

Ike Brannon: Abolishing Unfair Sales Act would help mitigate impact of gas tax hike

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Wisconsin Republicans recently [pondered](#) making up some of the revenue that would be lost from an income tax reduction via an increase in the gas tax. However, publicly pondering such a step has given many members of the caucus heartburn and several have since renounced doing so.

If slightly higher gas prices represents a bridge too far for them, there is an easy way to reduce or eliminate the impact of a higher gas tax on Wisconsin drivers: Abolish the Unfair Sales Act.

Wisconsin passed the Act during the great depression when it worried that too much price competition would lead to predatory pricing, resulting in gas stations going out of business. The fear was that those stations that survived would then have the ability to greatly increase prices and stick it to the consumer.

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But predatory pricing is an outdated concept that economists rejected decades ago. There is very little evidence that “cutthroat competition” exists anywhere: the rub is that high prices would attract new entrants into the market, which would cause the competitive cycle to begin again. In Wisconsin a gas station that did manage to drive out a competitor and raised its prices accordingly would likely see someone else enter the market—by buying the defunct gas station.

However, the Wisconsin legislature seems to be the last entity around to realize the

inanity of such a worry. In 1998 the state actually strengthened the penalties for selling gas at too low a price while also allowing those gas stations supposedly hurt by cutthroat competition to receive any fines levied. Predictably, a flurry of complaints ensued, and the courts became tied up with litigation on the matter.

To avoid being sued, gas stations have made sure to mark up their prices well above the mandatory 9.13% threshold above the posted wholesale price for the nearest wholesale terminal that the law requires, a margin that exceeds what we observe in localities that do not have any minimum markup law.

As a result, gas stations—and the large oil companies that own most of them in the state—earn higher profits in Wisconsin than elsewhere, and Wisconsinites pay more for gas than they otherwise would.

A [study](#) I did that examined the aftermath of the law change published by The Badger Institute found that gasoline prices increased 3-5 cents a gallon, and a 2017 study I did with Will Flanders of the Wisconsin Institute for Law and Liberty found that the law had no impact on the number of gas stations in a market.

My proposal is that the state increase gas taxes by the same amount while concomitantly ending the Act. Doing so would leave net gas prices virtually unaffected while giving us the money the state needs to finance an income tax reduction.

And I think an income tax reduction is sorely needed: While Illinois has taken a lot of heat for having drastically increased property taxes and income taxes in the last couple of years these tax burdens are still less than they are in Wisconsin.

The Unfair Sales Act represents an unmitigated triumph of special interest lobbying, and its continued existence is pointless. Regardless of whether we decide to increase the gas tax we should abolish this pointless law once and for all.

— *Ike Brannon is a Fellow with the Badger Institute*