

1 HB411
2 168425-5
3 By Representative McCutcheon
4 RFD: Commerce and Small Business
5 First Read: 02-APR-15

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ENROLLED, An Act,

To amend Sections 8-22-2, 8-22-4, 8-22-8, and 8-22-10, Code of Alabama 1975, relating to the Motor Fuel Marketing Act; to revise and clarify legislative intent relating to combined sales of motor fuel and other goods.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 8-22-2, 8-22-4, 8-22-8, and 8-22-10 of the Code of Alabama 1975, are amended to read as follows:

"§8-22-2.

"The Legislature makes the following findings with respect to the marketing of motor fuel in Alabama:

"(1) Marketing of motor fuel is affected with the public interest.

"(2) Unfair competition in the marketing of motor fuel occurs whenever costs associated with the marketing of motor fuel are recovered from other operations, allowing the refined motor fuel to be sold at subsidized prices. Such subsidies most commonly occur in one of three ways: when refiners use profits from refining of crude oil to cover below normal or negative returns earned from motor fuel marketing operations; and where a marketer with more than one location uses profits from one location to cover losses from below-cost selling of motor fuel at another location; ~~and where a~~

1 ~~business uses profits from nonmotor fuel sales to cover losses~~
2 ~~from below-cost selling of motor fuel.~~

3 "(3) Independent motor fuel marketers (i.e.,
4 dealers, distributors, jobbers, and wholesalers) are unable to
5 survive predatory subsidized pricing at the marketing level by
6 persons when all of an independent's income comes from
7 marketing operations.

8 "(4) Subsidized pricing is inherently predatory and
9 is reducing competition in the petroleum industry, and if it
10 continues unabated, will ultimately threaten the consuming
11 public.

12 "§8-22-4.

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

17 "(1) PERSON. Any person, firm, association,
18 organization, partnership, business trust, joint stock
19 company, company, corporation, or legal entity.

20 "(2) MOTOR FUEL. Those products upon which the state
21 excise tax levied, or defined, in Sections 40-17-1 through
22 40-17-52 and 40-17-170, as amended, is imposed.

23 "(3) WHOLESALER. Includes any person qualified as a
24 wholesaler of motor fuel with the state Revenue Commissioner,
25 and shall also mean and include any person, other than a

1 buying pool defined herein, wherever resident or located, who
 2 brings or causes to be brought into this state motor fuel
 3 purchased directly from the manufacturer thereof.

4 "(4) WHOLESALE DISTRIBUTION. Any person, or the act
 5 of any person, including any affiliate of such person, in
 6 commerce within the state, who purchases motor fuel for sale,
 7 consignment or distribution to another, or, receives motor
 8 fuel on consignment for consignment or distribution to his own
 9 motor fuel accounts or to accounts of his supplier, but shall
 10 not include a person who is an employee of, or merely serves
 11 as, a common carrier providing transportation services for
 12 such supplier.

13 "(5) RETAILER. Includes any person who is engaged in
 14 this state in the business of selling motor fuel at retail to
 15 the general public for ultimate consumption, and includes any
 16 group of persons, cooperative organizations, buying pools and
 17 any other person or group purchasing motor fuel on a
 18 cooperative basis from licensed distributors or wholesalers.

19 "(6) BUYING POOL. Includes any combination,
 20 corporation, association, affiliation or group of retail
 21 dealers operating jointly in the purchase, sale, exchange or
 22 barter of motor fuel, the profits of which accrue directly or
 23 indirectly to such retail dealers.

24 "(7) SALE or SELL. Any transfer for a combination,
 25 exchange, barter, gift, offer for sale, advertising for sale,

1 soliciting an order for motor fuel and distribution in any
2 manner or by any means whatsoever.

3 "(8) SELL AT WHOLESALE, SALE AT WHOLESALE and
4 WHOLESALES. Includes any sale made in the ordinary course of
5 trade or usual conduct of the wholesaler's business to a
6 retailer for the purpose of resale.

7 "(9) SELL AT RETAIL, SALE AT RETAIL and RETAIL
8 SALES. Includes any sale for consumption or use in the
9 ordinary course of trade or usual conduct of the seller's
10 business.

11 "(10) CUSTOMARY DISCOUNT FOR CASH. Includes any
12 allowance, whether a part of a larger discount or not, made to
13 a wholesaler or retailer when such person pays for motor fuel
14 within a limited or specified time.

15 "(11) REFINER. Any person engaged in the production
16 or refining of motor fuel, whether such production or refining
17 occurs in this state or elsewhere, and includes any affiliate
18 of such person.

19 "(12) COST TO REFINER. That refiner's posted
20 terminal price to the wholesale class of trade. In the event a
21 refiner does not regularly sell to the wholesale class of
22 trade at that terminal or does not post such a terminal price,
23 it may use as its cost the posted price of any other refiner
24 at any terminal within the general trade area which has

1 products readily available for sale to the wholesale class of
2 trade.

3 "(13) COMPETITION. Includes any person who competes
4 with another person in the same market area at the same level
5 of distribution.

6 "(14) BASIC COST OF MOTOR FUEL. Whichever of the two
7 following amounts is lower, namely, (i) the most recent
8 invoice cost of motor fuel to the wholesaler or retailer, as
9 the case may be, or (ii) the ~~lowest replacement~~
10 weighted-average cost of motor fuel to the wholesaler or
11 retailer, as the case may be, ~~within five days prior to the~~
12 ~~date of sale, in the quantity last purchased (whether within~~
13 ~~or before the said five-day period), less,~~ in either of said
14 two cases, all trade discounts except customary discounts for
15 cash, plus the full value of freight costs and any taxes which
16 may be required by law, now in effect or hereafter enacted, if
17 not already included in the invoice cost of the motor fuel to
18 the wholesaler or retailer, as the case may be. In computing
19 its basic cost of motor fuel, its cost of doing business and
20 in meeting competition under Section 8-22-8; a refiner that
21 assesses a processing fee of any kind for credit card
22 transactions must assess such fees in a like manner to its
23 affiliates.

24 "(15) COST TO WHOLESALER. As applied to wholesale
25 distribution, the most recent invoice or ~~replacement~~

1 weighted-average cost of the motor fuel ~~within five days prior~~
2 ~~to the date of sale, in the quantity last purchased,~~ whichever
3 is less, less all trade discounts except customary discounts
4 for cash, to which shall be added all applicable state,
5 federal and local taxes, inspection fees, freight charges not
6 otherwise included in the cost of motor fuel, cartage to the
7 retail outlet, if paid by the wholesaler, plus the cost of
8 doing business.

9 "(16) COST TO RETAILER. As applied to retail sales,
10 the most recent invoice or ~~replacement~~ weighted-average cost
11 of the motor fuel ~~within five days prior to the date of sale,~~
12 ~~in the quantity last purchased,~~ whichever is less, less all
13 trade discounts except customary discounts for cash, to which
14 shall be added all applicable state, federal and local taxes,
15 inspection fees, freight cost, if paid by the retailer, plus
16 the cost of doing business.

17 "(17) COST OF DOING BUSINESS or OVERHEAD EXPENSES.
18 Includes all costs incurred in the conduct of business,
19 including but not limited to: labor (including salaries of
20 executives and officers), rent (which rent must be no less
21 than fair market value based on current use), interest on
22 borrowed capital, depreciation, selling cost, maintenance of
23 equipment, transportation or freight cost, losses due to
24 breakage or damage; credit card fees, or other charges; credit

1 losses, all types of licenses, taxes, insurance, and
 2 advertising.

3 "(18) TRANSFER PRICE. Includes the price used by a
 4 person in transferring motor fuel to itself or an affiliate
 5 for resale at another marketing level. Such price shall be
 6 determined using standard, functional accounting procedures.

7 "(19) AFFILIATE. Any person who (other than by means
 8 of franchise) controls, is controlled by, or is under common
 9 control with, any other person.

10 "(20) OTHER GOODS. Any other articles, products,
 11 commodities, gifts, or concessions sold in a combined sale
 12 with motor fuel.

13 "(21) BASIC COST OF OTHER GOODS. The lower of the
 14 two following amounts:

15 "a. The most recent invoice cost of other goods to
 16 the wholesaler or retailer, as the case may be, less all trade
 17 discounts except customary discounts for cash, plus the full
 18 value of freight costs and any taxes which may be required by
 19 law, now in effect or hereafter enacted, if not already
 20 included in the invoice cost of the other goods to the
 21 wholesaler or retailer, as the case may be.

22 "b. The weighted-average cost of other goods to the
 23 wholesaler or retailer, as the case may be, less all trade
 24 discounts except customary discounts for cash, plus the full
 25 value of freight costs and any taxes which may be required by

1 law, now in effect or hereafter enacted, if not already
2 included in the invoice cost of the other goods to the
3 wholesaler or retailer, as the case may be.

4 "§8-22-8.

5 "(a) It is not a violation of this chapter if a
6 difference exists between the transfer price or sales price of
7 motor fuel of like grade and quality and the price charged to
8 a person who purchases for resale at the same level of
9 distribution, including any discounts, rebates, allowances,
10 services, facilities granted any of a supplier's own marketing
11 operations in excess of those provided to a person who
12 purchases for resale at the same level of distribution, if the
13 lower price is due to a cost differential incurred because of
14 a difference in shipping method, transportation, marketing,
15 sale or quantity, in which such motor fuel is sold.

16 "(b) It is not a violation of this chapter if any
17 price is established in good faith to meet an equally low
18 price of a competitor in the same market area on the same
19 level of distribution selling the same or a similar product of
20 like grade and quality or is exempt under Section 8-22-13.

21 "(c) It is not a violation of this chapter for a
22 retailer to offer to sell, or sell, motor fuel in a combined
23 sale with other goods when the retailer's combined selling
24 price is not below the cost to the retailer of all motor fuel
25 and other goods included in the transactions. A combined sale

1 permitted by this chapter includes both contemporaneous sales
2 and also sales or series of sales that are not
3 contemporaneous, including where the purchaser receives
4 accrued discounts or credits on motor fuel as a result of the
5 purchaser's earlier purchases of other goods from the
6 retailer.

7 "§8-22-10.

8 "In all advertisements, offers for sale or sales
9 involving two or more items, at least one of which items is
10 motor fuel, at a combined price, and in all advertisements,
11 offers of sale, or sales, involving the giving of any gift or
12 concession of any kind whatsoever (whether it be coupons or
13 otherwise), the wholesaler's or retailer's combined selling
14 price shall not be below the cost to the wholesaler or the
15 cost to the retailer, respectively, of the total of all
16 ~~articles, products, commodities, gifts, and concessions~~
17 ~~included in such transactions, except that if any such~~
18 ~~articles, products, commodities, gifts, or concessions, shall~~
19 ~~not be motor fuel, the basic cost thereof shall be determined~~
20 ~~in like manner as provided in subdivision (14) of Section~~
21 ~~8-22-4 motor fuel and other goods."~~

22 Section 2. This act shall become effective
23 immediately following its passage and approval by the
24 Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 12-MAY-15, as amended.

Jeff Woodard
Clerk

Senate

19-MAY-15

Passed