



Record Gas Prices Highlight the Need to Repeal Minimum Markup

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Recently, Governor Evers was among six Democratic Governors who asked the federal government to pause the federal gas tax in light of skyrocketing gasoline prices. Given the previous desire of the Governor to tie Wisconsin's gas tax to inflation, this was surprising. But as the average price of gas in the state surpasses \$4.00 per gallon, the need to work towards price reduction is apparently becoming bipartisan. While we'd welcome a reprieve from the federal gas tax, there is one antiquated policy here in Wisconsin that is playing a key role in expensive fuel—the minimum markup law.

Wisconsin's minimum markup law is a product of the Great Depression. At that time, there was a fear that large retailers would come in and engage and sell products at a loss ("Loss Leader") to drive small businesses out, before becoming something of a monopoly. Thus, a law was put in place to require that retailers increase the price of their gas by 9.18% over what they pay at wholesale. This means that gas stations are *required* to pass on price increases to consumers. A 2003 study supported that this price increase was not just theoretical. When the state strengthened the penalties for violating minimum markup laws, gasoline prices in the state increased by 6%.

This law applies not only to gasoline, but to other consumer products that have been subject to massive inflation in recent months as well. Outside of gas, alcohol and tobacco, Wisconsin retailers are prohibited from selling items at a loss, further driving up the cost of critical items like food.

Perhaps the law would be defensible if it actually accomplished what it sets out to do, but the evidence suggests that it doesn't even do that. In 2017, WILL partnered with Ike Brannon of the Cato Institute to examine the extent to which minimum markup laws protected small businesses. Comparing states that had both a gasoline-specific minimum markup law and general minimum markup law, we found no difference in the number of per capita small businesses in those states.

Indeed, in the modern era, the law may protect the same big retailers that it was designed to restrict. In general, bigger gas providers like these laws because they guarantee a profit on gas

sales while severely restricting the ability of alternative retailers to undercut them on price. This has made the repeal of this law that almost indisputably harms consumers all but impossible in the legislature.

As gas prices get higher and higher, the attractiveness for a retailer to even slightly undercut the markup as a means of driving customers to their outlet likely increases. Some retailers that have advocated for a repeal of the law, like Walmart, currently sell gas at razor-thin margins in other states but have been unable to do so in Wisconsin.

Of course, many other factors play a role in gas prices. Despite the presence of the minimum markup law, Wisconsin remains in the bottom third of states nationally in average price per gallon. This is not a silver bullet that will lead to dramatic shifts in prices. But even if the decline in prices is relatively small, it could make an important difference for families currently struggling under the weight of astronomical prices to fill their tank. The protection of retail profits in the name of an unproven Depression-era economic theory is increasingly untenable.