-

plaints about prices being too low. The money spent on the bureaucracy to manage that should go to a more beneficent purpose."

Louann Schoenberg is a freelance writer from the Lake Geneva area who was a longtime journalist at the Milwaukee Journal Sentinel.

Federal Trade Commission slammed markup law over the years

Minimum markup laws discourage competition, harm consumers and are unnecessary, according to findings repeatedly issued by the Federal Trade Commission over the years but either never made public or given little attention in the mainstream media.

Leaders of the commission charged with protecting consumers and maintaining competition have weighed in on such laws at least three different times. Twice, they were specifically responding to requests from state Democratic lawmakers trying unsuccessfully to amend or repeal Wisconsin's minimum markup law.

In 2005, the FTC chairman herself, Deborah Platt Majoras, remarked on such laws during testimony at a joint hearing of the Senate Committee on Commerce, Science and Transportation and the Senate Committee on Energy and Natural Resources.

Majoras prefaced her comments on gas prices at the time by saying that the FTC had developed expertise in the gasoline industry "through years of investigation and research" that closely scrutinized prices and examined any activity that could decrease competition and harm consumers. Obstacles to competition, she added, can arise from either private behavior — things such as price gouging in the wake of Hurricane Katrina, for example — or public policies such as high taxes or government-mandated markups.

Gas taxes were — and are — relatively high in Wisconsin. In 2005, Majoras said, the average state gas tax was 22 cents per gallon across the country. (Wisconsinites at the time were paying a tax of 29.9 cents per gallon and are now paying a tax of 32.9 cents per gallon.)

In addition, she testified, 11 states at the time had laws banning sales below certain levels.

9.18% gas markup appears 'completely arbitrary,' FTC letter said



Majoras

"These laws," she told the U.S. senators, "harm consumers by depriving them of the lower prices that more efficient (e.g., high-volume) stations can charge."

One of the biggest changes in the retail sale of gasoline in the prior three decades, she added, had been the rise of convenience stores and high-volume operations — places with multiple fuel islands, sometimes called "pumpers" — that "appear to lower retail gasoline prices."

"Another change to the retail gasoline market that appears to have helped keep gasoline prices lower is the entry of hypermarkets," she testified. "Hypermarkets are large retailers of general merchandise and grocery items, such as Wal-Mart and Safeway, that have begun to sell gasoline. Hypermarket sites typically sell even larger volumes of gasoline than pumper stations — sometimes four to eight times larger. Hypermarkets' substantial economies of scale generally enable them to sell significantly greater volumes of gasoline at lower prices."

Majoras was speaking in general terms when she said bans on below-cost sales harm consumers, but the FTC has twice issued findings specifically regarding the Wisconsin law, most recently in 2003.

The law's evolution

Wisconsin's Unfair Sales Act, adopted in 1939, has evolved over the years. In 1986, legislators passed a version that generally forbid below-cost sales of most goods but affirmed that three items — alcoholic beverages, tobacco products and motor vehicle fuel — had to be marked up 3% over wholesale and 6% over retail.

In 1997, legislators amended the law on gasoline to require either a 6% markup above certain actual costs or a 9.18%



Federal Trade Commission
Protecting America's Consumers

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

Bureau of Competition
Bureau of Economics
Office of Policy
Planning

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.

markup above the "average posted terminal price," whichever is greater, according to a decision by Federal Judge Rudolph Randa in 2009.

Randa indicated that the law, in reality, essentially mandates a 9.18% markup over the terminal price (a proxy for wholesale costs).

Randa wrote that an efficient retailer could sell gas "with substantially less markup than the imposed 9.18% markup ... and still make a reasonable profit."

That 9.18% mandated increase remains in effect today.

It has long been

MINIMUM MARKUP LAW

unpopular with some legislators who lament the cost to consumers. One of them, former state Rep. Shirley Krug (D-Milwaukee), asked for an opinion from the FTC in 2003 and received an exhaustive eight-page response from the commission's Bureaus of Competition and Economics and Office of Policy Planning.

Wisconsin's law, described by the FTC as one of the steepest minimum markups on retail sales in the country, "likely leads to significantly higher prices for consumers" discourages pro-competitive price cutting and — given federal antitrust laws — is simply not necessary, according to the commission's findings.

The FTC emphasized that the federal government, state attorneys general and private parties all have the ability

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]udies 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

practices of all eight of the major companies in the state for a three-year sample period. The Washington study found that licensee-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

without minimum markup laws to fight "predatory pricing," something the U.S. Supreme Court defines as "pricing below an appropriate measure of (a defendant's) cost for the purpose of eliminating competitors in the short run and reducing competition in the long run." But the FTC also stated that "predatory below-cost pricing happens infrequently"

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and that “anticompetitive below-cost sales of motor fuels are especially unlikely.”

Finally, the FTC questioned the logic behind the 9.18% markup in particular, writing that it appears “completely arbitrary.”

The 6% retail markup was included in the original bill way back in 1939. What was then known as Chapter 56 mandated a retail markup of 6% and a wholesale markup of 2% “added to the invoice cost,” according to the Wisconsin Legislative Reference Bureau.

The legislation was based upon a model State Unfair Sales Act prepared by the National Food and Grocery Conference Committee. The committee, in turn, was made up of representatives of associations from various branches — retail, wholesale and manufacturing — of the food and grocery trade, according to 1939 drafting files.

It’s unclear why legislators at that time chose the 6% markup or the 2% markup or, for that matter, why the 2% markup eventually was raised to 3%. The state Department of Agriculture, Trade and Consumer Protection, which administers the law today, says it does not have information on why or how those percentages were chosen.

The other FTC-issued comment on Wisconsin’s law came in 1987 and was in response to a request from John Norquist, the Democratic state senator who later became Milwaukee mayor.

At the time, according to the FTC, the Wisconsin law required retailers to mark up their price on fuel, alcoholic beverages and tobacco products 6% over their cost in order to account for overhead — an amount that chilled discount pricing and encouraged “fixed profit margins.”

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 1996, 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”

Removing the “pricing restraints” would “enable consumers to benefit from lower and more competitive prices,” John Peterson, director of the FTC’s Chicago Regional Office, wrote to Norquist.

Peterson told Norquist that the FTC staff had substantial experience analyzing the impact on various restraints on competition and concluded that the “requirement that sales be above cost unnecessarily raises consumer prices.”

He also quoted the Supreme Court as saying that predatory pricing schemes are “rarely tried and even more rarely successful” and wrote that “even if predatory pricing activity occurred, it could be attacked under the Sherman Act, the Clayton Act or the Federal Trade Commission Act.”

“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.”

The FTC staff urged repeal and commented that doing so would continue the state’s “tradition of progressive consumer legislation.”

— WPRI staff



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The motor fuel industry is not the same as the one that existed when the Unfair Sales Act was enacted.

Small gas retailers thrive across the country

Marketplace for fueling stations and convenience stores has evolved since 1939

By Mike Nichols

The vast majority of states do not have minimum mark-up laws on gasoline, yet independent small businesses that sell gas have flourished across the country, according to industry statistics and observers.

There are more than 150,000 “fueling stations” in the United States, according to the National Association of Convenience Stores. The group’s website says more than 127,000 convenience stores sell fuel, and those stores account for about 80% of the fuel sales in this country. A majority of those stores, more than 70,000, are owned by single-store operators, and many others are owned by people or groups with less than 50 outlets.

Of those 127,000, conversely, less than 1% are owned by one of the five major oil companies. Big Oil has almost entirely exited the retail gas business, according to both the statistics and those who work in the industry.

Ron Wyden, the Democratic U.S. senator from Oregon, noted this in blunt fashion during a hearing of the Senate Committee on Energy and Natural Resources that he

chaired on July 16, 2013. He pointed out during an analysis of gas prices at the pump in America that there have been major structural changes in the oil and gas industry over time, including the fact that “oil companies no longer own their own service stations.”

At the same hearing, William R. Klesse, chairman and CEO of Valero Energy Corp., the world’s largest independent petroleum refiner, testified that most retail gas outlets “are operated by independent business people (who) set their retail price.”

Supply contracts abound

Many Americans don’t realize this fact because many of those small business owners sell under the brand of a refiner with whom they have a supply contract. Under those contracts, the retailer pays the wholesaler a premium of a few cents per gallon more for the branded fuel. The contracts — and the signs above their businesses — forge a connection of sorts to refiners, but, according to NACS, the small businesses don’t share in the profits or losses of their suppliers.

The industry is not the same one that existed when the Unfair Sales Act was enacted in 1939 as a way to protect small businesses in danger of going bankrupt during the

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In 1971, only 6.8% of all convenience stores sold fuel.
Today, about 83% of convenience stores sell fuel.

Depression. Nor is it the same one that existed 30, 40 or 50 years ago.

A brief history of fuel marketing on the NACS website says that when the group was founded in 1961, very few convenience stores sold motor vehicle fuel. By 1971, only 6.8% of all convenience stores sold fuel; today, about 83% of convenience stores sell fuel.

There are, it is true, other types of “fueling stations” that are not convenience stores. Some of those are also small businesses, traditional service stations doing auto repair work or marinas selling gas to boaters on a lake someplace. About 12% of the fuel sold in America, meanwhile, comes through the big-box or mass-merchandising stores such as Wal-Mart, Costco or Kroger — places that the Federal Trade Commission says have helped keep gas prices down for consumers. (See story on *FTC opinions on Page 18.*)

In sum, there is a thriving and very competitive market for gas in the United States that is dominated by smaller companies and individuals. If there is a threat from bigger entities, it is not from Big Oil or refineries. They have very little interest in the retail gas business. The mass merchandisers are the real competition, as they are in the grocery business or the hardware business or the furniture business or countless other businesses in the country.

While an exact breakdown of who owns all the so-called fuel stations in Wisconsin is not readily available, it appears that the landscape is quite similar to elsewhere.

Of the 3,000 or so gas stations and convenience stores in the state, the Wisconsin Petroleum Marketers & Convenience Store Association estimates that half are single-store opera-

tions, almost all of which are independently owned and operated. Other than Marathon Speedway, major oil companies no longer own or operate stations in Wisconsin.

A partial check of a Wisconsin Department of Agriculture, Trade and Consumer Protection database of underground

gasoline tanks, a good source of information on gas station ownership, supports the contention that most gas station owners in the state have just a few locations each — with Kwik Trip being a clear exception.

There’s some debate over exact numbers of states with anything similar to what Wisconsin requires for a markup on gas — and the issue is further clouded by the fact that some states that have laws don’t enforce them aggressively. Twenty-one states have general restrictions on sales below cost, and 11 have laws specific to motor vehicle fuel, according to the Wisconsin Legislative Reference Bureau. The National Conference of State Legislatures says Wisconsin is one of 16 states with minimum markup laws. Whatever the exact number, there is no doubt the Badger State is part of a distinct minority.

The minimum markup law on gasoline has been around for so long in Wisconsin that it is impossible to definitively determine what the marketplace would look like here without it. But it is easy to look elsewhere — places without such laws — and see that small business owners have thrived while Big

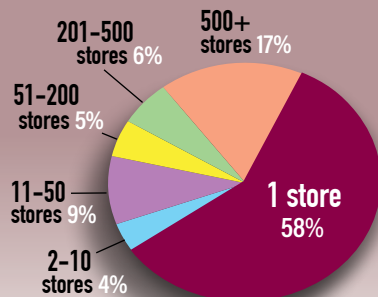
Oil has gotten out and the big national, mass merchandisers control only a portion of the market.

Mike Nichols is president of WPRI. Tom Tolan, a Milwaukee freelance writer who was a reporter and editor at The Milwaukee Journal and the Milwaukee Journal Sentinel for 24 years, contributed to this story.

Small businesses fuel America

Americans fuel up their cars about four to five times every month at more than 150,000 fueling stations across the country. But who owns these fueling locations? It’s highly unlikely that it’s an oil company and very likely it’s a one-store local business.

Ownership of convenience stores selling fuel



Over the past decade, the number of convenience stores selling fuel has grown by 15%. Big-box grocery stores and mass merchandising stores, known as “hypermarkets,” have entered the fuel-selling market.

Top five hypermarkets selling fuel:

- Kroger (1,220 stores)
- Costco (381)
- Walmart (999)
- Safeway (346)
- Sam’s Club (505)

Source: NACS Retail Fuel Reports, 2015

Wisconsin does little to enforce markup law

Complaints number in the thousands, but the state only issues dozens of warnings

By Dave Daley

For critics of Wisconsin’s minimum markup law, the good news is that the state has assigned only the equivalent of two employees to enforce the law and does little more than fire off warning letters when violations occur.

Over the past two decades, the state has adopted, in effect, a go-easy, look-the-other-way approach to violations, the available evidence shows. In fact, over the past 10 years, the state has not referred a single case to local prosecutors to take to court to win fines against violators.

That go-easy approach undoubtedly reflects the unpopularity of the markup law in many quarters, with politicians from both sides of the aisle pushing in recent years to repeal a law that critics say is obsolete and punishes consumers.

Seven years ago, the law almost slipped into a quiet grave when a federal judge declared unconstitutional the part of the law dealing with minimum markups on gasoline. Both then-Gov. Jim Doyle, a Democrat, and then-Wisconsin Attorney General J.B. Van Hollen, a Republican, declined to appeal. “It’s an outdated law,” Doyle said at the time.

Pointedly, the Wisconsin Department of Agriculture, Trade

and Consumer Protection, in charge of enforcing the law, also declined to appeal. But a Wisconsin trade group representing petroleum marketers and convenience stores pushed its own appeal and won, resurrecting the law.

State enforcement of the law is anything but aggressive,

though. State regulators do not actively look for violators but act only when someone — generally a competitor — files a complaint with the state.

“Investigations are complaint-driven,” says DATCP spokesman Bill Cosh.

“We have a multi-step enforcement approach,” Cosh explains. “The first step is education, usually by issuing an informational letter with a packet of information about the law.”





If violations continue, the state then issues a warning letter. Through the first half of 2015, DATCP sent 17 warning letters — 14 over below-cost sales of gasoline, two over tobacco and one over alcohol.

Last year, the state issued 61 warning letters, all but one involving gasoline. In 2013, 27 warnings were sent — 25 over fuel — and in 2012, 50 warning letters were issued, 41 over fuel.

“Most of the time, a warning letter is sufficient to gain compliance,” Cosh says. “Other tools available to us if (and) when necessary, include voluntary assurance of compliance, special administrative orders and referral for prosecution.”

Complaints vs. Enforcement

From 2012-2014, the state averaged 1,300 complaints annually about minimum markup law violations. The average number of enforcement actions annually was 46.

NUMBER OF CASES OPENED IN WISCONSIN		2012	2013	2014	2015 (thru June)
 Alcohol	COMPLAINTS	18	24	9	2
	WARNINGS	3	1	1	1
 Goods	COMPLAINTS	10	15	1	3
	WARNINGS	4	0	0	0
 Motor Fuel	COMPLAINTS	643	783	2,361*	428
	WARNINGS	41	25	60	14
 Tobacco	COMPLAINTS	4	2	2	3
	WARNINGS	2	1	0	2
Total		675	824	2,373*	436
		50	27	61	17

*These numbers differ slightly from the totals the state provided. WPRI tallied the complaints from data the state supplied.

Source: Wisconsin Department of Agriculture, Trade and Consumer Protection

Few referrals, prosecutions

Since 2012, the state has settled only six cases — all involving motor vehicle fuel — using the voluntary compliance process. And since April 2005 — more than 10 years — the state has not referred any cases to local prosecutors to pursue civil forfeitures in court, according to DATCP records.

That followed three years — from January 2002 to March 2005 — in which local prosecutors declined to prosecute any of the cases referred by the state. Four of those eight cases involved K-Mart, and two involved Marathon gas dealers operating at the Wind Point Quick Mart.

The state's go-easy approach goes back years.

Eleven years ago, in a 2005 analysis of 4,000 minimum markup complaints involving gasoline sales, the Appleton Post-Crescent found that enforcing the law had become less of a priority for state regulators, that more than 1,000 complaints were never investigated and that fines were rarely assessed against alleged violators.

A trade practice analyst said at the time that DATCP had de-emphasized going after fines for violators after an amendment to the law took effect in 1998 that allowed gas station owners to sue competitors for damages if they were found violating the law.

Grocery chains battle

Confusion over the law's legal status and the uneven enforcement of the law was underscored by the tussle last summer between Janesville-based Woodman's Markets grocery chain and Meijer Inc., a Grand Rapids, Mich.-based grocery and discount store chain that moved into Wisconsin in June.

Meijer opened stores in Kenosha and Grafton, offering grand opening discount prices on items such as milk at \$1.99 a gallon and bananas at 28 cents a pound as a way to attract shoppers. With more than 200 stores in six states, Meijer opened four more stores in the Milwaukee area in August and says it hopes to have a dozen stores in Wisconsin by the end of 2019, part of a \$750 million expansion by the chain.

Meijer's entry into the Wisconsin market sent rivals scrambling. Seven complaints against Meijer were quickly filed with DATCP, including one by the much smaller Woodman's chain,

"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."

- Frank Guglielmi, Meijer Inc. spokesman

with 16 stores in Wisconsin and northern Illinois.

In its complaint, Woodman's alleged that Meijer was selling 37 products at prices lower than cost, including Kellogg's pop tarts for \$1.50 a box, 12-packs of Pepsi for \$3 and a five-pound bag of russet potatoes for 99 cents.

In complaints filed by Milwaukee attorney Jerry Gonzalez last summer, Gonzalez alleged that Meijer was selling "well below cost to attract patronage to new store openings." He added, "My client sells many of the same items Meijer is selling below cost and, consequently, is well aware of the costs associated with these products."

"My client's main concern is that they don't want to be in the position where other competitors can ignore (the minimum markup law) and they have to abide by it," Gonzalez was quoted as saying in a Milwaukee Business Journal article. "It puts them at a disadvantage."

Meijer Inc. acknowledged offering products at those prices. "Those prices were for our grand opening promotions, which are consistent with the promotional prices we used when we opened (Michigan stores)," Meijer's spokesman Frank Guglielmi said at the time.

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

Ironically, 10 years ago, Woodman's was a sharp critic of the minimum markup law that it is now using to whack Meijer. The La Crosse Tribune reported in 2005 that owner Phil Woodman was pushing for the law's repeal, arguing that his grocery stores — which feature adjacent gas stations — could then sell gas 30 cents

per gallon less than what the minimum markup law forced him to charge.

Cosh of DATCP says that at the time the state received a complaint from Woodman's over Meijer's prices, the agency

The minimum markup law's enforcement provisions

- Investigations into potential violations are generally prompted by written complaints by retailers or consumers.
- Staff reviews complaints and prioritizes investigations based on potential market harm. Investigations can consist of interviews with witnesses and a review of financial documents.
- Investigators then summarize their findings and recommend case disposition. Recommendations may be reviewed by a supervisor and returned to the investigator for follow-up.
- Follow-up may consist of warning letters, special orders, court-ordered civil forfeitures or closing the case with no violation.
- Fines of \$50 to \$500 for the first violation and \$200 to \$2,500 for each subsequent violation may be issued.

Source: Wisconsin Department of Agriculture, Trade and Consumer Protection website

was already investigating Meijer, a probe apparently sparked by a separate complaint from another Wisconsin business.

“When that investigation was closed, we closed the Woodman’s complaint along with all other complaints against Meijer we received while the investigation was ongoing,” Cosh says.

Woodman’s has a history of opposition to the law but is essentially arguing that, if the law is going to exist, everyone should abide by it. The difficulty, of course, is that the state for decades has had little appetite for enforcement of a law that many consumers don’t like.

Dave Daley, a journalist for 30 years, covered the Capitol for The Milwaukee Journal and legal affairs for the Milwaukee Journal Sentinel.

Minnesota goes easy, too

Two nearby states, Minnesota and North Dakota, have minimum markup laws similar to Wisconsin’s. Minnesota appears to have adopted the same go-slow approach as in Wisconsin, rarely taking any action over alleged violations, the Rochester Post-Bulletin has reported.

Noting the loopholes and exceptions in Minnesota’s complicated law — a station, for example, can sell gas below cost as part of a promotion three days a year — the newspaper said “penalties are up for grabs” and joked that the definition of cost “requires a Ph.D. to understand.”

No winners in gas station clashes

By Ken Wysocky

Skirmishes among competing gas stations flare up regularly across Wisconsin — the fallout from the state’s minimum markup law. In most cases, it’s a never-ending battle, where no one wins because enforcement of the law is minimal, observers say.

Take three competitors in the Racine area: the Durand Express Mart, owned by Jesse Gill; the Open Pantry Food Mart, owned by Open Pantry; and Andy’s on Durand, owned by Andy Khullar.

In 2014 — the latest year for which statistics were made available — data from the state Department of Agriculture, Trade and Consumer Protection shows that the three businesses periodically sparred over alleged violations of the law, which requires retailers to mark up their gas prices.

Open Pantry filed 39 complaints against Andy’s and four against Durand Express Mart. Andy’s filed no complaints against Open Pantry and 23 against Durand Express Mart. Durand Express Mart filed no complaints against the other two.

Gill, who has owned his station since 2010, says he supports the law because it protects merchants like him who own just one station and find it difficult to compete with larger-volume businesses. One problem, though: Virtually no one obeys the law and it’s rarely enforced, he says.

“The state doesn’t enforce the law at all,” he says. “We can complain all we want, but all they do is send a letter (to alleged

violators) that says they’re under the minimum markup, and that’s as far as they go.”

Gill says that even though he’s been the subject of complaints, he’s never been fined by DATCP. He also says he’s stopped filing complaints, because it “just requires extra paperwork. You just keep going in circles — nothing ever happens.”

Being able to compete on fuel prices is critical to gas stations, Gill says, because it draws in customers who spend money on more profitable items such as snacks and beverages.

Khullar declined to comment for this story, and Open Pantry officials did not respond to requests for an interview.

One station owner in the Marinette area — a longtime veteran in the industry who requested anonymity for fear of repercussions — agreed with Gill that few station owners follow the law and that state enforcement is lax. “I don’t think the state enforces it at all,” he says. “I can’t tell you how many stations violate that law every day.

“Everyone drops their prices to match the competition,” he adds. “We wouldn’t last long if we didn’t, because if people see you’re priced higher on gas, they assume you’re higher priced on everything else you sell, too.”

The owner says he agrees with the law in principle because it helps keep mom-and-pop operations in business. “I just wish they would enforce it,” he says.

“The state doesn’t enforce the law at all. We can complain all we want, but all they do is send a letter (to alleged violators) that says they’re under the minimum markup, and that’s as far as they go.”

— Jesse Gill, owner of Durand Express Mart

Ken Wysocky of Whitefish Bay is a veteran freelance journalist and editor.

A WPRI Special Report:

MINIMUM MARKUP LAW

Getting around state law

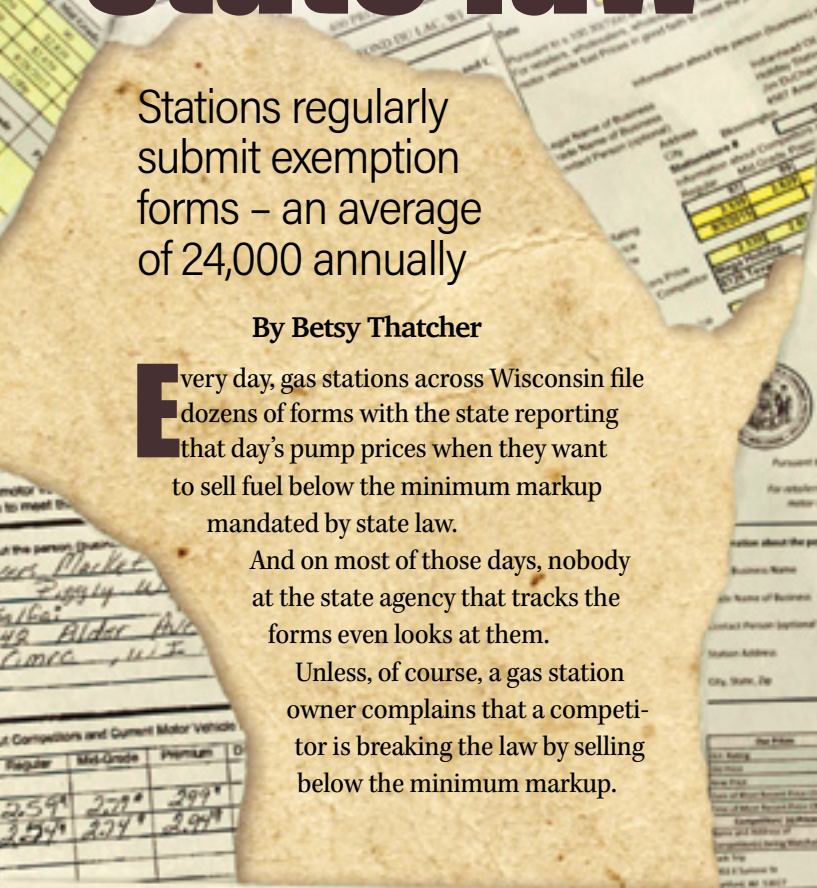
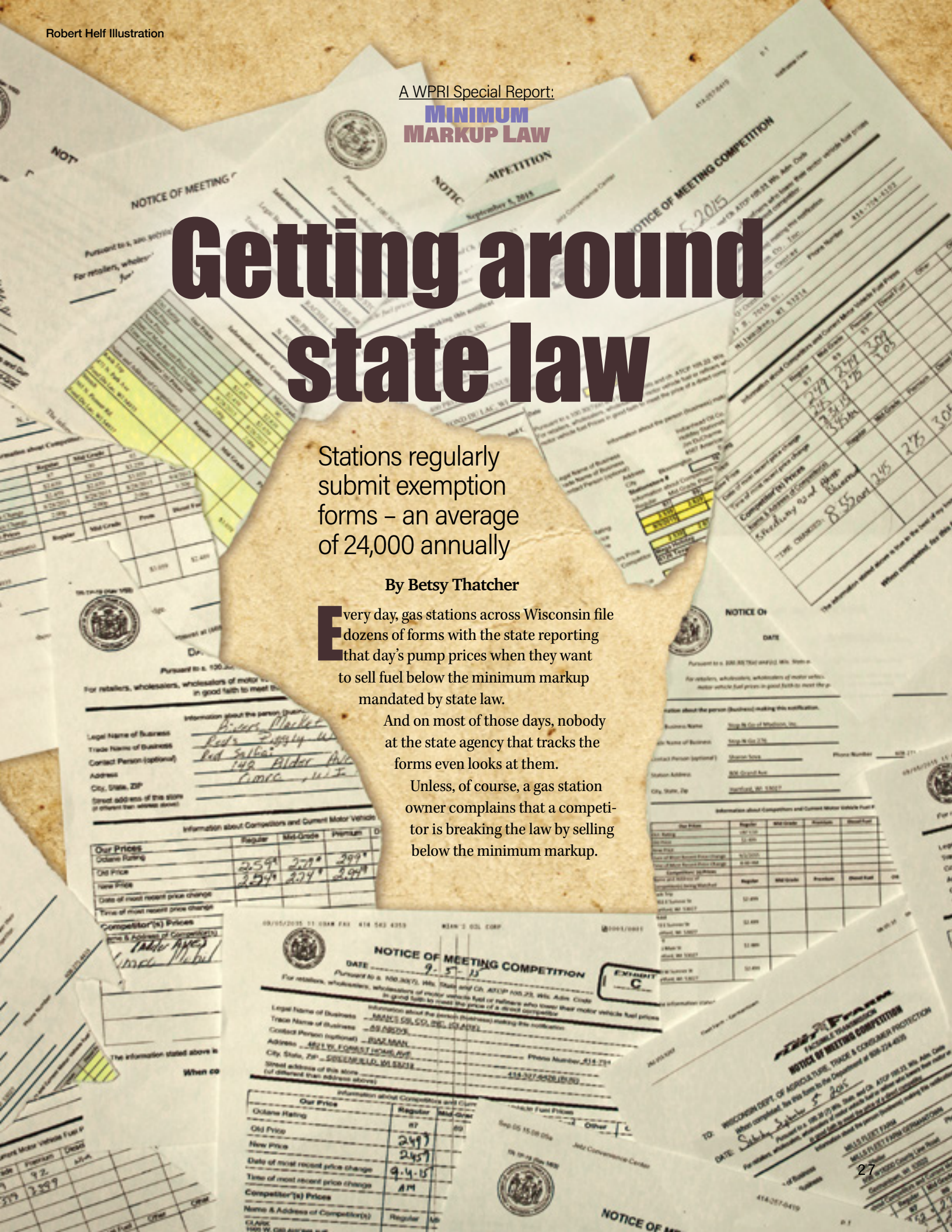
Stations regularly submit exemption forms – an average of 24,000 annually

By Betsy Thatcher

Every day, gas stations across Wisconsin file dozens of forms with the state reporting that day's pump prices when they want to sell fuel below the minimum markup mandated by state law.

And on most of those days, nobody at the state agency that tracks the forms even looks at them.

Unless, of course, a gas station owner complains that a competitor is breaking the law by selling below the minimum markup.



MINIMUM MARKUP LAW

A provision in the law, however, has some gas station owners saying it's a bookkeeping headache and one that seems to defeat the purpose of the law.

Stations can price their gas below the markup if they file a Notice of Meeting Competition form with the Wisconsin Department of Agriculture, Trade and Consumer Protection, attesting that they are doing so to match a competitor's price.

In 2014, there were 24,710 meeting-competition files — many containing multiple forms — submitted to the state.

"It makes no sense," station owner Riaz Mian says of the exemption. In effect, he sometimes has to sell fuel below the cost he paid to his wholesaler and he loses money, he says.

Mian, who owns two stations in Greenfield and Wauwatosa and has been in business since 1985, says that often his competitors are "not meeting the law" by selling below markup, but he is forced to drop his price to compete.

He is diligent about faxing the notices to the state because if he did not, he could find himself in violation of the law. "If you

The price police in Madison

By Dave Daley

They're jokingly called the "price police." Two state workers, they sit in offices in Madison and pore over complaints from businesses around Wisconsin — mostly gas stations — that competitors are giving customers too good a deal.

Then the state workers fire off letters informing the alleged violators of the complaint and advising them to read an enclosed packet of materials outlining Wisconsin's minimum markup law.

Tracking Notice of Meeting Competition forms, which allow retailers to match competitor's prices even if they are below the mandated markup, is one of the main tasks of the two workers in the state Department of Agriculture, Trade and Consumer Protection.

An average of over 24,000 of these forms piled up annually on their desks in recent years: 24,710 in 2014; 25,464 in 2013; and 23,925 in 2012.

The other main job of the two-worker price police office — technically, 2.1 FTE (full-time equivalents) workers under the state budget — is reviewing complaints. In 2014, 2,373 complaints were filed with the state; 2,361



File photo

The Department of Agriculture, Trade and Consumer Protection administers the minimum markup law.

involving motor vehicle fuel, nine over alcoholic beverages, two over tobacco products and one involving general merchandise.

The state budget allocates \$230,000 to administer the state's minimum markup law, which is enforced by DATCP.

For opponents of the minimum markup law, the good news is that the number of state workers assigned to investigating complaints is the same as it was 20 years ago, when Wisconsin laid out \$90,000 a year for two investigators. And legislators then were griping the same as lawmakers are today about paying workers to hunt down retailers offering consumers low prices.

"It is ridiculous to have state employees acting as a kind of

price police scouring the state to make sure no one is getting a bargain," Democratic state Rep. Shirley Krug complained then. Krug's Republican colleague, state Rep. Scott Jensen echoed her view. "When retailers compete on price, the ultimate winner is the consumer," Jensen said.

Dave Daley, a journalist for 30 years, covered the Capitol for The Milwaukee Journal and legal affairs for the Milwaukee Journal Sentinel.

MINIMUM MARKUP LAW

follow your competition, then it's fine" to sell below markup, Mian says. "I send the letter to the state. I'm just covering myself."

Exemption misunderstood

Matthew Hauser, president and CEO of the Wisconsin Petroleum Marketers & Convenience Store Association, which favors the law, says the ability to match a competitor's price is often misunderstood or ignored by critics of the law.

"It's the main reason why those claiming there will be consumer savings on gasoline purchases if the law was repealed are bogus," he says. "Wisconsin's retail gas prices generally track the national average even with our higher gas tax."

"It's not all that uncommon that the meeting-competition exception, rather than the strict application of the markup, factors more heavily into the prices retailers charge on the street," Hauser says.

“It makes no sense...If you follow your competition, then it's fine to sell below markup.”

— Riaz Mian, gas station owner

Mian says he is supposedly protected by the Unfair Sales Act as a small business trying to compete with big retailers, yet he is forced to lower his prices to keep up with those competitors who are using the provision in the law that allows them to sell below cost.

In other words, the competitors he is following are following their competitors and so on down the line.

A domino effect

There is a domino effect that starts at the Illinois border, says Kuldip Ahuja, another Milwaukee-area gas station owner.

Motor vehicle fuel in Wisconsin is supposed to be marked up at 9.18% above the "average posted terminal price," according to the law. Yet, it appears many gas stations are relying on the competition exemption to set their prices.

The law does not dictate how near or far a "direct competitor" must be or even whether a competitor has to be located in Wisconsin. In fact, a 2006 appeals court ruling upheld the state's consistent practice of allowing gas stations near state borders to use retailers across the state line to set their

prices. That includes Illinois, which does not have a minimum markup law.

A station owner in Kenosha, for instance, will use the price of an Illinois station to set his price on any given day, even if it is below Wisconsin's minimum markup, Ahuja says. That owner can do that because he uses the competition exemption.

The domino effect results from there, and the price spreads among stations in Wisconsin, Ahuja says.

"We match the competition," says Ahuja, who owns three stations and has been in the business for 33 years. "Sometimes it's pretty hard to monitor this."

The value of the exemption

DATCP officials say that because of the competition exemption, the market determines prices. "If several retailers are meeting competition in a given market area ... it means that the market is dictating the price, not the statute," says DATCP spokesman Bill Cosh.

The minimum markup law does not require retailers to adjust their prices to meet the statutory minimum every day, Cosh says. "Because retailers purchase fuel at different times and at different prices, there are often several retailers in a given market that don't raise their price immediately when the wholesale price goes up," he says.

Gas station owners survey their competitors daily and are able to claim the competition exemption as long as there is at least one other seller at a price below the legal markup, he says.

"Very frequently this is the case," Cosh says, "and a majority of our complaints are closed as a result."

When a retailer believes a competitor is violating the law, he or she can file a complaint with DATCP. That is when agency officials review Notice of Meeting Competition forms that pertain to the complaint.

During 2014, the agency received 2,361 complaints over motor vehicle fuel sales. Of those, 1,459 were closed as a result of meeting competition. As of Nov. 30, 2015, the agency had received 585 complaints. Of those, 212 were similarly closed.

Further, the department identified 298 "likely violations" in 2014 and 88 as of November 2015.

"Most of these cases involved enforcement action in the form of an informational letter or warning letter," Cosh says.

Betsy Thatcher is a freelance writer in West Bend and a former Milwaukee Journal Sentinel reporter.

Many prominent Democrats as well as Republicans have lambasted Wisconsin's minimum markup law

A history of bipartisanship to repeal

By Tom Tolan

For years, the debate over Wisconsin's minimum markup law was not defined by which side of the aisle one sat on.

State senators John Norquist, a Democrat who later became the mayor of Milwaukee, and Scott McCallum, a Republican who later became governor, both favored repeal in the 1980s. GOP Assembly Speaker Scott Jensen and Democratic Minority Leader Shirley Krug pursued repeal in 1995 and in subsequent legislative sessions.

In a recent interview, Jensen says he had attempted to get the minimum markup law repealed since he worked for the Assembly's Republican Caucus in 1987, and throughout his time in the Assembly, with bipartisan cooperation from Krug.

Early on, as a believer in free-market economics, Jensen says, "I was just stunned we had a law like that." But even as speaker, it was hard to get his whole caucus behind repeal. "A lot of rural members didn't like it," he says of the repeal effort.

Norquist was particularly vociferous in 1986 after the state



"If the public knew that we have a law that requires a 9.1% markup ... they would demand the repeal of that law."

— **John Norquist**, then state senator, speaking in 1986

sued the owners of three gas stations in Beloit for selling gas too cheaply — an action opponents of the law called anti-consumer. He called it "a selfish, special-interest law" and "an awful law that punishes people for having low prices." He told the Chicago Tribune that there was "no public interest in the law at all."

He argued that the free market should determine prices, not the state, and went on to sponsor legislation that ended up amending part of the law but left intact mandated markups on tobacco, alcohol and gasoline.

A unique coalition

In a 1986 Milwaukee Sentinel article about a repeal effort, Republican state Rep. Betty Jo Nelsen said, "We're trying to build a strong coalition to convince the Legislature that there is really no need for having this law on the books."



Jensen



"I believe we ought to have a competitive market, and we should let the market take prices where it will take them."

— **Jim Doyle**, then governor, speaking in 2001

That coalition included the Wisconsin Merchants Federation, the United Auto Workers and the Wisconsin Consumers League.

Norquist, who had introduced a companion bill seeking repeal, said, "What we really need to do is have the public become more aware of this ridiculous law. If the public knew that we have a law that requires a 9.1% markup ... they would demand the repeal of that law."

He blasted an Assembly proposal to add three enforcement positions at a cost of \$100,000 to the Department of Agriculture, asking, "Should the public have to pay taxes to have somebody go around and make sure prices are marked up?"

Wisconsin Attorney General Bronson La Follette, a Democrat, also supported repeal. "Where markets have a sufficient number of sellers to be competitive, there is absolutely no need for a minimum markup law," he said then.

In 1997, the Legislature approved a bill revising the law to allow businesses to sue competitors over alleged violations.

Democratic state Sen. Lynn Adelman — now a federal judge appointed by Democratic President Bill Clinton — objected to the change, saying it was "social engineering" that would guarantee high prices for consumers,

according to a Milwaukee Journal Sentinel article.

In 2001, state Senate Majority Leader Chuck Chvala, a Madison Democrat, tacked repeal of the minimum markup law onto the state budget bill. But lobbying from supporters of the law got it removed.

Former Democratic Gov. Jim Doyle long favored repeal as well, saying the law had outlived its usefulness.

"I believe we ought to have a competitive market, and we

should let the market take prices where it will take them," he told the Milwaukee Business Journal in 2001.

Laws that require retailers to artificially raise prices are "absurd," he said.

In 2009, after Federal Judge Rudolph Randa ruled the law unconstitutional, Democratic state Sen. Tim Carpenter applauded the decision.

"I have fought to eliminate this unfair and outdated rule that forces Wisconsin consumers to pay more for gasoline than our neighbors," he told the Minocqua Lakeland Times. Carpenter was the lead Senate author of a bill to repeal the law.

Both Doyle and Wisconsin Attorney General J.B. Van Hollen, a Republican, decided not to appeal the Randa ruling. However, the Wisconsin Petroleum Marketers & Convenience Store Association appealed, and the ruling was overturned in 2010 by a federal appeals court.

According to a 2008 WPRI report, the most recent attempt to repeal the minimum markup law on gasoline occurred in 2006, when a bill authored by Republican state Sen. Dave Zien made it to the Senate floor.

It eventually was sent back to committee, however, and died there. While support for repeal has been bipartisan over the years, it turns out opposition has been bipartisan as well. The vote that killed the repeal bill included 12 Democrats and seven Republicans.

Tom Tolan is a Milwaukee freelance writer. He was a reporter and editor at The Milwaukee Journal and the Milwaukee Journal Sentinel for 24 years.



Adelman



McCallum