

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

ENGROSSED

A BILL

TO BE ENTITLED

## 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

1 operations; and where a marketer with more than one location  
2 uses profits from one location to cover losses from below-cost  
3 selling of motor fuel at another location; ~~and where a~~  
4 ~~business uses profits from nonmotor fuel sales to cover losses~~  
5 ~~from below-cost selling of motor fuel.~~

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

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

15 "§8-22-4.

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

20 "(1) PERSON. Any person, firm, association,  
21 organization, partnership, business trust, joint stock  
22 company, company, corporation, or legal entity.

23 "(2) MOTOR FUEL. Those products upon which the state  
24 excise tax levied, or defined, in Sections 40-17-1 through  
25 40-17-52 and 40-17-170, as amended, is imposed.

26 "(3) WHOLESALER. Includes any person qualified as a  
27 wholesaler of motor fuel with the state Revenue Commissioner,

1 and shall also mean and include any person, other than a  
2 buying pool defined herein, wherever resident or located, who  
3 brings or causes to be brought into this state motor fuel  
4 purchased directly from the manufacturer thereof.

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

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

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

25 "(7) SALE or SELL. Any transfer for a combination,  
26 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  
25 products readily available for sale to the wholesale class of  
26 trade.

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

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

22                         "(15) COST TO WHOLESALER. As applied to wholesale  
23 distribution, the most recent invoice or ~~replacement~~  
24 weighted-average cost of the motor fuel ~~within five days prior~~  
25 ~~to the date of sale, in the quantity last purchased,~~ whichever  
26 is less, less all trade discounts except customary discounts  
27 for cash, to which shall be added all applicable state,

1       federal and local taxes, inspection fees, freight charges not  
2       otherwise included in the cost of motor fuel, cartage to the  
3       retail outlet, if paid by the wholesaler, plus the cost of  
4       doing business.

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

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

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

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

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

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

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

16                         "b. The weighted-average cost of other goods to the  
17 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                         "§8-22-8.

24                         "(a) It is not a violation of this chapter if a  
25 difference exists between the transfer price or sales price of  
26 motor fuel of like grade and quality and the price charged to  
27 a person who purchases for resale at the same level of

1 distribution, including any discounts, rebates, allowances,  
2 services, facilities granted any of a supplier's own marketing  
3 operations in excess of those provided to a person who  
4 purchases for resale at the same level of distribution, if the  
5 lower price is due to a cost differential incurred because of  
6 a difference in shipping method, transportation, marketing,  
7 sale or quantity, in which such motor fuel is sold.

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

13 "(c) It is not a violation of this chapter for a  
14 retailer to offer to sell, or sell, motor fuel in a combined  
15 sale with other goods when the retailer's combined selling  
16 price is not below the cost to the retailer of all motor fuel  
17 and other goods included in the transactions. A combined sale  
18 permitted by this chapter includes both contemporaneous sales  
19 and also sales or series of sales that are not  
20 contemporaneous, including where the purchaser receives  
21 accrued discounts or credits on motor fuel as a result of the  
22 purchaser's earlier purchases of other goods from the  
23 retailer.

24 "§8-22-10.

25 "In all advertisements, offers for sale or sales  
26 involving two or more items, at least one of which items is  
27 motor fuel, at a combined price, and in all advertisements,

1 offers of sale, or sales, involving the giving of any gift or  
2 concession of any kind whatsoever (whether it be coupons or  
3 otherwise), the wholesaler's or retailer's combined selling  
4 price shall not be below the cost to the wholesaler or the  
5 cost to the retailer, respectively, of the total of all  
6 ~~articles, products, commodities, gifts, and concessions~~  
7 ~~included in such transactions, except that if any such~~  
8 ~~articles, products, commodities, gifts, or concessions, shall~~  
9 ~~not be motor fuel, the basic cost thereof shall be determined~~  
10 ~~in like manner as provided in subdivision (14) of Section~~  
11 ~~8-22-4 motor fuel and other goods."~~

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

## House of Representatives

Read for the first time and referred to the House of Representatives committee on Commerce and Small Business..... 02-APR-15

Read for the second time and placed  
on the calendar with 1 substitute  
and..... . . . . . 30-APR-15

Yeas 104, Nays 0, Abstains 0

Jeff Woodard  
Clerk