



## 2005 SENATE BILL 215

May 24, 2005 - Introduced by Senators ZIEN and REYNOLDS, cosponsored by Representatives WOOD, GUNDRUM, LEHMAN and WASSERMAN. Referred to Committee on Judiciary, Corrections and Privacy.

1     **AN ACT** *to amend* 100.30 (2) (am) 1m. a., 100.30 (2) (am) 1m. b., 100.30 (2) (am)  
2             1m. c., 100.30 (2) (am) 1m. d., 100.30 (2) (am) 1m. e., 100.30 (2) (c) 1g., 100.30  
3             (2) (c) 1r. and 100.30 (3); and *to create* 100.30 (3) (a) 2. of the statutes; **relating**  
4             **to:** regulating the minimum price of motor vehicle fuel.

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### *Analysis by the Legislative Reference Bureau*

Under current law, the Unfair Sales Act or “minimum markup” law prohibits “loss leaders,” or wholesale and retail sales of merchandise at a price below the cost of the merchandise to the seller. With respect to motor vehicle fuel, current law prescribes certain formulas for calculating cost; a separate formula applies to each of several categories of wholesalers and retailers. Each calculation includes a minimum markup to cover a portion of the cost of doing business.

The minimum markup for a wholesaler of motor vehicle fuel is currently 3 percent, which means that the wholesaler must sell the fuel for at least 3 percent more than the cost of the fuel to the wholesaler. The minimum markup for the sale of motor vehicle fuel at a retail station owned by a refiner or a motor vehicle fuel wholesaler is 9.18 percent of the cost to the wholesaler or 9.18 percent of the average posted terminal price, whichever is greater. The “average posted terminal price” is an average price at which motor vehicle fuel is offered on a specific date, plus certain excise taxes and overhead costs. The minimum markup for the sale of fuel at a retail station not owned by a refiner or wholesaler is either 6 percent of the cost or 9.18 percent of the average posted terminal price, whichever is greater. The minimum

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markup for the retail sale of motor vehicle at a location other than a retail station is 3 percent. Current law does not define "retail station."

This bill eliminates the minimum markup component of each formula for calculating the cost of motor vehicle fuel. For sales of motor vehicle fuel, the bill changes the definition of loss leader from a sale below cost to a sale at or below cost. As a result, motor vehicle fuel must be sold at a price greater than the cost to the seller, but the cost no longer includes a minimum markup for the cost of doing business.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 100.30 (2) (am) 1m. a. of the statutes is amended to read:

2           100.30 (2) (am) 1m. a. In the case of the retail sale of motor vehicle fuel by a  
3           refiner at a retail station owned or operated either directly or indirectly by the  
4           refiner, the refiner's lowest selling price to other retailers or to wholesalers of motor  
5           vehicle fuel on the date of the refiner's retail sale, less all trade discounts except  
6           customary discounts for cash, plus any excise, sales or use taxes imposed on the  
7           motor vehicle fuel or on its sale and any cost incurred for transportation and any  
8           other charges not otherwise included in the invoice cost of the motor vehicle fuel, ~~plus~~  
9           ~~a markup of 9.18% of that amount to cover a proportionate part of the cost of doing~~  
10          ~~business; or the average posted terminal price at the terminal located closest to the~~  
11          ~~retail station plus a markup of 9.18% of the average posted terminal price to cover~~  
12          ~~a proportionate part of the cost of doing business; whichever is greater.~~

13           **SECTION 2.** 100.30 (2) (am) 1m. b. of the statutes is amended to read:

14           100.30 (2) (am) 1m. b. In the case of the retail sale of motor vehicle fuel by a  
15           wholesaler of motor vehicle fuel, who is not a refiner, at a retail station owned or  
16           operated either directly or indirectly by the wholesaler of motor vehicle fuel, the  
17           invoice cost of the motor vehicle fuel to the wholesaler of motor vehicle fuel within  
18           10 days prior to the date of sale, or the replacement cost of the motor vehicle fuel,

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1       whichever is lower, less all trade discounts except customary discounts for cash, plus  
2       any excise, sales or use taxes imposed on the motor vehicle fuel or on its sale, and any  
3       cost incurred for transportation and any other charges not otherwise included in the  
4       invoice cost or replacement cost of the motor vehicle fuel, ~~plus a markup of 9.18% of~~  
5       ~~that amount to cover a proportionate part of the cost of doing business; or the average~~  
6       ~~posted terminal price at the terminal located closest to the retail station plus a~~  
7       ~~markup of 9.18% of the average posted terminal price to cover a proportionate part~~  
8       ~~of the cost of doing business; whichever is greater.~~

9           **SECTION 3.** 100.30 (2) (am) 1m. c. of the statutes is amended to read:

10           100.30 (2) (am) 1m. c. In the case of the retail sale of motor vehicle fuel by a  
11       person other than a refiner or a wholesaler of motor vehicle fuel at a retail station,  
12       the invoice cost of the motor vehicle fuel to the retailer within 10 days prior to the  
13       date of sale, or the replacement cost of the motor vehicle fuel, whichever is lower, less  
14       all trade discounts except customary discounts for cash, plus any excise, sales or use  
15       taxes imposed on the motor vehicle fuel or on its sale and any cost incurred for  
16       transportation and any other charges not otherwise included in the invoice cost or  
17       the replacement cost of the motor vehicle fuel, ~~plus a markup of 6% of that amount~~  
18       ~~to cover a proportionate part of the cost of doing business; or the average posted~~  
19       ~~terminal price at the terminal located closest to the retailer plus a markup of 9.18%~~  
20       ~~of the average posted terminal price to cover a proportionate part of the cost of doing~~  
21       ~~business; whichever is greater.~~

22           **SECTION 4.** 100.30 (2) (am) 1m. d. of the statutes is amended to read:

23           100.30 (2) (am) 1m. d. In the case of a retail sale of motor vehicle fuel by a  
24       refiner at a place other than a retail station, the refiner's lowest selling price to other  
25       retailers or to wholesalers of motor vehicle fuel on the date of the refiner's retail sale,

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1 less all trade discounts except customary discounts for cash, plus any excise, sales  
2 or use taxes imposed on the motor vehicle fuel or on its sale and any cost incurred  
3 for transportation and any other charges not otherwise included in the invoice cost  
4 of the motor vehicle fuel ~~to which shall be added a markup to cover a proportionate~~  
5 ~~part of the cost of doing business, which markup, in the absence of proof of a lesser~~  
6 ~~cost, shall be 3% of the cost to the retailer as set forth in this subd. 1m. d.~~

7 **SECTION 5.** 100.30 (2) (am) 1m. e. of the statutes is amended to read:

8 100.30 (2) (am) 1m. e. In the case of a retail sale of motor vehicle fuel by a person  
9 other than a refiner at a place other than a retail station, the invoice cost of the motor  
10 vehicle fuel to the retailer within 10 days prior to the date of the sale, or the  
11 replacement cost of the motor vehicle fuel, whichever is lower, less all trade discounts  
12 except customary discounts for cash, plus any excise, sales or use taxes imposed on  
13 the motor vehicle fuel or on its sale and any cost incurred for transportation and any  
14 other charges not otherwise included in the invoice cost or the replacement cost of  
15 the motor vehicle fuel ~~to which shall be added a markup to cover a proportionate part~~  
16 ~~of the cost of doing business, which markup, in the absence of proof of a lesser cost,~~  
17 ~~shall be 3% of the cost to the retailer as set forth in this subd. 1m. e.~~

18 **SECTION 6.** 100.30 (2) (c) 1g. of the statutes is amended to read:

19 100.30 (2) (c) 1g. With respect to the wholesale sale of motor vehicle fuel by a  
20 refiner, "cost to wholesaler" means the refiner's lowest selling price to other retailers  
21 or to wholesalers of motor vehicle fuel on the date of the refiner's wholesale sale, less  
22 all trade discounts except customary discounts for cash, plus any excise, sales or use  
23 taxes imposed on the motor vehicle fuel or on its sale and any cost incurred for  
24 transportation and any other charges not otherwise included in the invoice cost of  
25 the motor vehicle fuel, ~~to which shall be added a markup to cover a proportionate part~~

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1 of the cost of doing business, which markup, in the absence of proof of a lesser cost,  
2 shall be 3% of the cost to the wholesaler as set forth in this subdivision.

3 **SECTION 7.** 100.30 (2) (c) 1r. of the statutes is amended to read:

4 100.30 (2) (c) 1r. With respect to the wholesale sale of motor vehicle fuel by a  
5 person other than a refiner, "cost to wholesaler" means the invoice cost of the motor  
6 vehicle fuel to the wholesaler of motor vehicle fuel within 10 days prior to the date  
7 of the sale or the replacement cost of the motor vehicle fuel, whichever is lower, less  
8 all trade discounts except customary discounts for cash, plus any excise, sales or use  
9 taxes imposed on the motor vehicle fuel or on its sale and any cost incurred for  
10 transportation and any other charges not otherwise included in the invoice cost or  
11 the replacement cost of the motor vehicle fuel to which shall be added a markup to  
12 cover a proportionate part of the cost of doing business, which markup, in the absence  
13 of proof of a lesser cost, shall be 3% of the cost to the wholesaler as set forth in this  
14 subdivision.

15 **SECTION 8.** 100.30 (3) of the statutes is amended to read:

16 100.30 (3) ILLEGALITY OF LOSS LEADERS. Any (a) In this subsection, "loss leader"  
17 means any of the following:

18 1. Except as provided in subd. 2., the sale of any an item of merchandise either  
19 by a retailer, or wholesaler, wholesaler of motor vehicle fuel or refiner, at less than  
20 cost as defined in this section.

21 (b) A loss leader by a retailer, wholesaler, wholesaler of motor vehicle fuel, or  
22 refiner, when made with the intent or effect of inducing the purchase of other  
23 merchandise or of unfairly diverting trade from a competitor, impairs and prevents  
24 fair competition, injures public welfare, and is unfair competition and contrary to  
25 public policy and the policy of this section. Such sales are prohibited. Evidence of any

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1 ~~sale of any item of merchandise a loss leader by any a~~ retailer, wholesaler, wholesaler  
2 of motor vehicle fuel, or refiner ~~at less than cost as defined in this section~~ shall be  
3 prima facie evidence of intent or effect to induce the purchase of other merchandise,  
4 ~~or~~ to unfairly divert trade from a competitor, or to otherwise injure a competitor.

5 **SECTION 9.** 100.30 (3) (a) 2. of the statutes is created to read:

6 100.30 **(3)** (a) 2. The sale of motor vehicle fuel by a retailer, wholesaler of motor  
7 vehicle fuel, or refiner at a price equal to or less than cost as defined in this section.

8 **SECTION 10. Initial applicability.** (1) This act first applies to sales of motor  
9 vehicle fuel occurring on the effective date of this subsection.

10 (END)