



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2005 Senate Bill 215

**Senate Substitute
Amendment 2**

Memo published: December 16, 2005

Contact: Ronald Sklansky, Senior Staff Attorney (266-1946)

Current Law

Section 100.30 (3), Stats., prohibits the sale of any item of merchandise either by a retailer, wholesaler, wholesaler of motor vehicle fuel or refiner at less than cost. Generally, the term “cost” (for merchandise other than tobacco, alcohol, or motor vehicle fuel) is based on the invoice cost of the merchandise to the retailer or wholesaler. [See s. 100.30 (2) (am) 2. and (c) 2., Stats.]

There are special provisions for the determination of cost to those enterprises selling motor vehicle fuel. These provisions vary depending on who makes the sale and where the sale is made, but, very generally, s. 100.30, Stats., provides that:

1. A wholesaler of motor vehicle fuel (or a refiner selling at retail from a place other than a retail station) must sell motor vehicle fuel at a minimum of 3% above the cost of the motor vehicle fuel to the wholesaler (or to the refiner).
2. A retailer of motor vehicle fuel must sell motor vehicle fuel at a minimum of 6% above the cost of the motor vehicle fuel to the retailer or 9.18% above the average posted terminal price, whichever is greater.
3. When a wholesaler or a refiner of motor vehicle fuel makes a retail sale at its own retail station, the motor vehicle fuel must be sold at a minimum of 9.18% above the cost of the motor vehicle fuel or 9.18% above the average posted terminal price, whichever is greater.

[At the federal level, 15 U.S.C. 13 (a) prohibits various forms of predatory or discriminatory pricing.]

The term “average posted terminal price” generally means the average posted rack price at which motor vehicle fuel is offered for sale at the close of business on the determination date. In turn, the term

“determination date” is defined generally to mean the day preceding the day of the sale at retail of motor vehicle fuel. However, if a retailer sells the fuel on a day other than the day on which the retailer last purchased fuel and the sale of the fuel by the retailer occurs no later than 10 days after its last purchase by the retailer, the term means either:

1. The day preceding the day of the sale of motor vehicle fuel by the retailer.
2. The day on which motor vehicle fuel was last purchased by the retailer. [See ss. 100.30 (2) (a) and (cg), Stats.]

Senate Substitute Amendment 2

The substitute amendment accomplishes the following:

1. The general requirement that the wholesale price of motor vehicle fuel be increased by a minimum of 3% over cost to the wholesaler is eliminated.
2. The general requirement that the retail price of motor vehicle fuel be increased by a minimum of 6% over the cost of the fuel to the retailer is reduced to a minimum markup of 4%.
3. In addition to the 4% retail minimum markup, the retailer must add at least three cents per gallon in a sale to a consumer.
4. When a retailer sells motor vehicle fuel at a price below the defined cost to the retailer in order to meet a competitor’s price, the “determination date” lookback period is reduced from 10 days to seven days.
5. A retailer, wholesaler, or a refiner may not sell motor vehicle fuel at a price equal to or less than cost to one of those providers.

Legislative History

On December 2, 2005, the Senate Committee on Judiciary, Corrections and Privacy introduced and adopted Senate Substitute Amendment 2 on a vote of Ayes, 5; Noes, 0. On the same date, the committee recommended the bill, as amended, for passage on a vote of Ayes, 3; Noes, 2.

RS:jal