

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 972
SENATE BILL 73

AN ACT TO CREATE THE MOTOR FUEL MARKETING ACT IN ORDER TO ENCOURAGE FAIR AND HONEST COMPETITION AND TO SAFEGUARD THE PUBLIC AGAINST UNFAIR PRACTICES INVOLVING THE SALE OF MOTOR FUEL.

The General Assembly of North Carolina enacts:

Section 1. Chapter 75 of the General Statutes of North Carolina is amended by adding a new Article 3 as follows:

"Article 3.

"Motor Fuel Marketing Act.

"§ 75-80. **Title.** – This act shall be known and may be cited as the 'Motor Fuel Marketing Act'.

"§ 75-81. **Definitions.** – The following terms shall have the meanings ascribed to them in this section unless otherwise stated and unless the context or subject matter clearly indicates otherwise:

- (1) 'Person' shall mean any person, firm, association, organization, partnership, business trust, joint stock company, company, corporation or legal entity.
- (2) 'Sale' shall mean selling, offering for sale or advertising for sale.
- (3) 'Motor Fuel' shall mean a refined or blended petroleum product used for the propulsion of self-propelled motor vehicles; 'motor fuel' shall also include the same meaning as defined by G.S. 105-430(1) and fuel as defined by G.S. 105-449.2(3).
- (4) 'Cost' or 'Costs' shall mean as follows:

(a) For a refiner or terminal supplier, costs shall be presumed to be the refiner's or terminal supplier's prevailing price to the wholesale class of trade at the terminal used by the refiner or terminal supplier to obtain the motor fuel in question or the lowest prevailing price within ten days prior to a sale alleged to be in violation of G.S. 75-82 hereof plus all transportation expenses including freight expenses (incurred and not otherwise included in the cost of the motor fuel), and motor fuel taxes. If a refiner or terminal supplier does not regularly sell to the wholesale class of trade at the terminal in question, then such refiner or terminal supplier shall use as the prevailing price either (i) the lowest price to the wholesale class of trade of those other refiners or terminal suppliers at the same terminal who regularly sell to the wholesaler class or (ii) a price determined by using standard functional accounting procedures.

(b) For all other sellers, cost includes the invoice or replacement cost, whichever is less, of the grade, brand or blend, of motor fuel within ten days prior to the date of sale, in the quantity or quantities last purchased, less all rebates and discounts received including prompt payment discounts and plus all applicable State, federal and local taxes, and transportation expenses including freight expenses, incurred and not otherwise included in the cost of the motor fuel.

- (5) 'Prompt Payment Discounts' shall mean any allowance for payment within a specified time, but shall not include discounts for cash made to the motoring public at motor fuel outlets.
- (6) 'Affiliate' shall mean any person who (other than by means of a franchise) controls, is controlled by or is under common control with, any other person.
- (7) 'Motor Fuel Merchant' is any person selling motor fuel to the public.
- (8) 'Motor Fuel Outlet' is any retail facility selling motor fuel to the motoring public.
- (9) 'New Retail Outlet' shall mean a new retail facility constructed from the ground or an existing retail facility that is offering motor fuel to the motoring public for the first time.
- (10) 'Refiner' shall mean any person engaged in the production or refining of motor fuel, whether such production or refining occurs in this State or elsewhere, and includes any affiliate of such person or firm.
- (11) 'Terminal Supplier' shall mean any person engaged in selling or brokering motor fuel to wholesalers or retailers from a storage facility of more than 2,000,000 gallons capacity and such person has an ownership interest in or control of the storage facility.

"§ 75-82. Unlawful below-cost selling; exceptions. – (a) It shall be unlawful where the intent is to injure competition for any motor fuel merchant or the affiliate of any motor fuel merchant to sell with such frequency as to indicate a general business practice of selling at a motor fuel outlet any grade, brand or blend of motor fuel for less than the cost of that grade, brand or blend of motor fuel except where (i) the price is established in good faith to meet or compete with the lower price of a competitor in the same market area on the same level of distribution selling the same or comparable product of like quality, (ii) the price remains in effect for no more than 10 days after the first sale of that grade, brand or blend by the merchant at a new retail outlet, (iii) the sale is made in good faith to dispose of a grade, brand or blend of motor fuel for the purpose of discontinuing sales of that product, or (iv) the sale is made pursuant to the order or authority of any court or governmental agency.

(b) For purposes of this act, motor fuel cost shall be computed separately for each grade, brand or blend of each motor fuel at each location where said motor fuel is offered for sale; however, nothing in this subsection shall prevent a motor fuel merchant from using a weighted average motor fuel cost for comparable grade, brand or blend when such motor fuel merchant is supplied by more than one refiner or terminal supplier at one or more terminals.

(c) This act shall apply only to retail sales of motor fuel at motor fuel outlets.

"§ 75-83. Unlawful inducement; civil penalty. – It shall be unlawful to knowingly induce, or to knowingly attempt to induce, a violation of this Article, whether by otherwise lawful or unlawful means. In any action initiated by the Attorney General, anyone found to have violated this provision shall be subject to the civil penalty applicable to the sales made in violation of this Article; or, if no sales were made, to a civil penalty of one thousand dollars (\$1,000).

"§ 75-84. Separate offenses; injunctions. – Each act of establishing a price in violation of this Article shall constitute a separate offense by the seller and the civil penalty for each offense shall be not more than one thousand dollars (\$1,000). Upon a proper showing by the Attorney General or his delegate, further violations may be temporarily or permanently enjoined.

"§ 75-85. Investigations by Attorney General. – The Attorney General is authorized to investigate any allegation of a violation of this Article made by a motor fuel merchant or by an association or group of motor fuel merchants. If an investigation discloses a violation, the Attorney General may exercise the authority under this Article to seek an injunction and he may also seek civil penalties.

"§ 75-86. Private actions. – Any person, corporation, or other business entity which is engaged in the sale of motor fuel for resale or consumption and which is directly or indirectly injured by a violation of this Article may bring an action in the judicial district where the violation is alleged to have occurred to recover actual damages, exemplary damages, costs and reasonable attorneys' fees. The court shall also grant such equitable relief as is proper, including a declaratory judgment and injunctive relief. Any action under this Article must be brought within one year of the alleged violation.

"§ 75-87. Private action presumptions. – (a) In any private action brought under this Article, a violation shall be presumed to have occurred if: (i) the prevailing price under G.S. 75- 81(4)(a) for any grade, brand or blend of a motor fuel sold by a refiner or terminal supplier to a wholesaler or retailer is greater than the price of the same grade, brand or blend of motor fuel sold by such refiner or terminal supplier directly through its own motor fuel outlet or through the outlet of an affiliate of said refiner or terminal supplier; or (ii) if the product price of any grade, brand or blend of a motor fuel sold by a wholesaler to a retailer is greater than the retail price of the same grade, brand or blend of motor fuel sold by such wholesaler through its own motor fuel outlet or the outlet of an affiliate of said wholesaler, provided the method of delivery and quantities of each delivery of motor fuel to the retailer and to the wholesaler's outlet or affiliate's outlet are the same or comparable.

(b) A party may rebut the presumption created by this section by presenting evidence to establish his cost of the grade, brand or blend of motor fuel in question, or by qualifying for an exception under G.S. 75-82.

"§ 75-88. Public disclosure. – Any refiner or terminal supplier computing prevailing price under the provisions of G.S. 75- 81(4)(a)(i) or (ii) shall be required to publicly disclose said price.

"§ 75-89. Powers and remedies supplementary. – The powers and remedies provided by this act shall be cumulative and supplementary to all powers and remedies otherwise provided by law."

Sec. 2. This act shall become effective September 1, 1986.

In the General Assembly read three times and ratified, this the 11th day of July, 1986.