



State of Wisconsin
2005 - 2006 LEGISLATURE

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**SENATE SUBSTITUTE AMENDMENT 2,
TO 2005 SENATE BILL 215**

December 2, 2005 – Offered by COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY.

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

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

6 **SECTION 1.** 100.30 (2) (am) 1m. (intro.) of the statutes is amended to read:
7 100.30 (2) (am) 1m. (intro.) With respect to the sale of motor vehicle fuel, “cost
8 to retailer” means not less than 3 cents per gallon plus the following:

9 **SECTION 2.** 100.30 (2) (am) 1m. a. of the statutes is amended to read:
10 100.30 (2) (am) 1m. a. In the case of the retail sale of motor vehicle fuel by a
11 refiner at a retail station owned or operated either directly or indirectly by the

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

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

11 100.30 (2) (am) 1m. b. In the case of the retail sale of motor vehicle fuel by a
12 wholesaler of motor vehicle fuel, who is not a refiner, at a retail station owned or
13 operated either directly or indirectly by the wholesaler of motor vehicle fuel, the
14 invoice cost of the motor vehicle fuel to the wholesaler of motor vehicle fuel within
15 10 days prior to the date of sale, or the replacement cost of the motor vehicle fuel,
16 whichever is lower, less all trade discounts except customary discounts for cash, plus
17 any excise, sales, or use taxes imposed on the motor vehicle fuel or on its sale, and
18 any cost incurred for transportation and any other charges not otherwise included
19 in the invoice cost or replacement cost of the motor vehicle fuel, plus a markup of
20 ~~9.18%~~ 4 percent of that amount to cover a proportionate part of the cost of doing
21 business; or the average posted terminal price at the terminal located closest to the
22 retail station plus a markup of ~~9.18%~~ 4 percent of the average posted terminal price
23 to cover a proportionate part of the cost of doing business; whichever is greater.

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

1 100.30 (2) (am) 1m. c. In the case of the retail sale of motor vehicle fuel by a
2 person other than a refiner or a wholesaler of motor vehicle fuel at a retail station,
3 the invoice cost of the motor vehicle fuel to the retailer within 10 days prior to the
4 date of sale, or the replacement cost of the motor vehicle fuel, whichever is lower, less
5 all trade discounts except customary discounts for cash, plus any excise, sales, or use
6 taxes imposed on the motor vehicle fuel or on its sale and any cost incurred for
7 transportation and any other charges not otherwise included in the invoice cost or
8 the replacement cost of the motor vehicle fuel, plus a markup of ~~6%~~ 4 percent of that
9 amount to cover a proportionate part of the cost of doing business; or the average
10 posted terminal price at the terminal located closest to the retailer plus a markup
11 of ~~9.18%~~ 4 percent of the average posted terminal price to cover a proportionate part
12 of the cost of doing business; whichever is greater.

13 **SECTION 5.** 100.30 (2) (c) 1g. of the statutes is amended to read:

14 100.30 (2) (c) 1g. With respect to the wholesale sale of motor vehicle fuel by a
15 refiner, “cost to wholesaler” means the refiner’s lowest selling price to other retailers
16 or to wholesalers of motor vehicle fuel on the date of the refiner’s wholesale sale, less
17 all trade discounts except customary discounts for cash, plus any excise, sales or use
18 taxes imposed on the motor vehicle fuel or on its sale and any cost incurred for
19 transportation and any other charges not otherwise included in the invoice cost of
20 the motor vehicle fuel, ~~to which shall be added a markup to cover a proportionate part~~
21 ~~of the cost of doing business, which markup, in the absence of proof of a lesser cost,~~
22 ~~shall be 3% of the cost to the wholesaler as set forth in this subdivision.~~

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

24 100.30 (2) (c) 1r. With respect to the wholesale sale of motor vehicle fuel by a
25 person other than a refiner, “cost to wholesaler” means the invoice cost of the motor

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

10 **SECTION 7.** 100.30 (2) (cg) 1. of the statutes is amended to read:

11 100.30 (2) (cg) 1. Except as provided in subd. ~~2.~~ subds. 1m. and 2.,
12 “determination date” is means the day preceding the day of the sale at retail of motor
13 vehicle fuel.

14 **SECTION 8.** 100.30 (2) (cg) 1m. of the statutes is created to read:

15 100.30 (2) (cg) 1m. With respect to a retailer that is selling motor vehicle fuel
16 at a price below the cost to retailer in order to meet a competitor’s price as described
17 in sub. (6) (a) 7., if the retailer sells motor vehicle fuel on a day other than the day
18 on which the retailer last purchased any motor vehicle fuel and the sale of the motor
19 vehicle fuel by the retailer occurs no later than 7 days after its last purchase by the
20 retailer, “determination date” means any of the following dates selected by the
21 retailer:

- 22 a. The day preceding the day of the sale of motor vehicle fuel by the retailer.
23 b. The day on which motor vehicle fuel was last purchased by the retailer.

24 **SECTION 9.** 100.30 (2) (cg) 2. (intro.) of the statutes is amended to read:

1 100.30 (2) (cg) 2. (intro.) ~~If a~~ With respect to a retailer that is not selling motor
2 vehicle fuel at a price below the cost to retailer in order to meet a competitor's price
3 as described in sub. (6) (a) 7., if the retailer sells motor vehicle fuel on a day other than
4 the day on which the retailer last purchased any motor vehicle fuel and the sale of
5 the motor vehicle fuel by the retailer occurs no later than 10 days after its last
6 purchase by the retailer, "determination date" means any of the following dates
7 selected by the retailer:

8 **SECTION 10.** 100.30 (3) of the statutes is amended to read:

9 100.30 (3) ILLEGALITY OF LOSS LEADERS. ~~Any~~ (a) In this subsection, "loss leader"
10 means any of the following:

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

14 (b) A loss leader by a retailer, wholesaler, wholesaler of motor vehicle fuel, or
15 refiner, when made with the intent or effect of inducing the purchase of other
16 merchandise or of unfairly diverting trade from a competitor, impairs and prevents
17 fair competition, injures public welfare, and is unfair competition and contrary to
18 public policy and the policy of this section. Such sales are prohibited. Evidence of ~~any~~
19 ~~sale of any item of merchandise~~ a loss leader by ~~any a~~ retailer, wholesaler, wholesaler
20 of motor vehicle fuel, or refiner ~~at less than cost as defined in this section~~ shall be
21 prima facie evidence of intent or effect to induce the purchase of other merchandise,
22 or to unfairly divert trade from a competitor, or to otherwise injure a competitor.

23 **SECTION 11.** 100.30 (3) (a) 2. of the statutes is created to read:

