

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 Those who want it repealed say the free market should determine prices and that consumers pay more for gas and other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Bruss would like to see the law repealed.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.



MINIMUM MARKUP LAW

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.

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— 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.