

1           HB411  
2        165378-2  
3        By Representative McCutcheon  
4        RFD: Commerce and Small Business  
5        First Read: 02-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 WHOLESALES. 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.

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

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

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

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

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

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

20 "(17) COST OF DOING BUSINESS or OVERHEAD EXPENSES.  
21 Includes all costs incurred in the conduct of business,  
22 including but not limited to: labor (including salaries of  
23 executives and officers), rent (which rent must be no less  
24 than fair market value based on current use), interest on  
25 borrowed capital, depreciation, selling cost, maintenance of  
26 equipment, transportation or freight cost, losses due to  
27 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 as described in Section 8-22-10.

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

15 "a. The invoice cost of other goods to the  
16 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 lowest replacement cost of other goods to  
23 the wholesaler or retailer, as the case may be, within five  
24 days before the date of the sale, in the quantity last  
25 purchased, whether within or before the five-day period, less  
26 all trade discounts except customary discounts for cash, plus  
27 the full value of freight costs and any taxes which may be

1       required by law, now in effect or hereafter enacted, if not  
2       already 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.

26               "§8-22-10.

"In all advertisements, offers for sale or sales involving two or more items, at least one of which items is motor fuel, at a combined price, and in all advertisements, offers of sale, or sales, involving the giving of any gift or concession of any kind whatsoever (whether it be coupons or otherwise), the wholesaler's or retailer's combined selling price shall not be below the cost to the wholesaler or the cost to the retailer, respectively, of the total of all ~~articles, products, commodities, gifts, and concessions included in such transactions, except that if any such articles, products, commodities, gifts, or concessions, shall not be motor fuel, the basic cost thereof shall be determined in like manner as provided in subdivision (14) of Section 8-22-4~~ motor fuel and other goods. Such offers of sale or sales shall be conclusively deemed not to have the effect of injuring competition or violating this chapter if the combined cost of the motor fuel and other goods does not exceed the combined price of the motor fuel and other goods."

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