



GAE MAGNAFICI

STATE REPRESENTATIVE • 28th ASSEMBLY DISTRICT

I am honored to provide my testimony in support of Assembly Bill 155 (AB 155). This bill aims to address an unnecessary government regulation imposed by the Department of Agriculture, Trade, and Consumer Protection (DATCP) that is not warranted in the context of business-to-business contracts for the rental or sale of soda equipment.

Currently, DATCP regulates the terms of sale or rental of soda water beverage equipment through an administrative rule, ATCP 102. However, this regulation is unwarranted and intrusive, as it interferes with private business transactions and limits competition in the marketplace. It is important to note that no other state requires purchasers to pay the full price of soda equipment by law, making this regulation an outlier.

AB 155 seeks to eliminate the equipment prohibition imposed by DATCP, allowing retailers and soda wholesalers to engage in free and open negotiations without unnecessary government interference. By removing this restrictive administrative rule, businesses will have the autonomy to determine the terms of their business relationships, just as it is done in other industries and professions.

The National Association of Theatre Owners of Wisconsin & Upper Michigan supports this bill wholeheartedly, as it fosters a more competitive and business-friendly environment for soda beverage transactions. AB 155 encourages open negotiations, promoting a fair and equitable marketplace for all parties involved.

I urge each of you to lend your support to Assembly Bill 155 and help eliminate unnecessary government intervention in the sales and rentals of soda water equipment. Thank you for your time and consideration.



JOAN BALLWEG

STATE SENATOR · 14TH SENATE DISTRICT

Assembly Bill 155: The Sale or Rental of Soda Water Beverage Equipment and
Coin-Operated Vending Machines

Assembly Committee on Consumer Protection

Testimony of Senator Joan Ballweg

Thursday, May 18, 2023

Thank you chairman Callahan and members of the committee for hearing AB 155.

It came to our attention that there is an administrative rule promulgated by the Department of Agriculture, Trade and Consumer Protection (DATCP), ATCP 102.12(2) and ATCP 102.13, which regulates numerous practices specific to the soda water beverage industry. Several organizations representing local retailers such as, movie theatres, grocery stores, restaurants, hotels and tourism attractions maintain this is having the effect of limiting their ability to negotiate with wholesalers when purchasing soda beverage equipment.

This bill simply allows the free market to function and stipulates that DATCP cannot regulate the terms of sale or rental of soda water beverage equipment, including coin-operated vending machines. Retailers are asking for the ability to negotiate in Wisconsin like they are already able to do in other states. It is clear that there are other professions, industries and products where such government restrictions do not exist.

These local retailers, many of which are family owned and operated, provide jobs in our local communities. The foodservice workforce alone in 2021 equaled 8% of employment in the state (239,200 positions); by 2030, that number is projected to grow by 15.7% or 37,500 additional jobs (to 276,700). It is important that every opportunity, like being able to negotiate contracts fully, is afforded to these locally operated entities in their efforts to reduce costs and stay in business.

This proposal is the same as 2017 SB 451/AB 544 (as amended), which passed an Assembly committee 9-0, a Senate committee 5-0, and the Assembly on a voice vote. However, the bill was not taken up by the Senate that session before adjournment.

AB 155 has the support of the Wisconsin Grocers Association, Wisconsin Hotel and Lodging Association, Wisconsin Restaurant Association, Association of Wisconsin Tourism Attractions, Skiing Wisconsin, and the National Association of Theatre Owners of Wisconsin & Upper Michigan.

Thank you for your consideration of AB 155, and I am happy to answer any questions.



Testimony of

Jeff Maurer, Maurer's Market and Michael Semmann

On Behalf of the

Wisconsin Grocers Association

Before the

Committee on Consumer Protection

Assembly Bill 155/Senate Bill 148

May 18, 2023

Chairman Callahan and members of the Committee, thank you for the opportunity to speak before you today in support of Assembly Bill 155/Senate Bill 148 related to the sale or rental of soda water beverage equipment and coin-operated vending machines.

The Wisconsin Grocers Association (WGA) is a non-profit trade association established in 1900 to represent independent grocers and grocery chains, warehouses & brokers, vendors, suppliers, and manufacturers before all levels of government. The WGA provides educational and networking opportunities, leadership training, public affairs, and compliance information for its membership.

WGA and its membership have a significant Economic Impact in the state of Wisconsin. The WGA represents nearly 350 independent grocers with multiple locations across the state, more than 200 retail grocery chain stores, warehouses and distributors, convenience stores, food brokers and suppliers. Wisconsin grocers employ over 30,000 people with over \$1 billion in payroll and generate more than \$12 billion in annual sales in Wisconsin resulting in approximately \$800 million in state sales tax revenue. (Data provided by The Food Institute).

With me today is WGA Board Member, Jeff Maurer of Maurer's Market in Wisconsin Dells.

We'll be happy to answer any questions that surface either during this testimony or in the future.

Thank you.

-over-

Good Morning, my name is Jeff Maurer and I'm the owner of the Maurer's Market in Wisconsin Dells.

The Wisconsin Grocers Association is supportive of Assembly Bill 155 that prohibits the Department of Agriculture, Trade and Consumer Protection from regulating the terms of sale or rental of soda water beverage equipment generally or the terms of sale or rental of coin-operated vending machines by soda water beverage wholesalers to retail food establishments.

Retail members raise this issue frequently to WGA. In fact, WGA surveys its membership on a regular basis and asks for ways the state of Wisconsin can ease regulatory red tape on our business. Consistently, this issue surfaces with a high degree of intensity. The industry has pursued similar legislation for over 15 years and we're hopeful that the committee will take action this session.

This statute and administrative rule are costly to retailers but also binds businesses through required contracts. Retailers must currently provide a significant amount of resources through rent to their soda distributor only to provide them with free advertising and prime retail space. All soda coolers and vending machines provided by the manufacturer are branded. Through the contract, retailers must place them in prime locations within their store, for example a cooler at checkout. Any other manufacturer looks at this arrangement as advertising and realizes the benefit they get by having their product name on the cooler or vending machine and therefore wants to provide the equipment free of charge or pay the retailer in product discounts. This is not the case in the soda/beverage industry. This antiquated law is now nearly fifty years old and has morphed beyond its original intent for the bottling companies.

Current law is restrictive to both the retailer and the soda wholesaler and does not allow the parties to negotiate the terms of the equipment. A similar law existed which required ice cream freezers to be sold or leased and not provided free of charge. However, ice cream manufacturers and distributors believed that by providing ice cream freezers free of charge they could help retailers to better market their products. The ice cream manufacturers contacted grocery retailers in 2001 and their efforts led to repeal of that particular law and ice cream freezers are no longer regulated under state statute.

We hope the committee will support AB 155 which allows retailers and soda wholesalers to negotiate without state regulation on these items.

Thank you.

Typical Rent on Soda Water Beverage Equipment

Includes Servicing of Equipment

FOUNTAIN UNIT

Typical Monthly Rent

\$100 to \$125

(1/60) of the total cost



COOLER

Typical Monthly Rent

\$20 to \$50

(1/60) of the total cost



VENDING MACHINE

Typical Monthly Rent

\$46 to \$64

(1/96) of total cost



Impact of AB 155/SB 148 Repeal of ACTP 102.12(2)

ATCP 102.12(2) **Prohibits *furnishing of things of value***

Retailers in Wisconsin currently have the option to rent soda water beverage equipment from wholesalers.

- All retailers, regardless of sales volume, have the option to rent equipment for a typical monthly fee.
- *Exclusivity* of products sold in leased equipment is prohibited, except for coin-operated vending machines.
- The requirement that there be a minimum monthly rental charge for furnished beverage equipment has been in place for some 45 years and is the basis of every soda water beverage wholesaler's business model

Wholesalers continually invest rent income in new state of the art equipment.

- Providing retailers with greater access to soda water beverage dispensing equipment is important as "single" serve sales are highly profitable, including in grocery stores where there is far less profit from multi-pack bottle and can beverage sales.

Rent allows for the employ of more than 130 family-supporting beverage industry vending technicians statewide.

- Technicians employed by beverage wholesalers' primarily service leased equipment free of charge to the retailer.

ASSEMBLY BILL 155/SENATE BILL 148 **Repeals prohibition on *furnishing of things of value***

ATCP 102.12(2) equipment rental program will be phased out. That's because as in other states, in the highly competitive soft drink industry, "preferred" retail customers will receive free equipment from larger wholesalers who have the resources to seek a foothold, including requiring exclusivity.

- **Small retailers** without sufficient volume to justify the placement of free equipment will be forced to purchase it, increasing their operating costs.
- **Small wholesalers** will experience a loss of sales due to exclusivity agreements which limit access and to their inability to compete financially in the placement of free equipment.

Less equipment & higher prices will drive down sales.

- Without rent to sustain capital investments, wholesalers will likely be forced to **reduce the amount of equipment** in the marketplace.
- Wholesalers may also opt to replace lost rent revenue by increasing the wholesale cost of their products. **Increased prices will ultimately be passed along to consumers who are already facing inflationary increases, resulting in the loss of sales.**

Less equipment means loss of family-support technician jobs.

- Without rent, bottlers would **not have a reliable revenue source to support the current technician workforce, resulting in loss of jobs.**



ROGERS CINEMA

P.O. BOX 280 MARSHFIELD, WI 54449 715-387-3437

To: Honorable Calvin Callahan, Representative and Chair
Members, Assembly Committee on Consumer Protection

From: Scott Koran, Rogers Cinema

Date: Thursday, May 18, 2023

Re: Testimony in Support of Assembly Bill 155, Soda Beverage Equipment

Chairman Callahan and members of the Committee.

My name is Scott Koran from Rogers Cinema, which operates cinemas in five cities and two states. Our Wisconsin operations are in Marshfield, Wisconsin Rapids, Waupaca and Stevens Point. The Michigan operation is in Houghton.

I am here today because of what other Wisconsin movie theatre owners and I view as a government intrusion into the negotiation, terms and contracts between Wisconsin retailers and wholesalers with respect to soda beverage equipment. Further, it is our experience and belief that this government intrusion and industry protectionism provides an unfair leverage in negotiations that may increase and protect soda beverage wholesaler profits at the expense and increased cost to your local Wisconsin retailers – as compared to other states.

It should be noted, that not only is it illegal for soda beverage wholesalers to provide equipment at a discount – I as a retailer am prohibited by law from even bringing the issue up (i.e. soliciting treatment from a wholesaler that is prohibited by ATCP 102).

Based on our research, to the best of our knowledge we do not know of any other state in the U.S. that has such a restriction on contract negotiations and terms. Therefore, Wisconsin is either the only state or one of only a few states – making this type of business restriction peculiar.

Further, based on a survey of our members, the advantage the administrative rule provides soda beverage wholesalers seems to affect and cost operators of all size. In fact, it is the mid-level and smaller movie theatre operator members who have complained the loudest within the association.

We are just asking the legislature to be fair and allow businesses to negotiate these contract terms as they do in other states.



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OFFICE MANAGER
Carol Brown

To: Representative Calvin Callahan, Chair
Members, Assembly Committee on Consumer Protection
From: George Rouman, President
Date: Thursday, May 18, 2023
Re: **Supporting Assembly Bill 155**
Allowing Negotiation of Terms on Sale & Rental of Soda Equipment

Good morning, Chairman Callahan, and members of the Committee.

First, I want to thank the lead authors, Representative Gae Magnafici and Senator Joan Ballweg, and the co-sponsors for introducing this legislation - and the Chair for scheduling a public hearing today.

My name is George Rouman, and I'm the President of the National Association of Theater Owners (NATO) of Wisconsin and Upper Michigan. Our trade organization represents nearly 40 Wisconsin companies and approximately 700 movie theater screens at 100 locations statewide.

I'm also the owner of Rouman Cinema, located in Rhineland, Wisconsin, and it was 102 years ago this month, on May 9, 1921, that my family opened our first movie theater in that community.

We're asking for your support on Assembly Bill 155.

As a small business owner, I recognize the immense fortitude that local retailers in Wisconsin have displayed – just like the others represented here today. Please understand that many of us are still struggling to deal with the losses we experienced during the Covid-19 Pandemic and are still paying off debts that we incurred during that time. While this legislation may seem small in the context of issues before the State Legislature, it's important that our businesses identify ways to promote efficiency and negotiate potential cost savings with vendors. Every dollar earned and saved truly counts.

Keep in mind that many local retailers are family owned and operated - providing jobs in our local communities. The foodservice workforce alone in 2021 equaled 8% of employment in the state (239,200 jobs), and by 2030 that number is projected to grow by 15.7% (or 37,500 additional jobs) to 276,700. These numbers don't even include all the retailer groups supporting AB-155 today.

The policy discussion before you is simple. Should the State of Wisconsin continue to restrict contract terms for the sale and rental of soda beverage equipment? And please note, not only does the rule limit negotiation on the sale and rental of soda beverage equipment, but as a retailer I'm prohibited from even asking/soliciting about it (i.e., ATCP 102.13, "prohibited acts of retailers").

While some soda beverage wholesalers will cite that this rule/law protects them from competition from within their own industry, I suggest that this protectionist policy is coming at a price that your local retailer businesses like mine are having to pay.

The more this issue is in the spotlight, the more local businesses become aware that Wisconsin is likely the only state in the U.S. to limit the contract negotiation terms on sale and rental of soda equipment. It should not cost us more to do business in Wisconsin.

Simply put, while this administrative rule may have had merit in 1977 when it was created – things have changed – and this situation is not fair to retailers today.

Thank you for your consideration.

Chapter ATCP 102

PRICE DISCRIMINATION AND RELATED PRACTICES

Subchapter I — Fermented Malt Beverages

- ATCP 102.01 Definitions.
 ATCP 102.02 Prohibited trade practices.
 ATCP 102.03 Report requirements.

Subchapter II — Soda Water Beverages

- ATCP 102.11 Definitions.
 ATCP 102.12 Prohibited trade practices.
 ATCP 102.13 Prohibited acts of retailers.

- ATCP 102.14 Prohibited acts of brokers.
 ATCP 102.15 Exceptions.
 ATCP 102.16 Reporting requirements.

Subchapter III — Motor Fuel

- ATCP 102.21 Definitions.
 ATCP 102.22 Discrimination.
 ATCP 102.23 Coercion.

Note: This chapter is adopted under authority of s. 100.20 (2), Stats., and is administered by the Wisconsin department of agriculture, trade and consumer protection. Violations of this chapter may be prosecuted under s. 100.26 (3) or (6), Stats. A person who suffers a monetary loss because of a violation of this chapter may sue the violator directly under s. 100.20 (5), Stats., and may recover twice the amount of the loss together with costs and reasonable attorneys' fees.

See also s. 133.04, Stats. (price discrimination; intent to destroy competition); s. 100.201, Stats., and ch. ATCP 103 (dairy trade practices); s. 100.22, Stats. (price discrimination in milk procurement); and s. 100.31, Stats. (drug price discrimination).

Subchapter I — Fermented Malt Beverages**ATCP 102.01 Definitions.** In this subchapter:

(1) "Brewer" means a person, firm or corporation engaged in the sale of beer to wholesalers licensed to sell beer to retailers under the provisions of s. 125.28, Stats.

(2) "Wholesaler" means a person, firm, or corporation engaged in the sale of fermented malt beverages for resale.

(3) "Fermented malt beverages" means any liquor or liquid capable of being used for beverage purposes, made by the alcoholic fermentation of an infusion in potable water of barley malt and hops, with or without unmalted grains or decorticated and degerminated grains or sugar containing one-half of one percent or more of alcohol by volume.

History: Cr. Register, August, 1968, No. 152, eff. 9-1-68; am. (1), Register, July, 1969, No. 163, eff. 8-1-69; renum. from ATCP 106.01, Register, February, 1996, No. 482, eff. 3-1-96; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1999, No. 521.

ATCP 102.02 Prohibited trade practices. (1) No brewer shall discriminate in price, allowance, rebate, refund, commission or discount between wholesalers purchasing fermented malt beverages of like kind or quality where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly, or to injure, destroy or prevent competition by a person who is or in good faith intends to become a competitor, in the wholesaling of fermented malt beverages, unless such discrimination is:

(a) Merely commensurate with a difference in the cost of manufacture, sale, or delivery resulting from differing methods or quantities of sale or delivery, or

(b) Made in good faith to meet or enable a wholesaler to meet the price or other terms of a competitor of either of them.

(2) No brewer shall threaten any wholesaler with any discrimination prohibited under sub. (1) with the purpose or effect of changing or maintaining resale prices of the wholesaler.

(3) Nothing in this chapter shall be deemed to prohibit brewers from selecting their own customers in bona fide transactions not in restraint of trade.

(4) The provisions of sub. (1) shall not be deemed to prohibit a brewer from extending to its wholesalers different terms of credit in the ordinary course of business taking into consideration the financial condition of the individual wholesaler and other factors normally considered in establishing credit, or from offering

or furnishing to its wholesalers different advertising, promotional or merchandising services, provided that such services shall not be intended or used to effect a discrimination in price, allowance, rebate, refund, commission or discount prohibited by said sub. (1).

History: Cr. Register, August, 1968, No. 152, eff. 9-1-68; am. (1), cr. (4), Register, July, 1969, No. 163, eff. 8-1-69; renum. from ATCP 106.02, Register, February, 1996, No. 482, eff. 3-1-96.

ATCP 102.03 Report requirements. In any investigation under this chapter a brewer or wholesaler upon request of the department shall furnish to it price lists and such other information as directed concerning the terms of any agreement, transaction, or offer which may be the subject of any prohibition under this chapter.

History: Cr. Register, August, 1968, No. 152, eff. 9-1-68; renum. from ATCP 106.03, Register, February, 1996, No. 482, eff. 3-1-96.

Subchapter II — Soda Water Beverages**ATCP 102.11 Definitions.** In this subchapter:

(1) "Soda water beverage" means all beverages commonly known as soft drinks, including soda water, carbonated or uncarbonated or sweetened or flavored, and bases, fountain syrups, concentrates and powders intended to be reconstituted by wholesalers or retailers to produce soft drinks. It does not include strong spirituous, vinous, malt, ardent or intoxicating liquors.

(2) (a) "Retailer" means every person making sales of soda water beverages for consumption or use other than resale or further processing or manufacturing. In the case of a person making both sales at wholesale and retail, such term shall apply to only the retail portion of such sales. "Retailer" does not include the United States, the state, any municipality as defined in s. 345.05 (1) (c), Stats., or any agency thereof, or any religious, charitable or educational organization or institution, but does include any other person engaged in the business of making retail sales wholly or in part for profit at an institution or facility operated by such an exempt party.

(b) Any subsidiary or affiliate corporation, cooperative, partnership or association, and any officer, director or partner of a corporation, cooperative, partnership, association or any other business unit which owns, controls or franchises any retailer or which has any retailer as an affiliate, member or subsidiary, is deemed to be a retailer of soda water beverages.

(3) (a) "Wholesaler" means every person making sales of soda water beverages for purposes of resale or further processing or manufacturing. In the case of a person making both sales at retail and wholesale, such term shall apply only to the wholesale portion of such business.

(b) Any subsidiary or affiliate corporation, cooperative, partnership or association, and any officer, director or partner of a corporation, cooperative, partnership or association which is a

wholesaler of soda water beverages is deemed to be a wholesaler of soda water beverages.

(4) "Broker" means any person engaged in negotiating sales or purchases of soda water beverages for or on behalf of a retailer or wholesaler or both.

History: Cr. Register, February, 1977, No. 254, eff. 3-1-77; renum. from ATCP 107.01, Register, February, 1996, No. 482, eff. 3-1-96; correction in (2) (a) made under s. 13.92 (4) (b) 7., Stats., Register June 2011 No. 666.

ATCP 102.12 Prohibited trade practices. No wholesaler of soda water beverages shall, in the sale or distribution of soda water beverages, engage in the following unfair methods of competition or unfair trade practices:

(1) Discriminate, directly or indirectly, in the price at which soda water beverages are sold to customers by selling or offering to sell such beverages at a special price or discount, or with special allowances, rebates, or commissions, or under other price or credit terms or conditions not offered or made available to all customers, where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly, or otherwise injure, destroy or prevent competition between wholesalers of soda water beverages or any of their customers.

(2) Furnish, sell, give, lend or rent any equipment, after the effective date of this chapter, for the refrigerated or heated storage or display, or mechanical dispensing of soda water beverages to a retailer, but this shall not prevent:

(a) The sale or rental of such equipment to a retailer under a written agreement describing the equipment sold or rented, and specifying the price and other terms and conditions under which it is to be sold or rented. Copies of agreements shall be kept on file by the wholesaler for at least 3 years after final payment has been received. No agreement for the sale or rental of equipment other than agreements for the rental of coin-operated vending machines shall contain any provision that prohibits the use of the equipment for the storage, display, or dispensing of the products of competing wholesalers or reserves any part of the available capacity of the equipment for the products of the wholesaler selling or renting the equipment.

1. Terms for the sale of equipment shall provide that the wholesaler shall recover at least the wholesaler's cost for the equipment, including all costs for transportation and installation of the equipment, either by advance payment in full or by equal monthly installment payments over a period not to exceed 5 years.

2. Terms for the rental of equipment, other than coin-operated vending machines, shall provide that minimum monthly rental charges shall be no less than one-sixtieth (1/60) of the total cost to the wholesaler, including all costs for transportation and installation of the equipment. Rentals may be charged in equal periodic installments or on a volume basis, and shall be collected at least once each year in an amount sufficient to recover all such costs within a period of 60 months.

3. Terms for the rental of coin-operated vending machines shall provide that the minimum monthly rental charge shall be no less than one ninety-sixth (1/96) of the total cost to the wholesaler, including all costs for transportation and installation. Rentals may be charged in equal periodic installments or on a volume basis, and shall be collected at least once each year in an amount sufficient to recover all such costs within a period of 96 months.

4. Cost of equipment which has been returned or repossessed or on which rental contracts are renewed shall be based on fair market value of the equipment, whether or not cost was recovered in whole or in part under a previous sale or rental agreement.

(b) The furnishing of equipment to a retailer, for the storage, transportation or display of soda water beverages for not more than a total of 20 days in a calendar year for use at fairs, exhibitions, expositions or other events for agricultural, industrial, charitable, educational, religious or recreational purposes.

(3) Discriminate, directly or indirectly, between customers in furnishing of advertising, promotional or other services or facilities to them, or in compensating customers for services or facilities to be rendered or furnished by or through them in connection with the sale or distribution of soda water beverages, under terms or conditions not available to all customers on proportionally equal terms, where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly, or otherwise injure, destroy or prevent competition between wholesalers of soda water beverages or any of their customers. This does not apply to the furnishing of equipment under sub. (2) (b).

History: Cr. Register, February, 1977, No. 254, eff. 3-1-77; am. (2) (a) and (3), r. (2) (c), Register, August, 1979, No. 284, eff. 9-1-79; renum. from ATCP 107.02, Register, February, 1996, No. 482, eff. 3-1-96.

ATCP 102.13 Prohibited acts of retailers. No retailer or any officer, director, employee or agent thereof shall solicit or receive, directly or indirectly, from or through a wholesaler, broker, or another retailer, anything which is prohibited by s. ATCP 102.12, where it is known, or in the exercise of reasonable prudence should be known that it is prohibited.

History: Cr. Register, February, 1977, No. 254, eff. 3-1-77; renum. from ATCP 107.03 and am., Register, February, 1996, No. 482, eff. 3-1-96.

ATCP 102.14 Prohibited acts of brokers. (1) No broker, or any officer or agent thereof, shall participate, directly or indirectly, in any trade practice prohibited by s. ATCP 102.12.

(2) No wholesaler shall engage or offer to engage in any trade practice prohibited by s. ATCP 102.12, directly or indirectly, through a broker.

History: Cr. Register, February, 1977, No. 254, eff. 3-1-77; renum. from ATCP 107.04 and am. (1) and (2), Register, February, 1996, No. 482, eff. 3-1-96.

ATCP 102.15 Exceptions. (1) Nothing in s. ATCP 102.12 (1) and (3) shall apply to the sale or offering for sale of soda water beverages:

(a) At a price different from that charged other customers, if such price differential merely allows for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such soda water beverages are sold or delivered, or if made in good faith to meet an equally low price of a competitor, or the terms or conditions under which they are sold by a competitor.

(b) With differences in services or facilities under s. ATCP 102.12 (3), if made in good faith to meet services or facilities, or any compensation therefor, furnished by a competitor.

(c) Which are imperfect, damaged, subject to immediate loss because of obsolescence or perishability, or discontinuance from sale.

(d) In the final liquidation of a soda water beverage business.

(e) To customers other than retailers or wholesalers as defined in s. ATCP 102.12 (2) or (3).

(f) Under the order or direction of any court.

(2) Equipment furnished, sold, given, lent, or rented prior to the effective date of this chapter shall, within 18 months after the effective date of this chapter, be either removed from the retailer's premises or brought into compliance with the requirements of s. ATCP 102.12 (2) and (3).

History: Cr. Register, February, 1977, No. 254, eff. 3-1-77; renum. from ATCP 107.05 and am. (1) (intro.), (b), (c) and (2), Register, February, 1996, No. 482, eff. 3-1-96.

ATCP 102.16 Reporting requirements. (1) In any investigation under this chapter, any wholesaler shall on request of the department furnish to it price lists, accounting records and data used in determining cost, and such other information as requested concerning the terms or conditions of any agreement, transaction, or offer related to the sale of soda water beverages.

(2) Cost data shall to the extent permitted by law be accorded confidentiality by the department and not opened to the public inspection without 10 days prior notice to the wholesaler concerned.

History: Cr. Register, February, 1977, No. 254, eff. 3-1-77; renun. from ATCP 107.06, Register, February, 1996, No. 482, eff. 3-1-96.

Subchapter III — Motor Fuel

ATCP 102.21 Definitions. In this subchapter:

(1) “Retailer” has the meaning given in s. 100.30 (2) (e), Stats.
 (3) “Motor fuel” includes motor fuels and special fuels as defined in ch. 78, Stats.

(4) “Person” means any individual, sole proprietorship, partnership, corporation or other business entity or any individual acting on behalf of any individual, sole proprietorship, partnership, corporation or other business entity.

(5) “Sell at retail” has the meaning given in s. 100.30 (2) (h), Stats.

(6) “Sell at wholesale” has the meaning given in s. 100.30 (2) (i), Stats.

(7) “Supplier” means a person who manufactures motor fuels or who is a controlled subsidiary of one who manufactures motor fuels and is engaged in the business of selling motor fuels to wholesalers, retailers or consumers.

(8) “Wholesaler of motor fuel” has the meaning given in s. 100.30 (2) (m), Stats.

History: Cr. Register, May, 1972, No. 197, eff. 9-1-72; renun. from ATCP 108.01 and amend (intro.), Register, February, 1996, No. 482, eff. 3-1-96; r. and recr. (1), renun. (2) to be (7), cr. (5), (6) and (8), Register, May, 1999, No. 521, eff. 6-1-99.

ATCP 102.22 Discrimination. (1) No supplier or wholesaler of motor fuel shall enter into any agreement or

arrangement whereby directly or indirectly discrimination is made in the price at which said supplier or wholesaler sells motor fuel to wholesalers or retailers thereof, where the effect of such discrimination may be to substantially lessen competition or to tend to create a monopoly, or to injure, destroy or prevent competition with any person in the marketing of motor fuel in the community in which said supplier or wholesaler is thus selling at a lower price; provided, that it shall be a justification for such a discrimination in price if the difference, made by said supplier or wholesaler in the price to the wholesaler or retailer to whom said supplier or wholesaler sells at a lower figure, is merely commensurate with an actual difference in the quality or quantity of motor fuel sold to said wholesaler or retailer or in the transportation charges or other expenses of marketing involved in the sale to said wholesaler or retailer. Nothing herein contained shall prevent a seller from showing that the lower price was made in good faith to meet an equally low price of a competitor.

(2) No person any part of whose business is the sale of motor fuel to wholesalers shall sell motor fuel for ultimate consumption or use at a price lower than that at which he or she sells to such wholesaler unless such lower price is justified as provided in sub. (1).

History: Cr. Register, May, 1972, No. 197, eff. 9-1-72; corrections made under s. 13.93 (2m) (b) 5., Stats., Register, April, 1993, No. 448; renun. from ATCP 108.02, Register, February, 1996, No. 482, eff. 3-1-96.

ATCP 102.23 Coercion. No supplier or wholesaler shall threaten any of his or her customers with any price discrimination or use any form of coercion with the purpose or effect of changing or maintaining resale prices of such customer.

History: Cr. Register, May, 1972, No. 197, eff. 9-1-72; correction made under s. 13.93 (2m) (b) 5., Stats., Register, April, 1993, No. 448; renun. from ATCP 108.03, Register, February, 1996, No. 482, eff. 3-1-96.



Assembly Committee on Consumer Protection

PUBLIC HEARING

Assembly Bill 155, Terms of Sale or Rental of Soda Water Beverage Equipment

Good morning Chairperson Callahan and members of the Committee. My name is Kelly McDowell. As Executive Secretary of the Wisconsin Beverage Association, I respectfully ask that you oppose passage of Assembly Bill 155, relating to the terms of rental or sale of soda water beverage equipment and coin-operated vending machines.

Under current law, the Department of Agriculture, Trade and Consumer Protection (DATCP) is authorized to promulgate rules **protecting competition and prohibiting unfair trade practices**. Using this authority, DATCP promulgated ATCP 102.12(2) which regulates the terms of sale or rental of soda water beverage equipment, including coolers, fountain units, and coin-operated vending machines when the equipment is sold or leased by wholesalers to retailers.

AB 155 would reverse a decades-long environment in which Wisconsin's beverage companies have competed in a fair marketplace benefiting retailers and consumers.

AB 155 WOULD CAUSE PHASE-OUT OF EQUIPMENT RENTAL OPTION

Most of Wisconsin's largest retailers already own and maintain their own equipment. Under ATCP 102.12(2), small and mid-size independent retailers that don't own their own equipment have the option to lease soda water beverage equipment from wholesalers, including coolers, fountain units, and vending machines for a *typical minimum monthly rental fee*.

AB 155 is a response to those small and medium-sized businesses seeking to cut costs through "negotiated" discounts on beverage equipment. However, **the option to rent equipment does not exist in states that allow wholesalers to furnish things of value to retailers, and will not likely remain a viable option here**. That's because in the very competitive soft drink industry market, there will be wholesalers able to furnish equipment "free" of charge to "preferred" customers in exchange for exclusivity.

LOSERS UNDER AB 155 WILL BE SMALL WHOLESALERS, SMALL RETAILERS & CONSUMERS

Allowing the *provision of free equipment from wholesaler to retailer* would cause considerable and sudden changes to the current competitive structure in Wisconsin, creating winners and losers.

The winner will be large volume retailers who would likely receive free equipment from larger wholesalers who have the resources to seek a foothold, including requiring exclusivity.

The losers will be small wholesalers, consumers, and small retailers.

Small wholesalers unable to compete in the provision of free equipment will experience a **loss of sales** as they will have **less equipment** in the marketplace. Importantly, these “single” serve sales are highly profitable, including in grocery stores where there is far less profit from multi-pack bottle and can beverage sales. Small wholesalers may also be forced to consider increasing the wholesale cost of their products to replace lost rent revenue. **Increased prices will ultimately be passed along to consumers** who are already facing inflationary increases, **resulting in the loss of sales.**

Small retailers with insufficient volume to justify free equipment from beverage wholesalers will face higher operating costs as the only option available to them will be to purchase their own equipment.

Consider the relevant feedback provided by Jeremy McPherson, Director of DATCP’s Bureau of Business Trade Practices, on similar legislation in 2007:

- *This rule (ATCP 102.12(2)) protects small wholesalers who are competing for retailers’ business but can’t provide free equipment to their customers because they don’t have the same access to resources that larger wholesalers do.*
- *This rule also protects retailers who may not be offered ... free equipment and would face higher operating costs than those “preferred” retailers.*

As Director of the DATCP bureau that is primarily concerned with **potential instances of unfair industry competition**, Mr. McPherson further wrote of ATCP 102.12(2): *DATCP is concerned about the influence wholesalers would have over the operations of retailers that receive free equipment. For example, a wholesaler may provide free vending machines to retailers only if those retailers agree to exclusively sell specific products or give its products preferential treatment.*

Importantly, beverage wholesalers are currently not allowed to *exclusively* sell their beverages in leased equipment (except vending machines), **creating healthy competition, and protecting consumer choices.**

RENT SUPPORTS INVESTMENT AND FAMILY-SUPPORTING SERVICE TECHNICIAN WORKFORCE

The requirement that there be a minimum monthly rental charge for furnished beverage equipment has been in place for some 45 years and is the basis of every soda water beverage wholesaler's business model in Wisconsin. Beverage wholesalers continually invest rent revenue in new state-of-the-art soda water beverage equipment leading to **newer and more equipment in Wisconsin’s marketplace** than in other states. **Rent revenue also allows wholesalers to maintain an equipment technician workforce to service leased equipment free of charge to the retailer. Absent rental income, beverage wholesalers would likely be forced to substantially reduce their service technician workforce, causing the loss of family-supporting jobs.**

The reduction in equipment and service technician workforce will not happen overnight as there are hundreds, if not thousands, of equipment rental agreements in place across the state based upon current law. Bottlers would need some allowance of time to manage the considerable financial, administrative and contractual upheaval that would be caused if this long-standing trade practice was nullified.

UNFAIR TRADE PRACTICES NOT UNIQUE TO BEVERAGE INDUSTRY

I also want to clarify that unfair trade practice regulations in Wisconsin that *limit the furnishing things of value from wholesaler to retailer* are not unique to the beverage industry, they also apply to dairy and beer wholesalers:

- Under [ATCP 103](#), with *certain exceptions*, **dairy wholesalers** may not furnish, sell, lease or rent equipment for the storage and display of selected dairy products.
- [Section 125.33\(1\)\(a\) Wis. Stats.](#), relating to *Furnishing Things of Value*, provides that with certain exceptions, **no brewer, brewpub, or wholesaler** may furnish, give, lend, lease, or sell any furniture, fixtures, fittings, equipment, money, or other thing of value to any campus or Class "B" licensee or permittee, or to any person for the use, benefit, or relief of any campus or Class "B" licensee or permittee...

In closing, on behalf of Wisconsin bottlers, who together provide some 4,800 family-supporting jobs throughout Wisconsin, I respectfully ask for your continued support of ATCP 102.12(2) which has allowed for a more vibrant mix of beverage wholesalers in Wisconsin, particularly as compared to other states. Thank you for your consideration. I would be happy to respond to any questions you may have.

ATCP 102.12 Prohibited trade practices. No wholesaler of soda water beverages shall, in the sale or distribution of soda water beverages, engage in the following unfair methods of competition or unfair trade practices:

(2) Furnish, sell, give, lend or rent any equipment, after the effective date of this chapter, for the refrigerated or heated storage or display, or mechanical dispensing of soda water beverages to a retailer, but this shall not prevent:

(a) The sale or rental of such equipment to a retailer under a written agreement describing the equipment sold or rented, and specifying the price and other terms and conditions under which it is to be sold or rented. Copies of agreements shall be kept on file by the wholesaler for at least 3 years after final payment has been received. No agreement for the sale or rental of equipment other than agreements for the rental of coin-operated vending machines shall contain any provision that prohibits the use of the equipment for the storage, display, or dispensing of the products of competing wholesalers or reserves any part of the available capacity of the equipment for the products of the wholesaler selling or renting the equipment.

1. Terms for the sale of equipment shall provide that the wholesaler shall recover at least the wholesaler's cost for the equipment, including all costs for transportation and installation of the equipment, either by advance payment in full or by equal monthly installment payments over a period not to exceed 5 years.

2. Terms for the rental of equipment, other than coin-operated vending machines, shall provide that minimum monthly rental charges shall be no less than one-sixtieth (1/60) of the total cost to the wholesaler, including all costs for transportation and installation of the equipment. Rentals may be charged in equal periodic installments or on a volume basis, and shall be collected at least once each year in an amount sufficient to recover all such costs within a period of 60 months.

3. Terms for the rental of coin-operated vending machines shall provide that the minimum monthly rental charge shall be no less than one ninety-sixth (1/96) of the total cost to the wholesaler, including all costs for transportation and installation. Rentals may be charged in equal periodic installments or on a volume basis, and shall be collected at least once each year in an amount sufficient to recover all such costs within a period of 96 months.



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May 17, 2023

TO: Assembly Committee on Local Government

FR: Susan Quam, WRA Executive Vice President

Testimony in support of AB 155 Regulation of the Rental and Sale of Soda Beverage Equipment

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) currently regulates rules as they apply to soda equipment and the purchasing terms between soda wholesalers and retailers. Current law mandates that soda wholesalers must either sell or lease equipment (including vending machines, dispensing equipment and coolers) to retailers for no less than a monthly charge of 1/60th of the equipment's cost.

These archaic regulations (ATCP 102.12(2)) require retailers to pay a significant rental fee for soda equipment, which is usually branded and provides the manufacturer with advertising benefits and provides the advantage of prime retail space. Further, we believe this restriction is a disservice to both the retailer and the soda wholesaler due to the lack of flexibility in negotiating terms for equipment based on what is most efficient and effective for both parties. All of Wisconsin's neighboring states do not have this rule, which makes operations for our multi-state members difficult.

We have heard many stories from our members regarding their frustration with this rule. They would much rather have the flexibility to negotiate the terms of their contracts for both equipment and product. We also have been informed by our larger members that while they must pay the standard equipment fees required by rule, they just negotiate harder on the cost of the products or require other types of concessions to bring the total cost down. Those large members readily admit they have the buying power to do that. Our smaller members do not necessarily have that same power, because they can only negotiate on the price of product. We also believe repealing this rule will give more ability for restaurants and bars to use equipment supplied by independent equipment providers who are not linked to the large wholesalers.

The WRA supports AB 155 that repeals the rental requirement on soda dispensing equipment and coolers, coin-operated vending machines as well as dispensing equipment and display coolers. Similar legislation passed the Assembly in 2018 and we urge you to pass this bill as well.

The Wisconsin Restaurant Association (WRA) represents over 7,000 restaurant locations statewide and represents all segments of the restaurant and hospitality industry. Our membership includes food establishments of all types and sizes, such as seasonal drive-ins, supper clubs, diners, bars, locally owned franchisees, fine-dining, and hotels/resorts. Over 75 percent of our membership are independent restaurants or restaurant groups. Regardless of ownership type, all restaurants are the cornerstones of their neighborhoods and communities. Restaurants not only provide great food, drink, and hospitality, they support schools, teams, charities and churches with fundraising and donations. They provide meeting places to celebrate, mourn and organize, or just provide a safe, tasty meal for a busy family.