

A WPRI Special Report:

# MINIMUM MARKUP LAW

# Getting around state law

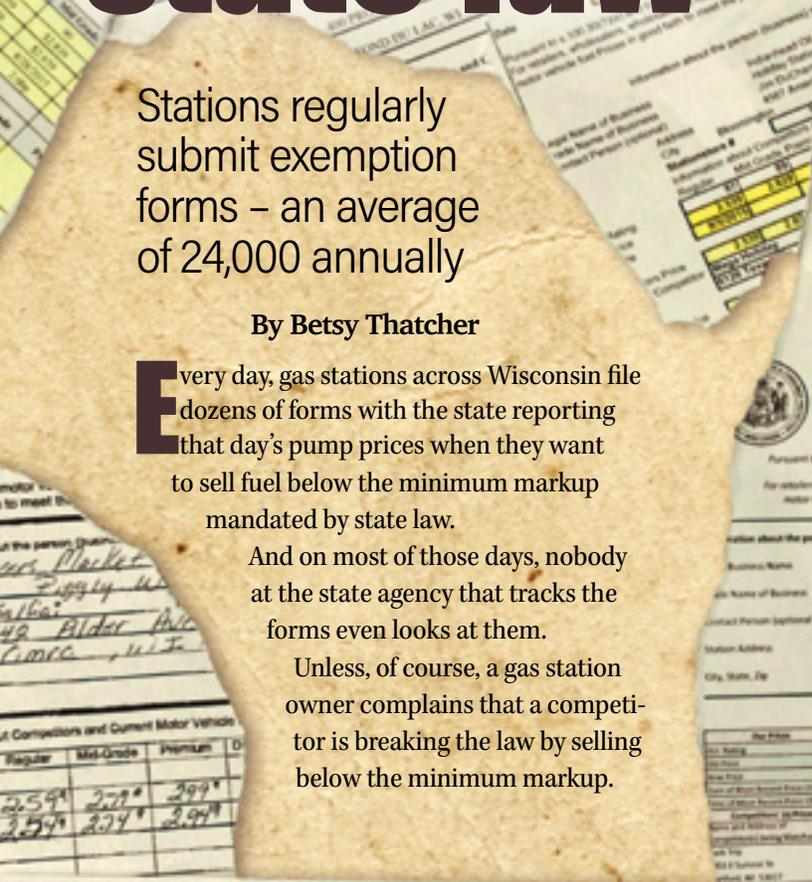
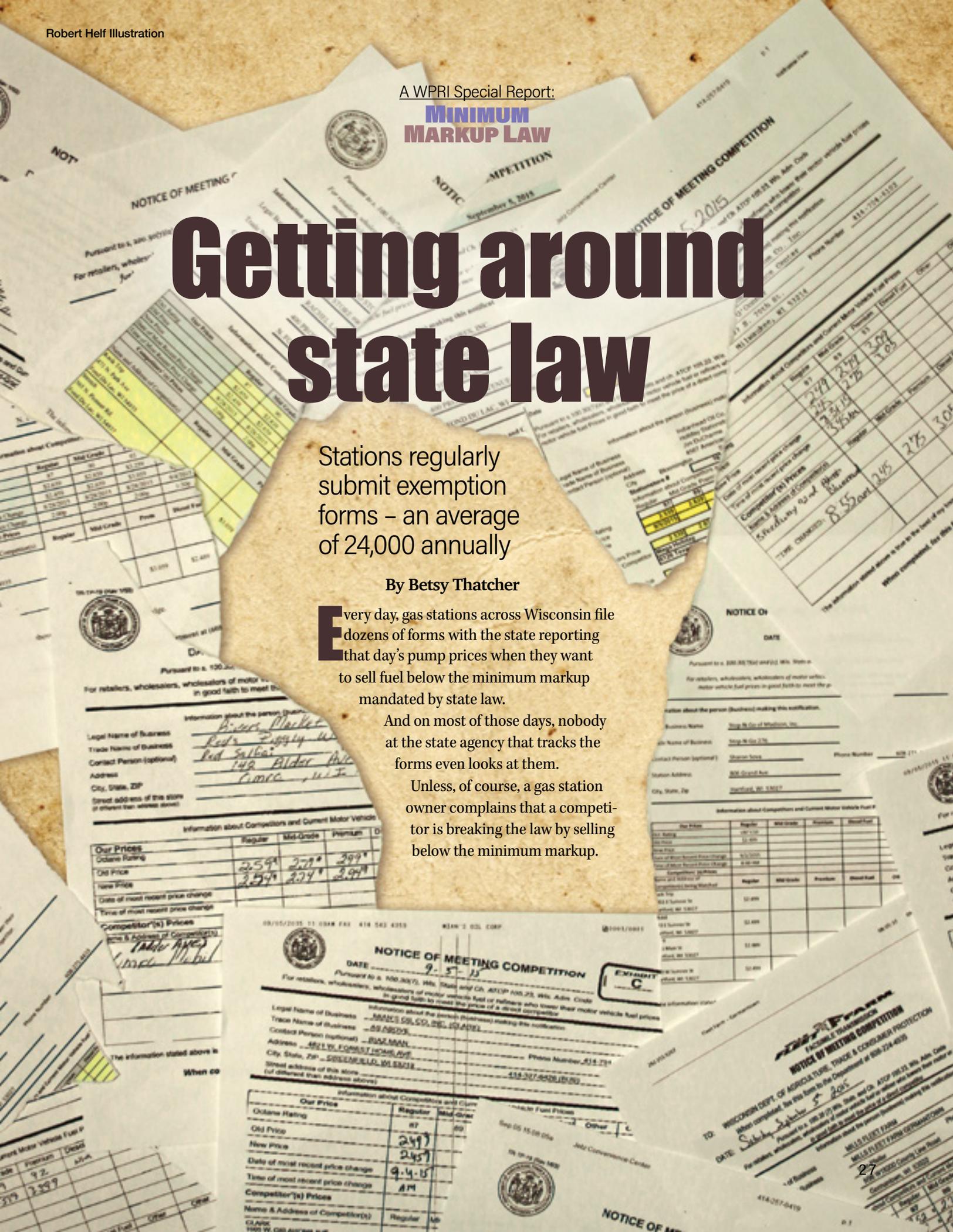
Stations regularly submit exemption forms – an average of 24,000 annually

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.



10/05/2015 11 02AM FBI 418 562 4315 WISCONSIN STATE DEPT. OF AGRICULTURE, TRADE & COOPERATION PROTECTION

**NOTICE OF MEETING COMPETITION**  
 DATE: 9-5-15  
 EXEMPT C

Purport to s. 130.25, Wis. Stat. and Ch. ATCP 100.25, Wis. Admin. Code  
 For retailers, wholesalers, wholesalers of motor vehicle fuel or refiners who lower their motor vehicle fuel prices in good faith to meet the price of a direct competitor

Information about the person (business) making this notification

Legal Name of Business: WISCONSIN STATE DEPT. OF AGRICULTURE, TRADE & COOPERATION PROTECTION  
 Trade Name of Business: STATE DEPT.  
 Contact Person (optional): BOB MAN Phone Number: 515-274  
 Address: 4821 W. FOREST HOME AVE  
 City, State, ZIP: SHREVEPORT, WI 53212  
 Street address of this store (if different than address above): \_\_\_\_\_

Information about Competitors and Current Motor Vehicle Fuel Prices

Our Prices	Regular	Mid-Grade	Premium
Old Price	87	90	
New Price	247	247	
Date of most recent price change	9-4-15		
Time of most recent price change	AM		

Competitor(s) Prices

Name & Address of Competitor(s)	Regular	Mid-Grade	Premium

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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.

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*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.

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