

1 SB434  
2 168625-1  
3 By Senator Holtzclaw  
4 RFD: Fiscal Responsibility and Economic Development  
5 First Read: 30-APR-15

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8 SYNOPSIS: This bill would clarify and simplify  
9 existing law relating to combined sales of motor  
10 fuel and other goods under the Motor Fuel Marketing  
11 Act.

12  
13 A BILL  
14 TO BE ENTITLED  
15 AN ACT  
16

17 To amend Sections 8-22-2, 8-22-4, 8-22-8, and  
18 8-22-10, Code of Alabama 1975, relating to the Motor Fuel  
19 Marketing Act; to revise and clarify legislative intent  
20 relating to combined sales of motor fuel and other goods.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Sections 8-22-2, 8-22-4, 8-22-8, and  
23 8-22-10 of the Code of Alabama 1975, are amended to read as  
24 follows:

25 "§8-22-2.

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

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

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

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

20           "(4) Subsidized pricing is inherently predatory and  
21 is reducing competition in the petroleum industry, and if it  
22 continues unabated, will ultimately threaten the consuming  
23 public.

24           "§8-22-4.

25           "The following terms shall have the meanings  
26 ascribed to them in this section unless otherwise stated and

1 unless the context or subject matter clearly indicates  
2 otherwise:

3 "(1) PERSON. Any person, firm, association,  
4 organization, partnership, business trust, joint stock  
5 company, company, corporation, or legal entity.

6 "(2) MOTOR FUEL. Those products upon which the state  
7 excise tax levied, or defined, in Sections 40-17-1 through  
8 40-17-52 and 40-17-170, as amended, is imposed.

9 "(3) WHOLESALER. Includes any person qualified as a  
10 wholesaler of motor fuel with the state Revenue Commissioner,  
11 and shall also mean and include any person, other than a  
12 buying pool defined herein, wherever resident or located, who  
13 brings or causes to be brought into this state motor fuel  
14 purchased directly from the manufacturer thereof.

15 "(4) WHOLESALE DISTRIBUTION. Any person, or the act  
16 of any person, including any affiliate of such person, in  
17 commerce within the state, who purchases motor fuel for sale,  
18 consignment or distribution to another, or, receives motor  
19 fuel on consignment for consignment or distribution to his own  
20 motor fuel accounts or to accounts of his supplier, but shall  
21 not include a person who is an employee of, or merely serves  
22 as, a common carrier providing transportation services for  
23 such supplier.

24 "(5) RETAILER. Includes any person who is engaged in  
25 this state in the business of selling motor fuel at retail to  
26 the general public for ultimate consumption, and includes any  
27 group of persons, cooperative organizations, buying pools and

1 any other person or group purchasing motor fuel on a  
2 cooperative basis from licensed distributors or wholesalers.

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

8 "(7) SALE or SELL. Any transfer for a combination,  
9 exchange, barter, gift, offer for sale, advertising for sale,  
10 soliciting an order for motor fuel and distribution in any  
11 manner or by any means whatsoever.

12 "(8) SELL AT WHOLESALE, SALE AT WHOLESALE and  
13 WHOLESALERS. Includes any sale made in the ordinary course of  
14 trade or usual conduct of the wholesaler's business to a  
15 retailer for the purpose of resale.

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

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

24 "(11) REFINER. Any person engaged in the production  
25 or refining of motor fuel, whether such production or refining  
26 occurs in this state or elsewhere, and includes any affiliate  
27 of such person.

1           "(12) COST TO REFINER. That refiner's posted  
2 terminal price to the wholesale class of trade. In the event a  
3 refiner does not regularly sell to the wholesale class of  
4 trade at that terminal or does not post such a terminal price,  
5 it may use as its cost the posted price of any other refiner  
6 at any terminal within the general trade area which has  
7 products readily available for sale to the wholesale class of  
8 trade.

9           "(13) COMPETITION. Includes any person who competes  
10 with another person in the same market area at the same level  
11 of distribution.

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

1 transactions must assess such fees in a like manner to its  
2 affiliates.

3 "(15) COST TO WHOLESALER. As applied to wholesale  
4 distribution, the most recent invoice or ~~replacement~~  
5 weighted-average cost of the motor fuel ~~within five days prior~~  
6 ~~to the date of sale, in the quantity last purchased,~~ whichever  
7 is less, less all trade discounts except customary discounts  
8 for cash, to which shall be added all applicable state,  
9 federal and local taxes, inspection fees, freight charges not  
10 otherwise included in the cost of motor fuel, cartage to the  
11 retail outlet, if paid by the wholesaler, plus the cost of  
12 doing business.

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

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

1 breakage or damage; credit card fees, or other charges; credit  
2 losses, all types of licenses, taxes, insurance, and  
3 advertising.

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

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

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

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

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

23 "b. The weighted-average cost of other goods to the  
24 wholesaler or retailer, as the case may be, less all trade  
25 discounts except customary discounts for cash, plus the full  
26 value of freight costs and any taxes which may be required by  
27 law, now in effect or hereafter enacted, if not already



1 included in the invoice cost of the other goods to the  
2 wholesaler or retailer, as the case may be.

3 "§8-22-8.

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

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

20 "(c) It is not a violation of this chapter for a  
21 retailer to offer to sell, or sell, motor fuel in a combined  
22 sale with other goods when the retailer's combined selling  
23 price is not below the cost to the retailer of all motor fuel  
24 and other goods included in the transactions. A combined sale  
25 permitted by this chapter includes both contemporaneous sales  
26 and also sales or series of sales that are not  
27 contemporaneous, including where the purchaser receives

1 accrued discounts or credits on motor fuel as a result of the  
2 purchaser's earlier purchases of other goods from the  
3 retailer.

4 "§8-22-10.

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

19 Section 2. This act shall become effective  
20 immediately following its passage and approval by the  
21 Governor, or its otherwise becoming law.