

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 343

Short Title: Amend/Motor Fuel Marketing Act.

(Public)

Sponsors: Senators Smith, Hunt; and Parnell.

Referred to: Judiciary I.

February 24, 1993

A BILL TO BE ENTITLED

AN ACT TO AMEND THE MOTOR FUEL MARKETING ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 75-81 reads as rewritten:

"§ 75-81. Definitions.

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

(1) ~~" Person" shall mean any person, firm, association, organization, partnership, business trust, joint stock company, company, corporation or legal entity.~~

(2) ~~" Sale" shall mean selling, offering for sale or advertising for sale.~~

(3) ~~" Motor Fuel" shall mean a refined or blended petroleum product used for the propulsion of self-propelled motor vehicles; "motor fuel" shall also include the same meaning as defined by G.S. 105-430(1) and fuel as defined by G.S. 105-449.2(3).~~

(4) ~~" Cost" or "Costs" shall mean 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 days prior to the date of sale, in the quantity or
11 quantities last purchased, less all rebates and discounts received
12 including prompt payment discounts and plus all applicable
13 State, federal and local taxes, and transportation expenses
14 including freight expenses, incurred and not otherwise included
15 in the cost of the motor fuel.

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

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

22 (7) " Motor Fuel Merchant" is any person selling motor fuel to the public.

23 (8) " Motor Fuel Outlet" is any retail facility selling motor fuel to the
24 motoring public.

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

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

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

35 The following definitions apply in this Article:

36 (1) Affiliate. – Any person who, other than by means of a franchise,
37 controls, is controlled by, or is under common control with any other
38 person.

39 (2) Area of Effective Competition. – The area in which a motor fuel outlet
40 competes with other motor fuel outlets. It shall be presumed that a
41 motor fuel outlet within three miles of another motor fuel outlet is in
42 competition with that motor fuel outlet.

- 1 (3) Controlled Motor Fuel Outlet. – A motor fuel outlet where a refiner, a
2 refiner's affiliate, or a distributor determines the consumer retail price
3 of motor fuel sold to the public.
- 4 (4) Cost. – The lowest price, less all discounts received, of a grade or
5 blend of motor fuel charged to the wholesale class of trade at the
6 terminal used by the refiner, distributor, or dealer in the normal course
7 of business to obtain the motor fuel in question within five days prior
8 to a sale alleged to be in violation of G.S. 75-82, plus the following
9 expenses directly attributable to the sale of motor fuel at the motor fuel
10 outlet in question:
- 11 a. Transportation expenses, including freight expenses, incurred
12 and not otherwise included in the amount charged for the motor
13 fuel.
- 14 b. Inspection fees incurred and not otherwise included in the
15 amount charged for the motor fuel.
- 16 c. Operating expenses.
- 17 For purposes of determining the lowest price to the wholesale class of
18 trade, the lowest price shall include only those prices offered which
19 resulted in bona fide sales made to independent purchasers not
20 affiliated with the seller.
- 21 (5) Dealer. – A person who purchases motor fuel from a refiner, a
22 distributor, or any other bulk seller of motor fuel for resale to the
23 public at a motor fuel outlet. A person who owns, operates, or
24 otherwise controls more than two motor fuel outlets shall be deemed a
25 distributor and not a dealer.
- 26 (6) Discount. – A reduction from the posted price, including any rebate
27 and any allowance for payment within a specified time. A reduction
28 does not include discounts for cash made to the motoring public at
29 motor fuel outlets.
- 30 (7) Distributor. – A person, other than a refiner, who purchases motor fuel
31 in bulk from a refiner or any other bulk seller of motor fuels for
32 distribution through its own motor fuel outlets, for distribution through
33 consignment accounts, for distribution through commercial accounts,
34 for resale to other distributors, or for resale to a dealer.
- 35 (8) Freight. – The per gallon rate at which a third party, unaffiliated
36 petroleum carrier will deliver motor fuel in tank truck quantities. The
37 per gallon rate shall be established by reference to a published
38 common carrier rate within the particular geographic area.
- 39 (9) Motor Fuel. – A refined or blended petroleum product, including any
40 additives, used for the propulsion of self-propelled motor vehicles.
41 The term includes 'motor fuel' as defined in G.S. 105-430 and 'fuel' as
42 defined in G.S. 105-449.2.
- 43 (10) Motor Fuel Merchant. – A person who sells motor fuel to the public.

- 1 (11) Motor Fuel Outlet. – A retail facility where motor fuel is sold to the
2 motoring public.
- 3 (12) Operating Expenses. – All expenses directly attributable to the sale of
4 motor fuel at a motor fuel outlet as calculated for the prior fiscal year.
5 The term includes accounting, advertising, cash shortages, credit,
6 depreciation, inventory, labor, licenses, maintenance, payroll,
7 promotions, property taxes and other operating taxes, refuse removal,
8 rent, repair, supplies, and utilities expenses. Operating expenses will
9 be allocated to motor fuel sales and sales of other products and
10 services based on the percentage of retail revenue each accounts for at
11 a motor fuel outlet. (Retail motor fuel revenue divided by total retail
12 revenue equals the percentage of operating expenses attributable to
13 motor fuel.)
- 14 (13) Person. – An individual, a firm, a partnership, an association, a
15 corporation, or any other organization or group acting as a unit.
- 16 (14) Price. – The amount charged by a refiner or distributor for motor fuel,
17 plus motor fuel taxes and less all discounts.
- 18 (15) Refiner. – A person and any affiliate of a person engaged in the
19 production or refining of motor fuel from crude oil, whether the
20 production or refining occurs in this State or elsewhere.
- 21 (16) Sale. – Selling, offering for sale or advertising for sale.
- 22 (17) Wholesale Class of Trade. – The term includes both branded
23 distributors purchasing motor fuel under a federally registered
24 trademark of a refiner and distributors purchasing other motor fuel in
25 bulk for redistribution or resale. In the event a refiner does not
26 regularly sell to distributors at a given terminal, the term includes
27 dealers."

28 Sec. 2. G.S. 75-82 reads as rewritten:

29 "§ 75-82. ~~Unlawful below~~ **(a) It shall be unlawful where the intent is to injure**
30 ~~competition for any motor fuel merchant or the affiliate of any motor~~
31 ~~fuel merchant to sell with such frequency as to indicate a general~~
32 ~~business practice of selling at a motor fuel outlet any grade, brand or~~
33 ~~blend of motor fuel for less than the cost of that grade, brand or blend of~~
34 ~~motor fuel except where (i) the price is established in good faith to meet~~
35 ~~or compete with the lower price of a competitor in the same market area~~
36 ~~on the same level of distribution selling the same or comparable product~~
37 ~~of like quality, (ii) the price remains in effect for no more than 10 days~~
38 ~~after the first sale of that grade, brand or blend by the merchant at a~~
39 ~~new retail outlet, (iii) the sale is made in good faith to dispose of a grade,~~
40 ~~brand or blend of motor fuel for the purpose of discontinuing sales of~~
41 ~~that product, or (iv) the sale is made pursuant to the order or authority~~
42 ~~of any court or governmental agency.~~

43 (b) For purposes of this Article, motor fuel cost shall be computed separately for
44 each grade, brand or blend of each motor fuel at each location where said motor fuel is

1 offered for sale; however, nothing in this subsection shall prevent a motor fuel merchant
2 from using a weighted average motor fuel cost for comparable grade, brand or blend
3 when such motor fuel merchant is supplied by more than one refiner or terminal
4 supplier at one or more terminals.

5 (e) This Article shall apply only to retail sales of motor fuel at motor fuel outlets.

6 (a) It shall be unlawful for a motor fuel merchant to sell at a motor fuel outlet any
7 grade or blend of motor fuel for less than the cost of that grade or blend of motor fuel,
8 as determined by G.S. 75-81.

9 (b) If the method of delivery and the quantity of each delivery of motor fuel to
10 the distributor or dealer and the controlled motor fuel outlet are comparable, it shall be
11 unlawful for:

12 (1) A refiner to sell at a controlled motor fuel outlet any grade or blend of
13 motor fuel for less than the highest price charged on that same day by
14 the refiner for that grade or blend of motor fuel to distributors or
15 dealers in the same area of effective competition, plus the refiner's
16 operating expenses at that motor fuel outlet.

17 (2) A distributor to sell at a controlled motor fuel outlet any grade or blend
18 of motor fuel for less than the highest price charged on that same day
19 by the distributor for that grade or blend of motor fuel to dealers in the
20 same area of effective competition, plus the distributor's operating
21 expenses at that motor fuel outlet.

22 (c) For purposes of this Article, motor fuel cost shall be computed separately for
23 each grade or blend of each motor fuel at each location where the motor fuel is offered
24 for sale.

25 (d) Nothing in this Article shall prevent a refiner or distributor from giving
26 volume discounts as long as the offer is made equally to all purchasers in a class of
27 trade."

28 Sec. 3. G.S. 75-83 reads as rewritten:

29 **"§ 75-83. Unlawful inducement; civil penalty.**

30 It shall be unlawful to knowingly violate any provision of this Article, or to
31 knowingly induce, or to knowingly induce or attempt to induce, induce a violation of this
32 Article, whether by otherwise lawful or unlawful means. In any action initiated by the
33 Attorney General, anyone found to have violated this provision shall be subject to the a
34 civil penalty applicable to the sales made in violation of this Article; or, if no sales were made,
35 to a civil penalty of one thousand dollars (\$1,000) of up to five thousand dollars (\$5,000).
36 Civil penalties assessed under this section shall be credited to the General Fund."

37 Sec. 4. G.S. 75-84 reads as rewritten:

38 **"§ 75-84. Separate offenses; injunctions.**

39 Each act of establishing a price act, for a day or part of a day, of selling motor fuel at a
40 retail price in violation of this Article shall constitute a separate offense by the seller and
41 the civil penalty for each offense shall be not more than one thousand dollars (\$1,000) seller.
42 Upon a proper showing by the Attorney General or his delegate, further violations may
43 be temporarily or permanently enjoined."

44 Sec. 5. G.S. 75-85 reads as rewritten:

1 **"§ 75-85. Investigations by Attorney General.**

2 The Attorney General is authorized to investigate any allegation of a violation of this
3 Article made by a ~~motor fuel merchant or by an association or group of motor fuel merchants.~~
4 any person. If an investigation discloses a violation, the Attorney General may exercise
5 the authority under this Article to seek an injunction and he may also seek civil
6 penalties. If the Attorney General prevails in an action under this Article, he shall
7 recover all costs and reasonable attorneys' fees."

8 Sec. 6. G.S. 75-86 reads as rewritten:

9 **"§ 75-86. ~~Private actions.~~ Enforcement actions.**

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

19 (b) A claimant who prevails in an action brought under this Article may recover
20 any one or more of the following:

21 (1) The actual damages suffered by the claimant, including, but not
22 limited to, the difference between the legal price and the actual price
23 charged.

24 (2) Threefold the actual damages sustained in the case of a knowing
25 violation of a provision of this Article or a willful disregard of a
26 provision of this Article.

27 (3) All costs and reasonable attorneys' fees.

28 (c) There shall be a right of trial by jury in any action brought under this act."

29 Sec. 7. G.S. 75-88 reads as rewritten:

30 **"§ 75-88. ~~Public disclosure.~~ disclosure and record keeping.**

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

33 (a) A refiner must disclose its prices to the wholesale class of trade, to motor fuel
34 merchants, and to the Attorney General on request. A refiner must also maintain
35 records of all motor fuel sales at each terminal for a period of three years.

36 (b) A motor fuel merchant who sells more than 360,000 gallons of motor fuel at a
37 motor fuel outlet in the prior year must keep the records required under this subsection
38 for that outlet in the subsequent year. A motor fuel merchant subject to this subsection
39 must maintain a record of its cost for motor fuel and its retail selling price of motor fuel.
40 The records must be kept for three years."

41 Sec. 8. This act becomes effective July 1, 1993, and applies to acts occurring
42 on or after that date.