

**WISCONSIN STATE
LEGISLATURE COMMITTEE
HEARING RECORDS**

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

**Committee on
Small Business,
Emergency
Preparedness,
Workforce
Development,
Technical Colleges &
Consumer Protection**

(SC-SBEPWDTCCP)

COMMITTEE NOTICES ...

➤ Committee Reports ... CR

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➤ Executive Sessions ... ES

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➤ Public Hearings ... PH

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➤ Record of Comm. Proceedings ... RCP

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**INFORMATION COLLECTED BY
COMMITTEE FOR AND AGAINST
PROPOSAL ...**

➤ Appointments ... Appt

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Name:

➤ Clearinghouse Rules ... CRule

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➤ Hearing Records ... HR (bills and resolutions)

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(companion bill: _____)

➤ Miscellaneous ... Misc

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**Wisconsin
Manufacturers
& Commerce**

Wisconsin Manufacturers'
Association • 1911
Wisconsin Council
of Safety • 1923
Wisconsin State Chamber
of Commerce • 1929

James S. Haney
President

James A. Buchen
Vice President
Government Relations

James R. Morgan
Vice President
Marketing & Membership

Michael R. Shoys
Vice President
Administration

TO: Senate Committee on Small Business, Emergency Preparedness, Workforce Development, Technical Colleges and Consumer Protection

FROM: Jeff Schoepke, Director, Tax & Corporate Policy

DATE: January 30, 2008

RE: Price Gouging and Opposition to Senate Bill 219

Thank you for the opportunity to provide comments today on Senate Bill 219 (SB 219). WMC opposes this legislation.

SB 219 prohibits charging a price for consumer goods or services that "grossly exceeds" the price at which similar goods are presently sold or the average price at which similar goods were sold in the past year. It does not define "grossly exceeds" nor does it specify what "similar" is intended to include.

SB 219 is a recipe for expensive litigation and political mischief. Under the bill, the Attorney General is given carte blanche authority to accuse businesses of gouging consumers with no criteria, objective or otherwise, with which to judge whether prices are grossly excessive. Any action by the Attorney General under such a law would inevitably be subject to long, drawn-out litigation over differences of opinion on what constitutes grossly excessive. Such litigation which could cost the state hundreds of thousands of dollars and potentially never address the underlying issues. It is simply not fair to expose sellers to such a capricious law, especially when the consequences are large fines and negative media attention that could affect their business.

While price controls inevitably have unintended consequences and often lead to shortages of needed goods, the business community is sensitive to the issue of prices during an economic emergency or natural disaster. This bill is not necessary to prevent price gouging during an emergency. 2005 Act 450 creates a mechanism to do so, and this Committee has been working on the Department of Agriculture, Trade and Consumer Protection (DATCP) rule implementing that statute, ATCP 106, since last fall. In November this Committee asked DATCP to consider unspecified changes to ATCP 106. Unfortunately, the changes adopted by DATCP do not address the concerns of the business community, and those expressed by Committee members last fall. As drafted, the rule will still lead to shortages of important commodities during a time of emergency.

However, with certain changes, ATCP 106 could work well and meet the twin goals of protecting consumers and making certain needed goods continue to flow into markets when they are needed most. Most important, an improved ATCP 106 would provide businesses with a clear definition of what is considered "excessive pricing," a notable improvement to the ambiguous "grossly exceeds" standard in this bill. Rather than pass a new bill on price gouging, WMC encourages the Committee to ask DATCP for specific changes to ATCP 106 as outlined in the attached memorandum.

Thank you for the opportunity to provide these comments.

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TO: Assembly Committee on Judiciary and Ethics
Senate Committee on Small Business, Emergency Preparedness, Workforce Development, Technical Colleges and Consumer Protection

FROM: Nickolas C. George, President
Midwest Food Processors Association
Bill G. Smith, State Director
National Federation of Independent Business
Brad Boycks, Director of Government Affairs
Wisconsin Builders Association
Michelle Kussow, Vice President-Government Affairs & Communications
Wisconsin Grocers Association
Bill Oemichen, President and CEO
Wisconsin Federation of Cooperatives
Jeff Schoepke, Director, Tax & Corporate Policy
Wisconsin Manufacturers & Commerce
Chris Tackett, President
Wisconsin Merchants Federation
Ed Wilusz, Vice President
Wisconsin Paper Council
Erin Roth, Executive Director
Wisconsin Petroleum Council
Matthew Hauser, Director of Government Relations
Wisconsin Petroleum Marketers & Convenience Store Association

In The
SB 219
Folder

DATE: January 29, 2008

SUBJECT: Price Gouging During an Emergency (ATCP 106); Final Draft Rule

The above organizations have serious concerns that the subject rule, which imposes price controls during an emergency, will result in shortages of needed products and services. The key issue is that the rule fails to recognize that price increases are often due to fluctuations in the commodity markets. It has become an economic reality that commodities in the energy and food products industries are subject to wide price swings, particularly during an emergency. Putting a 15 percent cap on such prices will assuredly cause those products to be sold elsewhere and inevitably create shortages in Wisconsin.

On November 28, 2007, the Senate Committee on Small Business, Emergency Preparedness, Workforce Development, Technical Colleges and Consumer Protection requested the Department of Agriculture, Trade and Consumer Protection (DATCP)

consider making unspecified changes to Clearinghouse Rule 07-004, price gouging during an emergency. While DATCP agreed to do so, they made only minor revisions that do not address the key issues raised by industry throughout this rule-making effort. We respectfully request the committees ask DATCP for meaningful changes to the rule.

In conjunction with its hearing on this rule, we prepared the attached memorandum to the Senate Committee. While the memo touches on various issues, we believe the following changes are crucial.

1. Create an Exception for Commodities and Market Trends. Consistent with North Carolina law, the rule should be revised to clarify that “excessive pricing” does not include price increases “attributable to fluctuations in applicable commodity markets; fluctuations in applicable regional, national, or international market trends; or to reasonable expenses and charges for attendant business risk incurred in procuring or selling the goods or services.”

In essence, such an exception recognizes that there is no “price gouging” if prices within emergency areas are consistent with prices outside such areas. Conversely, any seller charging prices above the cap in emergency areas that are not reflective of market pricing would be violating the rule. This change is critical if we are to avoid shortages during emergencies.

2. Increase the Price Cap to 25 Percent. DATCP latest draft moves the price cap during emergencies from 10% to 15%. Normal fluctuations in the price of milk, corn, natural gas and other commodities over the past few years would have far exceeded a 15% cap. Even New York Attorney General Spitzer recognized that a 25% cap would better provide merchants with a reasonable threshold.
3. Modify the Enforcement Provision. The exception for increased costs, and we hope, market fluctuation, is only available if the “seller possesses and relies upon accurate information” that demonstrates that exceeding the cap was justified. We interpret “possession” to mean having discrete economic documentation at the time of sale, which is an excessive hurdle. We think it would be sufficient to require that “the seller relies upon information that reasonably demonstrates” exemption criteria are met.

Thank you very much for your consideration on this important rule. While we have serious reservations over price controls, we would support a rule that imposes reasonable controls in emergency areas. However, requiring prices within these areas that are less than other markets will only lead to shortages; not lower prices.