

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 986

Short Title: Motor Fuel Marketing Act. (Public)

Sponsors: Senators Hoyle; Apodaca, Dalton, Hartsell, Kerr, Soles, and Stevens.

Referred to: Commerce.

March 24, 2005

A BILL TO BE ENTITLED
AN ACT TO AMEND THE MOTOR FUEL MARKETING ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 75 of the General Statutes reads as rewritten:

"Article 3.

"Motor Fuel Marketing Act.

"§ 75-80. Title.

This Article shall be known and may be cited as the "Motor Fuel Marketing Act".

"§ 75-81. Definitions.

~~The following terms shall have the meanings ascribed to them~~ As used in this section unless otherwise stated and Article, unless the context or subject matter clearly indicates otherwise: ~~otherwise~~, the following definitions apply:

- (1) "Person" ~~shall mean~~ means any person, firm, association, organization, partnership, business trust, joint stock company, company, corporation or legal entity.
- (2) "Sale" ~~shall mean~~ means selling, offering for sale or advertising for sale.
- (3) "Motor Fuel" means motor fuel, as defined in G.S. 105-449.60, and alternative fuel, as defined in G.S. 105-449.130.
- (4) "Cost" or "Costs" ~~shall mean~~ means as follows:
 - a. For a refiner or terminal supplier, costs shall be presumed to be the refiner's or terminal supplier's prevailing price to the wholesale class of trade at the terminal used by the refiner or terminal supplier to obtain the motor fuel in question or the lowest prevailing price within 10 days prior to a sale alleged to be in violation of G.S. 75-82 hereof plus all transportation expenses including freight expenses (incurred and not otherwise included in the cost of the motor fuel), and motor fuel taxes. If a

1 refiner or terminal supplier does not regularly sell to the
2 wholesale class of trade at the terminal in question, then such
3 refiner or terminal supplier shall use as the prevailing price
4 either (i) the lowest price to the wholesale class of trade of
5 those other refiners or terminal suppliers at the same terminal
6 who regularly sell to the wholesaler class or (ii) a price
7 determined by using standard functional accounting procedures.

8 b. For all other sellers, cost includes the invoice or replacement
9 cost, whichever is less, of the grade, brand or blend, of motor
10 fuel within ~~10-~~ three days prior to the date of sale, in the
11 quantity or quantities last purchased, less all rebates and
12 discounts received at the wholesale level, including prompt
13 payment discounts and plus all applicable State, federal and
14 local taxes, and transportation expenses including freight
15 expenses, incurred and not otherwise included in the cost of the
16 motor fuel.

17 (5) "Prompt Payment Discounts" ~~shall mean~~ means any allowance for
18 payment within a specified time, but shall not include discounts for
19 cash made to the motoring public at motor fuel outlets.

20 (6) "Affiliate" ~~shall mean~~ means any person who (other than by means of
21 a franchise) controls, is controlled by or is under common control with,
22 any other person.

23 (7) "Motor Fuel Merchant" ~~is-~~ means any person selling motor fuel to the
24 public.

25 (8) "Motor Fuel Outlet" ~~is-~~ means any retail facility selling motor fuel to
26 the motoring public.

27 (9) ~~"New Retail Outlet" shall mean a new retail facility constructed from~~
28 ~~the ground or an existing retail facility that is offering motor fuel to the~~
29 ~~motoring public for the first time.~~

30 (10) "Refiner" ~~shall mean~~ means any person engaged in the production or
31 refining of motor fuel, whether such production or refining occurs in
32 this State or elsewhere, and includes any affiliate of such person or
33 firm.

34 (11) "Terminal Supplier" ~~shall mean~~ means any person engaged in selling
35 or brokering motor fuel to wholesalers or retailers from a storage
36 facility of more than 2,000,000 gallons capacity and such person has
37 an ownership interest in or control of the storage facility.

38 **"§ 75-82. Unlawful ~~below-cost selling;~~ motor fuel marketing; exceptions.**

39 (a) It shall be unlawful where the intent or effect is to injure competition for any
40 motor fuel merchant or the affiliate of any motor fuel merchant to sell with such
41 frequency as to indicate a general business practice of selling at a motor fuel outlet any
42 grade, brand or blend of motor fuel for less than the cost of that grade, brand or blend of
43 motor fuel ~~except where (i) the~~ unless either of the following applies:

1 (1) ~~The price is established in good faith to meet or compete with the~~
2 lower price of a competitor ~~in the same market area on the same level~~
3 of distribution selling the same or comparable product of like quality,
4 (ii) ~~the price remains in effect for no more than 10 days after the first~~
5 sale of that grade, brand or blend by the merchant at a new retail
6 outlet, (iii) ~~the sale is made in good faith to dispose of a grade, brand~~
7 or blend of motor fuel for the purpose of discontinuing sales of that
8 product, or (iv) ~~the quality.~~

9 (2) The sale is made pursuant to the order or authority of any court or
10 governmental agency.

11 (b) ~~For purposes of this Article, motor fuel cost shall be computed separately for~~
12 each grade, brand or blend of each motor fuel at each location where said motor fuel is
13 offered for sale; ~~however, nothing in this subsection shall prevent a motor fuel merchant~~
14 from using a weighted average motor fuel cost for comparable grade, brand or blend
15 when such motor fuel merchant is supplied by more than one refiner or terminal
16 supplier at one or more terminals.

17 (b) A party may rebut the presumption created by this section by presenting
18 evidence to establish that the party qualifies for an exception under subdivision (1) or
19 subdivision (2) of subsection (a) of this section.

20 (c) This Article shall apply only to retail sales of motor fuel at motor fuel
21 outlets.

22 (d) A violation of this section is an unfair method of competition under
23 G.S. 75-1.1.

24 "**§ 75-83. Unlawful inducement; civil penalty.**

25 It ~~shall be~~ is unlawful to knowingly induce, or to knowingly attempt to induce, a
26 violation of this Article, whether by otherwise lawful or unlawful means. In any action
27 initiated by the Attorney General, anyone found to have violated this provision shall be
28 subject to the civil penalty applicable to the sales made in violation of this Article; or, if
29 no sales were made, to a civil penalty of one thousand dollars (\$1,000). The clear
30 proceeds of any civil penalties imposed in any actions initiated by the Attorney General
31 under this section shall be remitted to the Civil Penalty and Forfeiture Fund in
32 accordance with G.S. 115C-457.2.

33 "**§ 75-84. Separate offenses; injunctions.**

34 Each act of establishing a price less than cost in violation of this Article shall
35 constitute a separate offense by the ~~seller~~ seller, and the civil penalty for each offense
36 shall be not more than one thousand dollars (\$1,000). Upon a proper showing by the
37 Attorney ~~General or his delegate,~~ General, further violations may be temporarily or
38 permanently enjoined.

39 The clear proceeds of civil penalties provided for in this section shall be remitted to
40 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

41 "**§ 75-85. Investigations by Attorney General.**

42 The Attorney General is authorized to investigate any allegation of a violation of this
43 Article made by a motor fuel merchant ~~or by an association~~ or group of motor fuel
44 merchants. If an investigation discloses a violation, the Attorney General may exercise

1 the authority under this Article to seek an injunction and ~~he~~ may also ~~seek~~ impose civil
2 penalties. The clear proceeds of civil penalties provided for in this section shall be
3 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

4 **"§ 75-86. Private actions.**

5 Any person, corporation, or other business entity ~~which~~ that is engaged in the sale
6 of motor fuel for resale or consumption and ~~which~~ that is directly or indirectly injured
7 by a violation of this Article may bring an action in the district court ~~district as defined~~
8 ~~in G.S. 7A-133~~ or superior court ~~district or set of districts as defined in G.S. 7A-41.1,~~ as
9 ~~the case may be,~~ of the county where the violation is alleged to have occurred to recover
10 ~~actual damages, exemplary damages, costs~~ treble damages, costs, and reasonable
11 attorneys' fees. The court shall also grant such equitable relief as is proper, including a
12 declaratory judgment and injunctive relief. Any action under this Article must be
13 brought within one year of the alleged violation.

14 **"§ 75-87. Private action presumptions.**

15 (a) In any private action brought under this Article, a violation shall be presumed
16 to have occurred ~~if: (i) the~~ if any of the following apply:

17 (1) The prevailing price under G.S. 75-81(4)(a) for any grade, brand or
18 blend of a motor fuel sold by a refiner or terminal supplier to a
19 wholesaler or retailer is greater than the price of the same grade, brand
20 or blend of motor fuel sold by such refiner or terminal supplier directly
21 through its own motor fuel outlet or through the outlet of an affiliate of
22 said refiner or terminal supplier; ~~or (ii) if the supplier.~~

23 (2) The product price of any grade, brand or blend of a motor fuel sold by
24 a wholesaler to a retailer is greater than the retail price of the same
25 grade, brand or blend of motor fuel sold by such wholesaler through its
26 own motor fuel outlet or the outlet of an affiliate of said wholesaler,
27 provided the method of delivery and quantities of each delivery of
28 motor fuel to the retailer and to the wholesaler's outlet or affiliate's
29 outlet are the same or comparable.

30 (3) A motor fuel merchant or affiliate of a motor fuel merchant sells motor
31 fuel for less than cost.

32 (b) A party may rebut the presumption created by this section by presenting
33 evidence to establish ~~his cost of the grade, brand or blend of motor fuel in question,~~ or
34 ~~by qualifying that the party qualifies~~ for an exception under subdivision (1) or
35 subdivision (2) of subsection (a) of G.S. 75-82.

36 **"§ 75-88. ~~Public disclosure.~~ disclosure; quantity of motor fuel available for sale.**

37 (a) Any refiner or terminal supplier computing prevailing price under the
38 provisions of ~~G.S. 75-81(4)(a)(i) or (ii)~~ G.S. 75-81(4) shall be required to publicly
39 disclose ~~said~~ this price.

40 (b) No entity shall limit the quantity of motor fuel sold or offered for sale from a
41 motor fuel pump to any one customer to a quantity less than the entire supply that is
42 owned or possessed by the seller and that the seller is authorized to sell at the place of
43 sale or offering for sale unless this subsection is preempted by a State or federal state of
44 emergency.

1 (c) Motor fuel purchased under this section shall be dispensed into a container
2 approved by the fire prevention code, the State Building Code as authorized under
3 G.S. 143-139, or a containment vehicle approved by the Department of Transportation.

4 (d) Each act that is in violation of this section shall constitute a separate offense
5 and is subject to a civil penalty. The civil penalty for each offense shall be not more
6 than five thousand dollars (\$5,000). Upon a proper showing by the Attorney General,
7 further violations may be temporarily or permanently enjoined. The proceeds of civil
8 penalties under this section shall be remitted to the Civil Penalty and Forfeiture Fund in
9 accordance with G.S. 115C-457.2.

10 **"§ 75-89. Powers and remedies supplementary.**

11 The powers and remedies provided by this Article shall be cumulative and
12 supplementary to all powers and remedies otherwise provided by law."

13 **SECTION 2.** This act becomes effective October 1, 2005, and applies to
14 sales of motor fuels and offers of sales of motor fuels on or after that date.