

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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HOUSE BILL 1203\*  
Committee Substitute Favorable 4/29/03

Short Title: Amend Motor Fuel Marketing Act.

(Public)

Sponsors:

Referred to:

April 10, 2003

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE MOTOR FUEL MARKETING ACT.  
3 The General Assembly of North Carolina enacts:

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

6 "Article 3.

7 "Motor Fuel Marketing Act.

8 "§ 75-80. Title.

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

10 "§ 75-81. Definitions.

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

- 14 (1) 'Person' ~~shall mean~~ means any person, firm, association, organization,  
15 partnership, business trust, joint stock company, company, corporation  
16 or legal entity.
- 17 (2) 'Sale' ~~shall mean~~ means selling, offering for sale or advertising for sale.
- 18 (3) 'Motor Fuel' means motor fuel, as defined in G.S. 105-449.60, and  
19 alternative fuel, as defined in G.S. 105-449.130.
- 20 (4) 'Cost' or 'Costs' ~~shall mean as follows:~~

21 a. ~~For a refiner or terminal supplier, costs shall be presumed to be~~  
22 ~~the refiner's or terminal supplier's prevailing price to the~~  
23 ~~wholesale class of trade at the terminal used by the refiner or~~  
24 ~~terminal supplier to obtain the motor fuel in question or the~~  
25 ~~lowest prevailing price within 10 days prior to a sale alleged to~~  
26 ~~be in violation of G.S. 75-82 hereof plus all transportation~~  
27 ~~expenses including freight expenses (incurred and not otherwise~~  
28 ~~included in the cost of the motor fuel), and motor fuel taxes. If a~~  
29 ~~refiner or terminal supplier does not regularly sell to the~~

1 wholesale class of trade at the terminal in question, then such  
2 refiner or terminal supplier shall use as the prevailing price  
3 either (i) the lowest price to the wholesale class of trade of  
4 those other refiners or terminal suppliers at the same terminal  
5 who regularly sell to the wholesaler class or (ii) a price  
6 determined by using standard functional accounting procedures.

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

16 a. The most recently published average reseller rack cost of motor  
17 fuel by grade and quality, as calculated by the Oil Price  
18 Information Service (OPIS) for the particular terminal from  
19 which the motor fuel was delivered to the motor fuel merchant  
20 or the low OPIS Rack Price as reported by OPIS for the  
21 particular terminal from which the motor fuel was delivered to  
22 the motor fuel merchant, whichever is less.

23 b. The freight charges on the motor fuel.

24 c. All applicable State and federal excise taxes.

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

28 (6) ~~'Affiliate' shall mean~~means any person who (other than by means of a  
29 franchise) controls, is controlled by or is under common control with,  
30 any other person.

31 (7) ~~'Motor Fuel Merchant' is~~means any person selling motor fuel to the  
32 public.

33 (8) ~~'Motor Fuel Outlet' is~~means any retail facility selling motor fuel to the  
34 motoring public.

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

38 (10) ~~'Refiner' shall mean~~means any person engaged in the production or  
39 refining of motor fuel, whether such production or refining occurs in  
40 this State or elsewhere, and includes any affiliate of such person or  
41 firm.

42 (11) ~~'Terminal Supplier' shall mean~~means any person engaged in selling or  
43 brokering motor fuel to wholesalers or retailers from a storage facility

1 of more than 2,000,000 gallons capacity and such person has an  
2 ownership interest in or control of the storage facility.

3 **"§ 75-82. Unlawful below-cost selling; exceptions.**

4 (a) ~~It shall be unlawful where the intent is to injure competition for any~~ No motor  
5 fuel merchant or the affiliate of any motor fuel merchant ~~to shall~~ sell with such  
6 frequency as to indicate a general business practice of selling at a motor fuel outlet any  
7 grade, brand or blend of motor fuel for less than the cost of that grade, brand or blend  
8 of motor fuel except where (i) ~~the~~ unless either of the following applies:

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

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

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

25 (c) This Article ~~shall apply~~ applies only to retail sales of motor fuel at motor fuel  
26 outlets.

27 (d) A violation of this section is an unfair method of competition under G.S.  
28 75-1.1.

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

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

39 **"§ 75-84. Separate offenses; injunctions.**

40 Each act of establishing a price below cost in violation of this Article shall constitute  
41 a separate offense by the ~~seller~~ seller, and the civil penalty for each offense shall be not  
42 more than ~~one thousand dollars (\$1,000),~~ ten thousand dollars (\$10,000). Upon a proper  
43 showing by the Attorney General or ~~his delegate,~~ the Commissioner of Agriculture,  
44 further violations may be temporarily or permanently enjoined. The clear proceeds of

1 civil penalties provided for in this section shall be remitted to the Civil Penalty and  
2 Forfeiture Fund in accordance with G.S. 115C-457.2.

3 **"§ 75-85. Investigations by ~~Attorney General~~ Commissioner of Agriculture.**

4 ~~The Attorney General is authorized to~~ Notwithstanding G.S. 75-9, the Commissioner  
5 of Agriculture may investigate any allegation of a violation of this Article made by a  
6 motor fuel merchant or by an association or group of motor fuel merchants. If the  
7 Commissioner of Agriculture receives a complaint in writing that a motor fuel merchant  
8 is selling motor fuel below cost, the Commissioner of Agriculture shall investigate and  
9 determine within three business days of the receipt of the written complaint whether the  
10 allegations in the complaint are true. If an investigation discloses a violation, the  
11 Commissioner of Agriculture may request the Attorney General may to exercise the  
12 authority under this Article to seek an injunction and he may also seek impose civil  
13 penalties. The Commissioner of Agriculture may, in order to prevent further sales,  
14 request the Attorney General to seize and seal any dispensing pump or dispensing  
15 devices from which motor fuel is offered or exposed for sale in violation of this Article.  
16 Motor fuel that has been seized and sealed under this section shall not be offered for  
17 sale until the Commissioner of Agriculture and the Attorney General, after consultation,  
18 are satisfied that the motor fuel merchant has satisfied the requirements of this Article.  
19 The clear proceeds of civil penalties provided for in this section shall be remitted to the  
20 Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

21 **"§ 75-86. Private actions.**

22 Any person, corporation, or other business entity ~~which that~~ is engaged in the sale of  
23 motor fuel for resale or consumption and ~~which that~~ is directly or indirectly injured by a  
24 violation of this Article may bring an action in the district court ~~district as defined in~~  
25 ~~G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as~~  
26 ~~the case may be, of the county~~ where the violation is alleged to have occurred to recover  
27 ~~actual damages, exemplary damages, costs~~ treble damages under G.S. 75-16, costs, and  
28 reasonable attorneys' fees. The court shall also grant such equitable relief as is proper,  
29 including a declaratory judgment and injunctive relief. Any action under this Article  
30 must be brought within one year of the alleged violation.

31 **"§ 75-87. Private action presumptions.**

32 (a) In any private action brought under this Article, a violation shall be presumed  
33 to have occurred if: (i) the prevailing price ~~under G.S. 75-81(4)(a)~~ for any grade, brand  
34 or blend of a motor fuel sold by a refiner or terminal supplier to a wholesaler or retailer  
35 is greater than the price of the same grade, brand or blend of motor fuel sold by such  
36 refiner or terminal supplier directly through its own motor fuel outlet or through the  
37 outlet of an affiliate of said refiner or terminal supplier; or (ii) if the product price of any  
38 grade, brand or blend of a motor fuel sold by a wholesaler to a retailer is greater than the  
39 retail price of the same grade, brand or blend of motor fuel sold by such wholesaler  
40 through its own motor fuel outlet or the outlet of an affiliate of said wholesaler,  
41 provided the method of delivery and quantities of each delivery of motor fuel to the  
42 retailer and to the wholesaler's outlet or affiliate's outlet are the same or comparable.

43 (b) A party may rebut the presumption created by this section by presenting  
44 evidence to establish ~~his that~~ party's cost of the grade, brand or blend of motor fuel in

1 question, or by qualifying for an exception under subdivision (1) or subdivision (2) of  
2 subsection (a) of G.S. 75-82.

3 **"§ 75-88. ~~Public disclosure.~~disclosure; quantity of motor fuel available for sale.**

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

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

11 (c) Motor fuel purchased under this section shall be dispensed into a container  
12 approved by the fire prevention code, the State Building Code as authorized under G.S.  
13 143-139, or a containment vehicle approved by the Department of Transportation.

14 (d) Each act violating this section shall constitute a separate offense, and is  
15 subject to a civil penalty. The civil penalty for each offense shall be not more than five  
16 thousand dollars (\$5,000). Upon a proper showing by the Attorney General or the  
17 Commissioner of Agriculture, further violations may be temporarily or permanently  
18 enjoined. The clear proceeds of civil penalties provided for in this section shall be  
19 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

20 **"§ 75-89. Powers and remedies supplementary.**

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

23 **SECTION 2.** This act becomes effective October 1, 2003, and applies to  
24 sales of motor fuels and offers of sale of motor fuel on or after that date.