



Legislative Briefs

from the Legislative Reference Bureau



Legislative Brief 06--11

June 2006

ANTI-PRICE GOUGING LAWS AND GASOLINE PRICES

2005 Wisconsin Act 450, passed by the legislature and signed by Governor Jim Doyle on May 25, 2006, creates new trade regulations targeted at "price gouging". While the law does not specify any one product, its applicability to gasoline pricing is clear. Anti-price gouging legislation has gained momentum in many states since the spike in gasoline prices immediately after Hurricane Katrina in August 2005.

PROHIBITED SELLING PRACTICES

Act 450 was introduced as 2005 Senate Bill 358 and was sponsored by Senator Neal Kedzie. SB-358 was a redraft of 2001 Assembly Bill 762, which was modeled after New York law and introduced after the terrorist attacks of September 11, 2001. New York's price gouging law, last updated in 1998, was utilized after 9/11 to prosecute hotel owners who charged excessive prices for their accommodations, affecting people who had been stranded in the city while air traffic was restricted.

The new Wisconsin law will be triggered if the governor declares a state of emergency. The act prohibits a seller from selling consumer goods or services at unreasonably excessive prices if the governor, by executive order, has certified that the state or a part of the state is in a period of abnormal economic disruption.

Under Act 450, a "seller" is a manufacturer, producer, supplier, wholesaler, distributor, or retailer. "Consumer goods and services" are defined as goods or services that are used primarily for personal, family, or household purposes. These would include gasoline.

A "period of abnormal economic disruption" is a period of time during which normal business transactions in the state or a part of the state are disrupted, or are threatened to be disrupted, due to an emergency.

An emergency that causes a period of abnormal economic disruption can be a destructive act of nature such as a tornado, flood, fire, storm, or other natural event. Other emergencies can be a hostile action (an act of violence by a foreign power or terrorist), a strike or civil disorder, or a disruption of energy supplies to the degree that a serious risk is posed to the public.

Act 450 does not define "unreasonably excessive prices". It directs the Department of Agriculture, Trade and Consumer Protection (DATCP) to create administrative rules that establish formulas or other standards for use in determining whether a price is "unreasonably excessive".

ENFORCEMENT AND PENALTIES

DATCP is responsible for the enforcement of the law, as is the Department of Justice (DOJ) after consulting with DATCP. If the law is violated, DATCP or DOJ may issue a warning notice to the seller which specifies the action the seller is required to take so it will be within the law. The agencies may also commence a court action in the name of the state against the seller. If the agencies are successful, they may recover a civil forfeiture of not more than \$10,000 or may receive an order that temporarily or permanently restrains or enjoins the seller from charging unreasonably excessive prices, or both.

GOUGING LAWS IN OTHER STATES

Because there is no federal law that targets price gouging, many states have felt compelled to introduce or strengthen laws which address the issue. Rising gas prices affecting motor vehicle fuel and home heating costs are the current motivation for such legislation. However, the Federal Trade Commission (FTC) released a report in May 2006 in which it found no instances of illegal market manipulation to create higher gasoline prices. While the FTC did find 15 examples of price gouging as defined in the commission's appropriations legislation, it stated that most of the price increases could have been explained by other factors, such as local market trends.

The FTC did not support federal gasoline price gouging legislation in its report. The commission believes the law would be difficult to enforce and that consumers might be worse off if prices are distorted through legislation or regulation.

According to the FTC report, 29 states (not including Wisconsin) and the District of Columbia have price gouging laws. Most state laws are only applicable while a state of emergency is in effect. All four states directly affected by Hurricane Katrina (Alabama, Florida, Louisiana, and Mississippi) have such laws. Six states prohibit price increases above a specified percentage, and four states limit them to the wholesale price increase for retailers. Most states use nonspecific terms like "gross disparity" and "unconscionable". States that do not specifically target price gouging may prosecute offenders under other trade practice laws.

GAS PRICE LAWSUITS IN WISCONSIN

Wisconsin has used its trade practice laws to prosecute what it believes are unfair pricing practices. In May 2006, the Wisconsin Attorney General's Office announced that it was filing seven lawsuits around the state against the

owners of gasoline stations for allegedly violating state law. The complaints allege violations of Section 100.18 (8), Wisconsin Statutes, which prohibits sellers from changing motor fuel prices more than once in a 24-hour period. The seven companies named in the complaint are accused of violating that law in the aftermath of Hurricane Katrina. In some cases, the Attorney General's Office claims that the price changes occurred within less than an hour of each other.

Under the statute, the state is seeking an order to restrain the named companies from any further violations of the law. The courts may also order the companies to repay any customers affected by the violations. If they are found guilty, the companies are subject to civil forfeitures of not less than \$50 and not more than \$200 for each violation.

EFFECTS TO BE SEEN

What and how product pricing will be affected in Wisconsin by Act 450 will not be known until an incident requires the governor to declare a state of emergency. There is still debate on how other states' anti-gouging laws affected prices post-Katrina. However, the state legislature has acted to ensure that even if prices for some products do rise, sellers who would take unfair advantage of such a situation by charging unreasonable prices will be subject to prosecution by the state.

EFFECTIVE DATE

2005 Wisconsin Act 450 took effect June 10, 2006.

FOR FURTHER INFORMATION

View a copy of 2005 Wisconsin Act 450 at www.legis.state.wi.us/2005/data/acts/05Act450.pdf.

The FTC report on gas prices post-Katrina can be found at www.ftc.gov/reports/060518PublicGasolinePricesInvestigationReportFinal.pdf.