

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.

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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 invoice cost of
14 motor fuel to the wholesaler or retailer, as the case may be,
15 or (ii) the lowest replacement cost of motor fuel to the
16 wholesaler or retailer, as the case may be, within five days
17 prior to the date of sale, in the quantity last purchased
18 (whether within or before the said five-day period), less, in
19 either of said two cases, all trade discounts except customary
20 discounts for cash, plus the full value of freight costs and
21 any taxes which may be required by law, now in effect or
22 hereafter enacted, if not already included in the invoice cost
23 of the motor fuel to the wholesaler or retailer, as the case
24 may be. In computing its basic cost of motor fuel, its cost of
25 doing business and in meeting competition under Section
26 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.

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