



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB2571

Introduced 02/18/05, by Rep. Calvin L. Giles

SYNOPSIS AS INTRODUCED:

New Act

Creates the Motor Fuel Fair Marketing Practices Act. Provides that it is a violation of the Act to engage in motor fuel price gouging in response to the occurrence of a national disaster or State emergency, except where the sale is both an isolated and inadvertent incident. Provides that in certain instances it is not a violation of the Act to sell or advertise for sale motor fuel at a retail price that would constitute a below cost sale. Allows concessions of up to 5% of the motor fuel sale, provided that the concessions are not given by the motor fuel retailer or an affiliate, that the cost of the concessions are not borne by the motor fuel retailer or affiliate, and that the concessions do not reduce the pump price and net amount paid for the motor fuel at the time of the sale. Provides that if there is a concession that exceeds 5%, that otherwise meets the specified criteria, the motor fuel retailer is required to take certain actions to stop the excess portion of the concession. Provides that the Department of Revenue and the Attorney General shall have certain powers and duties under the Act. Establishes a Motor Fuel Cost Review Board. Provides the remedies and penalties for selling motor fuel below cost and price gouging.

LRB094 05091 RXD 35127 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Motor
5 Fuel Fair Marketing Practices Act.

6 Section 5. Legislative findings; purpose.

7 (a) Retail marketing of motor fuel is affected by the
8 public's interest.

9 (b) Consumers benefit from ample numbers of conveniently
10 located motor fuel facilities and ample storage of motor fuels
11 to readily accommodate consumer demand.

12 (c) Local communities benefit from motor fuel businesses
13 owned and operated by independent retailers and wholesalers,
14 because independents generally support private sector
15 businesses that are local or regional in nature, including but
16 not limited to, lenders, insurance providers, providers of
17 accounting services, and providers of legal services.

18 (d) Communities also benefit from financial, equipment,
19 and manpower support from independent retailers and
20 wholesalers to not-for-profit organizations operating within
21 such communities.

22 (e) Despite actual differences in motor fuel production and
23 quality, motor fuel is considered largely to be a "commodity
24 product", with price having evolved as the primary basis of
25 competition.

26 (f) With price as the primary basis of competition, profit
27 margins and returns on investment for retail marketers of motor
28 fuel are generally low and most retailers of motor fuel must be
29 competent in order to survive.

30 (g) Retail marketers of motor fuel must earn a margin of
31 profit on the sale of motor fuel for reinvestment in the
32 business because many motor fuels are flammable and combustible

1 liquids, that must be distributed in a safe manner, utilizing
2 specially designed and costly explosion-proof equipment.

3 (h) Retail marketers of motor fuel must earn a margin of
4 profit on the sale of motor fuel for maintenance and
5 reinvestment in the business because motor fuels are
6 potentially hazardous to the underground environment, such
7 that specially designed and costly equipment must be used to
8 contain and monitor the containment of motor fuels, and to
9 comply with governmentally-imposed regulations.

10 (i) Over the years, the margin of profit earned on the sale
11 of motor fuel has lessened, largely due to the advent of
12 self-service as well as the sharing of costs of motor fuel
13 retailing with the retailing of other goods and services
14 offered at the motor fuel facility, including but not limited
15 to, the sale of convenience store goods and services, car
16 washes, and fast-foods, where the shared costs can include
17 cashiering, management, accounting, facility maintenance,
18 facility development, land acquisition, and land development.

19 (j) Given today's cost of doing business and the average
20 volume motor fuel station facility, the sharing of personnel to
21 accommodate transactions of both convenience store items and
22 motor fuel sales has allowed for a significant reduction in the
23 minimum needed profit margin on a motor fuel operation
24 benefiting from cost sharing as compared with a motor fuel
25 operation not benefiting from such cost sharing.

26 (k) A lower margin of profit on the sale of motor fuel has
27 been a gain to consumers through lower retail prices on motor
28 fuel, which for many years has allowed the majority of
29 competently-run independent businesses to remain financially
30 viable because of cost sharing.

31 (l) In recent years, however, the profit earned on the sale
32 of motor fuel within a growing number of markets has gone below
33 what is reasonable and necessary for an independent marketer to
34 cover its costs of doing business, even when the motor fuel
35 marketer is benefiting from cost sharing.

36 (m) The primary reason that the profit earned on the sale

1 of motor fuel has gone below what is reasonable and necessary
2 for a cost-sharing retailer to cover its costs of doing
3 business is the growing practice of below-cost marketing of
4 motor fuels.

5 (n) With price as the number one basis of competition in
6 the retailing of motor fuel, below-cost retailing by the
7 competition leaves the independent retailer of motor fuel with
8 only two choices: (1) join in the below-cost retailing of motor
9 fuel to keep its customer base, which will eventually cause the
10 independent retailer to become financially unsound and not
11 competitive because it cannot generate capital to reinvest in
12 its business; or (2) do not join in the below-cost retailing of
13 motor fuel, and lose customers and sales volumes as a result,
14 eventually becoming financially unsound and not competitive
15 through the inability to generate reinvestment capital. Either
16 way, many independent retailers will be selling out or closing
17 up.

18 (o) Those who initiate below-cost marketing of motor fuel
19 are able to do so either from subsidized pricing unrelated to
20 cost-sharing or from wholesale price discrimination.

21 (p) Subsidized pricing stems from one of the following 4
22 sources:

23 (1) A retailer covers its losses on the sale of motor
24 fuel from profits generated by the sales of products and
25 services unrelated to the retail sale of motor fuels and
26 unrelated to the sharing of personnel and other costs
27 involved in the sales of motor fuel products. Examples
28 include, but are not necessarily limited to, bulk
29 distributors of motor fuel, supermarket operators and mass
30 merchandiser retailers who have added motor fuel as an
31 additional, separate product offering, and who provide
32 motor fuel discounts and subsidize motor fuel operations
33 with revenue generated on separate operations, as well as
34 those involved in money laundering and illegal trade. This
35 form of subsidization is referred to as "subsidization via
36 revenue sharing from diversification".

1 (2) Large chain retailers who cover a large geographic
2 market and subsidize their below-cost sales in one market
3 with profits generated in other markets. This form of
4 subsidization is referred to as "subsidization via revenue
5 sharing from geographic dispersion".

6 (3) Vertically integrated companies that subsidize the
7 retailing end of the business from either the wholesaling,
8 transportation, refining, and oil production portions of
9 their business. This form of subsidization is hereinafter
10 referred to as "subsidization via revenue sharing from
11 vertical integration".

12 (4) Foreign nationals who receive subsidies from
13 abroad in order to maintain business and citizenship
14 opportunities in the United States. This form of
15 subsidization is hereinafter referred to as "subsidization
16 via revenue sharing from foreign sources".

17 (q) Wholesale price discrimination occurs when refiners or
18 other originators of motor fuel sell to one wholesaler or
19 retailer in a market area at an advantaged price over another
20 wholesaler or retailer in the same market area, when the
21 pricing differential is not cost-justified.

22 (r) Below-cost marketing of motor fuel is unfair
23 competition because it injures and threatens the viability of
24 independent motor fuel marketers, even those possessing the
25 highest degree of competence and who are engaging in
26 cost-sharing by way of diversified retail operations, by
27 depriving independent motor fuel marketers of their ability to
28 accumulate capital, which is essential in a capitalistic
29 economy, and which is essential for reinvestment in the motor
30 fuel operation.

31 (s) The inability of independent motor fuel marketers to
32 accumulate capital, due to unfair competition in the motor fuel
33 industry, also damages local and regional suppliers of
34 equipment, facilities, technology, and other goods and
35 services with whom independents regularly do business, all to
36 the detriment of local and regional economies.

1 (t) Unfair competition in the retail motor fuel industry
2 also injures the ability of independent motor fuel marketers to
3 generate money to cover the costs of regulation compliance
4 related to underground storage tank systems, potentially
5 endangering the environment.

6 (u) Unfair competition in the retail motor fuel industry
7 also injures the ability of local independent retailers to
8 provide new jobs, expand career opportunities for their current
9 employees, implement new technologies, raise living standards
10 for their employees, and enhance the overall economic welfare
11 of their local communities and region.

12 (v) Unfair competition in the retail motor fuel industry
13 also adversely affects the State because it adversely affects
14 business spending by independent marketers in the high-wage
15 sectors of construction, manufacturing, and technology, and it
16 adversely affects the revenue-generating abilities of the
17 State through lower sales and income tax collections.

18 (w) Below-cost marketing of motor fuel is inherently
19 predatory and stands to injure competition and reduce the
20 number of competitors in petroleum marketing, especially the
21 number of independently owned marketers, to the detriment of
22 the consuming public welfare by limiting the number of motor
23 fuel retail outlets available to State motorists, and by making
24 motorists susceptible to increased retail prices long-term.

25 (x) Unfair competition by way of the predatory practice of
26 below-cost pricing also tends to create barriers to entry or
27 re-entry into the motor fuel marketplace by independent motor
28 fuel marketers, resulting in a marketplace that is not truly
29 free.

30 (y) While the federal government has regulations dealing
31 with predatory pricing, the regulations fail to protect
32 businesses and consumers because the regulations are not held
33 to be violated until long after the damage caused by predatory
34 pricing has been done, with much of the damage (i.e. bankrupt
35 and closed family and other independent businesses) being
36 irreversible.

1 (z) Federal regulations also fail to take into account the
2 unique circumstances associated with the retail motor fuel
3 industry, including but not necessarily limited to, the
4 following:

5 (1) There is a barrier to entry into the motor fuel
6 market on the basis of product differentiation because
7 motor fuel is perceived largely as a commodity product,
8 where product differentiation is small and price is the
9 number one basis of competition, providing little for the
10 independent motor fuel marketer to do on a strategy of
11 differentiation.

12 (2) The high investment cost required to enter the
13 motor fuel industry (with the average cost for fuel
14 improvements and fuel equipment running approximately
15 \$300,000 and the cost for land, land development, and
16 improvements and equipment for cost-sharing running as
17 much as \$900,000, for a total entry cost being as much as
18 \$1.2 million depending on the geographic area of the
19 State), requires those entering into the motor fuel
20 business to have a reasonable opportunity to earn a
21 positive return on investment.

22 (3) The threat of continued or repeated predatory
23 pricing practices, creates a significant barrier to
24 re-entry into the business by those previously run out of
25 business, as well as a significant barrier to entry by
26 those wanting to enter the market for the first time.

27 (aa) On the other end of the spectrum, in the past,
28 following times of national crisis, an isolated number of motor
29 fuel retailers have engaged in price gouging, which has served
30 to exacerbate the crisis by stimulating public panic over the
31 purchase of motor fuel.

32 (bb) Competent independent motor fuel marketers (dealers,
33 distributors, jobbers, and wholesalers) are vital to a healthy,
34 competitive marketplace, and are important to the economic
35 viability of the State and its local communities.

36 (cc) While retailers of motor fuel should not be guaranteed

1 a financial net profit from the marketing of motor fuel,
2 retailers of motor fuel also should not be guaranteed a
3 financial net loss from the marketing of motor fuel.

4 (dd) Consumer protection and protection of honest
5 businesses are both important to the economic viability of the
6 State and local communities.

7 (ee) The General Assembly declares that there is a need for
8 public policy that is balanced between the needs of consumers
9 and of businesses, and that demonstrates care and concern for
10 both consumers and those businesses that serve consumers.

11 (ff) The General Assembly declares that there is a need for
12 public policy based on protection through prevention:
13 protection of competently run, diversified, cost-sharing motor
14 fuel retailers through the prevention of pricing that is
15 predatory, protection of consumers through the prevention of
16 the lessening of competition (resulting from the elimination of
17 competent retailers of motor fuel because of predatory
18 pricing), and through the prevention of pricing that is gouging
19 following times of national crises and State emergencies.

20 (gg) The General Assembly declares that there is a need for
21 public policy to set a floor below which the retail price of
22 motor fuel shall not be set, unless the motor fuel marketer can
23 demonstrate that the price of motor fuel below the floor, is
24 not below its retail selling cost of such motor fuel, or unless
25 the motor fuel marketer can demonstrate that it is meeting the
26 equally low price of a competitor, thereby allowing retail
27 motor fuel prices to be set by those who are able to establish
28 the lowest cost of selling motor fuel.

29 (hh) The General Assembly further declares that there is
30 also a need, during times of national disaster or State
31 emergency, for public policy to set a ceiling above which the
32 retail price of motor fuel shall not be set, unless the motor
33 fuel marketer can demonstrate that the price of motor fuel,
34 above the ceiling, is necessary to cover its costs of selling
35 motor fuel.

36 (ii) In order to provide the most simplicity in determining

1 when a motor fuel marketer is in compliance with this Act, and
2 to also eliminate the need for rules and regulations governing
3 wholesale price discrimination, transfer pricing, commodities
4 trading, or related issues involved in the subsidization of
5 motor fuel at retail from a vertically integrated motor fuel
6 marketer, the General Assembly declares that there is a need
7 for a neutral guideline on which to base fuel prices for the
8 purpose of determining if below-cost pricing or price-gouging
9 is occurring.

10 (jj) The General Assembly recognizes the existence of
11 reporting services, including but not necessarily limited to,
12 Oil Price Information Service (OPIS) or AXXIS Petroleum
13 (AXXIS), which neutrally report wholesale prices of motor fuel
14 from a myriad of motor fuel suppliers from which average
15 wholesale rack/terminal pricing may be established. Prices
16 reported by OPIS and AXXIS are used as a benchmark by the world
17 to buy and sell U.S. gasoline and diesel fuel. Neither OPIS nor
18 AXXIS have a stake in fuel transactions, neither is funded by
19 oil industry initiatives, and each strictly adheres to
20 antitrust guidelines determined by independent legal counsel.
21 The General Assembly declares that such a pricing service shall
22 be utilized to provide a benchmark for determining if
23 below-cost pricing or price-gouging is occurring.

24 (kk) Because a motor fuel marketer shall be allowed to meet
25 the equally low price of another motor fuel marketer, there
26 must be a mechanism that provides for the periodic restoration
27 of pricing of motor fuel to a level that is not below cost.

28 (ll) Below-cost selling laws have been effective in other
29 states in protecting competent independent and small-business
30 retailers and wholesalers from subsidized, below-cost pricing.
31 The purpose of this Act is to substantially lessen subsidized
32 pricing of petroleum and related products, while still allowing
33 the reduction of motor fuel pricing through cost-sharing over
34 the sales of other products and services, where cost-savings
35 are the result of sharing personnel and other relevant cost
36 factors in motor fuel retailing, including sales, management,

1 maintenance, accounting, and property costs.

2 (mm) This Act provides that the advertising, offering for
3 sale, or sale of motor fuel below cost is necessarily done with
4 the intent of injuring competitors or destroying or
5 substantially lessening competition, and is an unfair and
6 deceptive trade practice. The policy of the State is to promote
7 the general welfare through the prohibition of such sales. The
8 purpose of this Act is to carry out that policy in the public
9 interest, providing for exceptions under stated circumstances,
10 providing for enforcement and providing penalties.

11 (nn) Because motor fueling constitutes one of the most
12 competitive industries in the marketplace, it is important that
13 one motor fuel marketer not be advantaged over another motor
14 fuel marketer as a result of any type of governmental subsidy;
15 therefore, the development of a motor fuel facility, or the
16 development of a facility that has, as a part thereof, a
17 facility for the sale of motor fuel, should not be
18 government-subsidized when such facility would be in
19 competition with another non-subsidized facility in the same
20 market area.

21 (oo) It is believed that the costs of ensuring compliance
22 with and enforcing this Act will be more than offset by the
23 additional sales and income tax revenues stemming from
24 compliance and enforcement.

25 Section 10. Definitions. In this Act:

26 "Actual costs of selling motor fuel" means any costs and
27 expenses reasonably incurred by a retailer of motor fuel
28 associated with the selling of motor fuel at a retail motor
29 fuel facility, including the following costs and expenses
30 defined in this Act: the applicable laid-in cost of motor fuel,
31 plus expense costs of selling motor fuel, plus investment costs
32 of selling motor fuel, plus costs and expenses excluded from
33 expense costs of selling motor fuel, plus extraordinary costs
34 of selling motor fuel, plus other costs reasonably incurred.

35 "Actual costs of selling motor fuel from dedicated

1 supplier" means any costs and expenses reasonably incurred by a
2 retailer of motor fuel associated with the selling of motor
3 fuel at a retail motor fuel facility, including the applicable
4 laid-in cost of motor fuel originating from dedicated supplier,
5 plus expense costs of selling motor fuel, plus investment costs
6 of selling motor fuel, plus costs and expenses excluded from
7 expense costs of selling motor fuel, plus extraordinary costs
8 of selling motor fuel, plus other costs reasonably incurred.

9 "Actual costs of selling motor fuel per gallon" means the
10 actual costs of selling motor fuel, divided by the number of
11 gallons sold, during the period in which motor fuel was sold.

12 "Actual costs of selling motor fuel per gallon from
13 dedicated supplier" means the actual costs of selling motor
14 fuel from dedicated supplier, divided by the number of gallons
15 sold, during the period in which motor fuel was sold.

16 "Actual health insurance costs" means the health insurance
17 costs, if any, actually incurred.

18 "Advertising expenses" means the following forms of
19 advertising: newspaper, Internet, magazine, television, radio,
20 direct-mail, billboard, and other forms of off-premises
21 advertising related to motor fuel.

22 "Affiliate" means a person who is related to another person
23 through common ownership or common control. Franchisees and
24 licensees of branded motor fuel suppliers are not affiliates of
25 their branded fuel suppliers.

26 "Average monthly gallons of motor fuel sold" means the
27 mathematical result obtained by dividing the total number of
28 gallons of motor fuel sold at a given retail motor fuel
29 facility over the 12 months preceding the date in question, by
30 the number of months that motor fuel was sold from such
31 facility over the 12-month period.

32 "AXXIS Petroleum (AXXIS)" is an independent reporting
33 service, located in the state of Minnesota, providing daily
34 reports of prices of refined motor fuel, including the gasoline
35 grades being sold, as well as No. 2 low sulfur clear diesel
36 fuel, that is widely accepted as an independent fuel price

1 benchmark for supply.

2 "Below cost sale", "below cost selling", "selling below
3 cost", "to sell below cost", and "sell below cost" means the
4 selling of gasoline or No. 2 low sulfur clear diesel fuel at
5 retail in the State at a price that is below the lower of: (1)
6 the regulated minimum retail cost price of motor fuel sold, or
7 (2) the mathematical sum of the applicable laid-in cost of
8 motor fuel plus the cost of selling the motor fuel at retail on
9 a per gallon basis.

10 "Benchmark pricing service" means the independent
11 reporting service providing daily reports of supplier
12 wholesale prices of refined motor fuel from wholesale rack
13 terminals, including the gasoline grades being sold as well as
14 No. 2 low sulfur clear diesel fuel, whichever service is
15 selected by the Department under this Act. OPIS and AXXIS are
16 the only two such pricing services known to be available at the
17 time of passage of this Act. If one or more other such pricing
18 services becomes available, the Department shall have
19 discretion to select any other such pricing service in
20 accordance with this Act.

21 "Competition" means the vying for motor fuel sales between
22 any 2 persons selling motor fuel in the same market area at the
23 same level of distribution.

24 "Competitor" means any person who vies for motor fuel sales
25 against another person in the same market area at the same
26 level of distribution.

27 "Cost of selling motor fuel at retail on a per gallon
28 basis" means a per gallon cost determined mathematically by the
29 sum of the following 2 cost items: (1) the mathematical result
30 derived from dividing the expense costs of selling motor fuel
31 at retail during the 24 months before the date in question by
32 the number of gallons of motor fuel sold during the 24 months
33 before the date in question, plus (2) the mathematical result
34 derived from dividing the investment costs of selling motor
35 fuel at retail by the average monthly gallons of motor fuel
36 sold.

1 "Credit card and bank card related expenses" means any
2 costs to the motor fuel retailer associated with accommodating
3 the payment of motor fuel by way of bank and credit card
4 transactions, including but not limited to, fixed fees,
5 transaction fees, and network processing fees. In the event
6 that goods and services, other than motor fuel, are sold within
7 the same facility as motor fuel, in the event that the payment
8 of such goods and services are also by way of bank and credit
9 card transactions, and to the extent that any costs associated
10 with accommodating the payment of motor fuel by way of bank and
11 credit cards are not made separate and readily distinguishable
12 from the costs associated with accommodating the payment of
13 non-motor fuel items by bank and credit cards, then the portion
14 of costs not made separate and readily distinguishable that
15 should be allocated as motor fuel related costs shall be
16 determined mathematically as follows: total bank card and
17 credit card related costs incurred by the retailer for the
18 applicable retail facility, multiplied by the total dollars
19 associated with motor fuel purchases paid by bank or credit
20 cards at the retail facility, divided by the total dollars
21 associated with total purchases paid by bank or credit cards at
22 the facility.

23 "Credit carrying and handling costs of the motor fuel
24 retailer" means those costs incurred by the motor fuel retailer
25 in providing its own credit to its customers on the sale of
26 motor fuel, including but not limited to, the cost of tying up
27 money, as well as billing and bad debt expenses, but excluding,
28 credit card and bank card related expenses. Because such costs
29 can vary from time to time and from retailer to retailer (due
30 to fluctuating interest rates, due to fluctuations in the
31 economy, and other factors not within the control of the motor
32 fuel retailer), and because such costs may be very difficult to
33 precisely calculate, such costs, for purposes of this Act,
34 shall be deemed to equal the lowest rate available to the motor
35 fuel retailer for the processing of general bank cards (as
36 opposed to any bank cards that are co-branded or sponsored by

1 the brand of the motor fuel retailer), whether or not the motor
2 fuel retailer is utilizing the lowest priced bank card
3 processor available to the retailer. To the extent that a motor
4 fuel retailer is unable to provide information regarding the
5 lowest priced bank card processor available to the retailer,
6 then the credit carrying and handling costs of such motor fuel
7 retailer shall be presumed to be 2% of the motor fuel sale.

8 "Dedicated supplier" means a motor fuel supplier of a motor
9 fuel retailer for the retail facility in question to which the
10 retailer is contractually committed at the time of the motor
11 fuel purchase by the retailer from the retailer's supplier for
12 the retail facility in question.

13 "Department of Revenue" and "Department" means the
14 Department of Revenue of the State of Illinois.

15 "Depreciation allowance on fuel equipment" means, on a
16 monthly basis, the original acquisition and installation cost
17 value in all installed fuel equipment (including but not
18 limited to, fuel pumps, fuel dispensers, fuel tanks, fuel
19 piping, fuel tank gauge systems, fuel controllers, credit card
20 acceptance devices on the fuel dispensers, fuel distribution
21 boxes, pump access modules, and fuel related signage) divided
22 by a factor of 180 months.

23 "Depreciation allowance on fuel improvements" means, on a
24 monthly basis, the original cost value of all fuel improvements
25 (including but not limited to, fuel canopy, fuel canopy
26 fixtures, fuel canopy and fuel canopy breezeway fixtures,
27 pavement above the underground storage tanks and piping,
28 pavement below the fuel canopy and canopy breezeway, fuel
29 islands, and fuel related electrical conduit and wiring, fuel
30 kiosk, and that portion of any other building where motor fuel
31 transactions are accommodated) divided by a factor of 240
32 months.

33 "Direct labor costs" means the wages and payroll taxes
34 associated with those personnel directly involved in the sale,
35 delivery, or transfer of motor fuel, including maintenance on
36 motor fuel facilities. Direct labor costs also include

1 workman's compensation, unemployment insurance, imputed health
2 insurance costs, and other human resources costs directly
3 related to such personnel (excluding actual health insurance
4 costs). In the event that personnel directly involved in the
5 sale, delivery or transfer of motor fuel from one retail
6 facility are also directly involved in the sale, delivery or
7 transfer of motor fuel from one or more other retail
8 facilities, and to the extent that direct labor costs for one
9 facility are not separate and readily distinguishable from the
10 direct labor costs of another facility, then the portion of
11 costs not made separate and readily distinguishable that should
12 be allocated as direct labor costs for a given facility shall
13 be determined mathematically as follows: total
14 non-distinguishable direct labor costs multiplied by the total
15 sales dollars at the given retail facility, divided by the
16 total sales dollars of all retail facilities for whom the
17 direct labor costs are incurred. In the further or other event
18 that goods and services, other than motor fuel, are sold within
19 the same facility as motor fuel, in the event that the
20 personnel directly involved in the sale, delivery, or transfer
21 of motor fuel are also involved in the sale or delivery of such
22 other goods and services, and to the extent that the personnel
23 costs associated with motor fuel are not separate and readily
24 distinguishable from the personnel costs associated with
25 non-motor fuel sales or service delivery, then the portion of
26 costs not made separate and readily distinguishable that should
27 be allocated as motor fuel related costs shall be determined
28 mathematically as follows: total non-distinguishable direct
29 labor costs for the retail facility multiplied by the total
30 motor fuel sales dollars at the retail facility, divided by the
31 total sales dollars of all products and services (motor fuel
32 sales and non-motor fuel sales) at the retail facility. Direct
33 labor costs do not include credit carrying and handling costs
34 of the motor fuel retailer.

35 "Disaster" has the meaning given in Section 4 of the
36 Illinois Emergency Management Agency Act.

1 "Expense costs of selling motor fuel at retail" means the
2 mathematical sum obtained by adding the following costs
3 associated with the retailing of motor fuel at a given retail
4 facility: direct labor, plus indirect labor costs, plus credit
5 card and bank card related expenses, plus credit carrying and
6 handling costs of the motor fuel retailer, plus utilities
7 expenses, plus property taxes, plus insurance expenses, plus
8 maintenance expenses, plus supplies expenses, plus
9 telecommunications expenses, plus inventory losses, plus
10 regulatory compliance costs. Expense costs of selling motor
11 fuel at retail does not include interest on borrowed capital,
12 dividends paid on equity capital, advertising expenses, actual
13 health insurance costs, life insurance costs, or leasing costs
14 (since a substitute for leasing costs is provided by investment
15 costs of selling motor fuel as defined in this Section).

16 "Extraordinary costs of selling motor fuel" means costs
17 other than those customarily incurred in the sale of motor fuel
18 at retail, but does not include, expense costs of selling motor
19 fuel at retail, laid-in cost of motor fuel, investment costs of
20 selling motor fuel at retail, interest on borrowed capital,
21 dividends paid on equity capital, advertising expenses, actual
22 health insurance costs, or life insurance costs. While it is
23 difficult to anticipate what such costs may include, and while
24 what follows is not intended to limit the range of what may be
25 an extraordinary cost, one example would be the costs
26 associated with the placement and running, whether by lease,
27 purchase, or otherwise, of an electric generator to accommodate
28 motor fuel sales during power outages. Another example would be
29 costs associated with financial penalties owed, or reasonably
30 anticipated to be owed to a dedicated supplier as a result of a
31 purchase in excess of a supplier-imposed allocation, or below a
32 supplier-imposed minimum purchase quantity.

33 "Fuel equipment" includes, but is not limited to, fuel
34 pumps, fuel dispensers, fuel tanks, fuel piping, fuel tank
35 gauge systems, fuel controllers, credit card acceptance
36 devices on the fuel dispensers, fuel distribution boxes, pump

1 access modules, and fuel related signage.

2 "Fuel improvements" includes, but are not limited to, fuel
3 canopy, fuel canopy fixtures, fuel canopy and fuel canopy
4 breezeway fixtures, pavement above the underground storage
5 tanks and piping, pavement below the fuel canopy and canopy
6 breezeway, fuel islands, fuel-related electrical conduit and
7 wiring, fuel kiosk, and that portion of any other building
8 where motor fuel transactions are accommodated.

9 "Government subsidy" means any State or local governmental
10 money disbursed to develop a facility or to develop the
11 infrastructure contained on property of the facility, as well
12 as any State or local government money foregone by any
13 governmental entity as a result of the development of a
14 facility or the infrastructure of the land on which the
15 facility is located, including but not limited to, reduced
16 taxes stemming from incremental tax districts and enterprise
17 zones.

18 "Gross margin on motor fuel" means the difference between
19 the retail price of the motor fuel and the applicable laid-in
20 cost of motor fuel or the applicable laid-in cost of motor fuel
21 from a dedicated supplier, whichever is applicable.

22 "Imputed health insurance costs" means 75% of the most
23 recent reported average premiums cost for employer-sponsored
24 health insurance coverage, as published by the Henry J. Kaiser
25 Family Foundation (or other authoritative source as selected by
26 the Department), applicable to all specified employees of the
27 motor fuel retailer (except those that have health insurance
28 coverage through an employer group health plan other than his
29 or her retail motor fuel employer) who are working for the
30 motor fuel retailer for 30 or more hours per work week, and who
31 have been employed by the motor fuel retailer for at least 90
32 consecutive days working 30 or more hours per work week.

33 "Inadvertent incident" means that the incident can be shown
34 not to be deliberate, but, rather accidental. Examples of
35 accidental incidents include, but are not limited to, errors or
36 omissions on the part of the retail personnel who change the

1 prices, the failure on the part of clerical personnel to
2 properly enter pricing data into a data processing system, and
3 the failure to include, in computing laid-in cost of motor
4 fuel, the wholesale pricing of a new supplier due to a lack of
5 awareness of such new supplier. Failure to perform the
6 computations necessary to ensure compliance with this Act shall
7 not be deemed accidental.

8 "Indirect labor costs" means labor costs other than direct
9 labor costs, including but not limited, to supervisory,
10 bookkeeping, and administrative personnel who are indirectly
11 related to the sale, delivery, transfer, or accounting of motor
12 fuel, whether or not such personnel are situated at the motor
13 fuel facility. Indirect labor costs also include workman's
14 compensation, unemployment insurance, imputed health insurance
15 costs, and other human resources costs directly related to such
16 personnel (excluding actual health insurance costs). In the
17 event that personnel indirectly involved in the sale, delivery
18 or transfer of motor fuel from one retail facility also are
19 indirectly involved in the sale, delivery or transfer of motor
20 fuel from one or more other retail facilities, and to the
21 extent that indirect labor costs for one facility are not
22 separate and readily distinguishable from the indirect labor
23 costs of another facility, then the portion of costs not made
24 separate and readily distinguishable that should be allocated
25 as indirect labor costs for a given facility shall be
26 determined mathematically as follows: total
27 non-distinguishable indirect labor costs multiplied by the
28 total sales dollars at the given retail facility, divided by
29 the total sales dollars of all retail facilities for whom the
30 indirect labor costs are incurred. In the further or other
31 event that goods and services, other than motor fuel, are sold
32 within the same facility as motor fuel, and in the event that
33 the personnel indirectly involved in the sale, delivery, or
34 transfer of motor fuel at the facility are also indirectly
35 involved in the sale or operations of such other goods and
36 services, and to the extent that the personnel costs associated

1 with motor fuel are not separate and readily distinguishable
2 from the personnel costs associated with non-motor fuel sales
3 or operational activities, then the portion of costs not made
4 separate and readily distinguishable that should be allocated
5 as motor fuel related costs for that facility shall be
6 determined mathematically as follows: total
7 non-distinguishable indirect labor costs for that facility (as
8 determined above if such indirect labor costs are attributable
9 to more than one facility) multiplied by the total motor fuel
10 sales dollars at that facility, divided by the total sales
11 dollars of all products and services (motor fuel sales and
12 non-motor fuel sales) at the facility. Indirect labor costs do
13 not include credit carrying and handling costs of the motor
14 fuel retailer.

15 "Insurance expenses" means any insurance costs associated
16 with the retail sale of motor fuel at a given retail facility,
17 including liability insurance, property insurance, employer's
18 liability costs and expenses on direct and indirect labor,
19 except that insurance expenses does not include actual health
20 insurance costs, imputed health insurance costs, life
21 insurance costs or the labor related insurance expenses of
22 workers' compensation and unemployment compensation.

23 "Inventory losses" means losses due to breakage, damage,
24 shrinkage, or theft.

25 "Investment costs of selling motor fuel at retail" means a
26 monthly cost obtained by adding land holding costs, plus land
27 development costs, plus depreciation allowance on fuel
28 improvements, plus depreciation allowance on fuel equipment.

29 "Isolated incident" means that the occurrence was
30 exceptional and not generally repeated, unless the cause for
31 repeating was definitely accidental and such accident occurred
32 with the retailer having one or less prior inquiries from the
33 Department of Revenue within 18 months immediately preceding
34 the occurrence for the facility in question.

35 "Labor costs" means direct labor costs plus indirect labor
36 costs.

1 "Laid-in cost of motor fuel" means the regional
2 benchmarking pricing service average price per gallon on the
3 day preceding the sale in question for the gasoline grade being
4 sold or for No. 2 low sulfur clear diesel fuel, whichever is
5 applicable, plus all applicable taxes and governmentally
6 imposed fees applicable to the motor fuel purchase by and
7 delivery to the retailer, plus transportation charges to
8 transport the motor fuel from the wholesale or supply point to
9 the retail point, plus one quarter of a cent per gallon (for
10 ordering and other inventory management costs associated with
11 motor fuel), plus sales taxes and other governmental taxes and
12 fees imposed on the sale of the fuel at the pump.

13 "Laid-in cost of motor fuel originating from dedicated
14 supplier" means the actual price per gallon charged to the
15 retailer by the retailer's dedicated supplier on the day
16 preceding the sale in question for the gasoline grade being
17 sold or for No. 2 low sulfur clear diesel fuel, whichever is
18 applicable, plus all applicable taxes and governmentally
19 imposed fees applicable to the motor fuel purchase by or
20 delivery to the retailer, plus transportation charges to
21 transport the motor fuel from the wholesale or supply point to
22 the retail point, plus one quarter of a cent per gallon (for
23 ordering and other inventory management costs associated with
24 motor fuel), plus sales taxes and other governmental taxes and
25 fees imposed on the sale of the fuel at the pump.

26 "Land holding costs" means on a monthly basis, a 7% return
27 on the market value of the land occupied by motor fuel
28 facilities (motor fuel facilities consisting of motor fuel
29 improvements and equipment). Since motor fuel facilities will
30 not always occupy all of the land at a site where motor fuel
31 sales take place in conjunction with the sales of other goods
32 and services, the portion of the land that the motor fueling
33 facilities occupy (including the area of driveway entrances and
34 driveways utilized by motor fueling motorists in their ingress
35 to and egress from motor fueling facilities) shall be measured,
36 in square feet, and that area shall be divided by the total

1 area, in square feet, of the entire developed area of land to
2 determine the percentage of the land occupied by motor fuel
3 facilities. That percentage (100% in the case of a stand-alone
4 motor fuel facility) shall be multiplied by the total market
5 value of the land to determine the value of the land
6 attributable to the motor fuel facility. That proportional
7 value shall then be multiplied by a factor of 7%, then divided
8 by a factor of 12 to determine the land holding costs per month
9 for the motor fuel facility. In the event that the land is
10 leased, not owned, by the motor fuel retailer, and if the
11 monthly leasing costs, for the portion of the land occupied by
12 the motor fueling facilities, is greater than the proportional
13 value of the land and multiplied by a factor of 7%, divided by
14 a factor of 12, then the land holding costs for the motor fuel
15 facility shall be equal to the monthly leasing costs
16 attributable to the land portion of the motor fuel facility.

17 "Land development costs" means, on a monthly basis, a 7%
18 return on the costs of developing land occupied by motor fuel
19 facilities (motor fuel facilities consisting of motor fuel
20 improvements and equipment). Land development costs include,
21 but are not limited to, paving, storm sewer, and underground
22 utilities costs, excluding however, any costs of motor fuel
23 improvements and equipment. In the event that motor fuel
24 facilities do not occupy all of the land development at a site
25 where motor fuel sales take place in conjunction with sales of
26 other goods and services, the portion of the costs attributable
27 to developing the land occupied by motor fuel facilities shall
28 be determined mathematically as follows: total costs of
29 developing the land, multiplied by the area, in square feet,
30 occupied by the motor fuel facility (motor fuel facility
31 includes fuel improvements and fuel equipment, as well as the
32 area of driveway entrances and driveways utilized by motor
33 fueling motorists in their ingress to and egress from motor
34 fueling facilities), divided by the total area, in square feet,
35 of the entire developed area of land. That percentage (100% in
36 the case of a stand-alone motor fuel facility) shall be

1 multiplied by the total costs of developing the land occupied
2 by motor fuel facilities to determine the value of developed
3 land attributable to the motor fuel facility. That proportional
4 value shall then be multiplied by a factor of 7%, then divided
5 by a factor of 12, to determine the land development costs per
6 month for the motor fuel facility. In the event that the land
7 development is leased, not owned by the motor fuel retailer,
8 and in the further event that the monthly leasing costs for the
9 portion of the land development occupied by the motor fueling
10 facilities, is greater than the proportional value of such land
11 multiplied by a factor of 7%, divided by a factor of 12, then
12 the land development costs for the motor fuel facility shall be
13 equal to the monthly leasing costs attributable to the land
14 development portion of the motor fuel facility.

15 "Leasing costs" means lease expenses on land, land
16 improvements, fuel improvements, and fuel equipment. In the
17 event that motor fuel facilities do not comprise all of the
18 land development at a site where motor fuel sales take place in
19 conjunction with the sales of other goods and services, the
20 portion of the lease expenses attributable to the motor fuel
21 facility shall be determined mathematically as follows: total
22 lease costs of the land, land improvements, fuel improvements,
23 and fuel equipment multiplied by the area, in square feet,
24 occupied the motor fuel facility (including fuel improvements
25 and fuel equipment, as well as the area of driveway entrances
26 and driveways utilized by motor fueling motorists in their
27 ingress to and egress from motor fueling facilities), divided
28 by the total area, in square feet, of the entire leased area of
29 land.

30 "Life insurance costs" means those costs associated with
31 providing life insurance on personnel related to the applicable
32 retail motor fuel facility.

33 "Maintenance expenses" means the maintenance costs
34 associated with a given motor fuel facility (including fuel
35 improvements, fuel equipment, and land improvements). In the
36 event that motor fuel facilities do not comprise all of the

1 land at a site where motor fuel sales take place in conjunction
2 with the sales of other goods and services, the proportional
3 cost of maintenance on the land and land improvements allocable
4 to motor fuel retailing shall be determined mathematically as
5 follows: total maintenance costs on the land and on the land
6 improvements, multiplied by the area, in square feet, occupied
7 by the motor fuel facility (including fuel improvements and
8 fuel equipment, as well as the area of driveway entrances and
9 driveways utilized by motor fueling motorists in their ingress
10 to and egress from motor fueling facilities), divided by the
11 total area, in square feet, of the entire developed area of
12 land.

13 "Market area" means a distance of 4 miles by road in
14 non-urban areas, a distance of 2.5 miles by road in a standard
15 metropolitan statistical area, and a distance of 60 miles by
16 road for truck stop outlets with more than 60% of fuel sales to
17 vehicles with gross weight of over 50,000 lbs.

18 "Market value of land" means the appraised valuation of the
19 land occupied by a retail motor fueling facility, such
20 appraisal to have been given by a certified, MAI Appraiser
21 sometime within a 48-month period before the date or within the
22 18-month period following the date that such appraisal is used
23 to document land holding costs under this Act.

24 "Motor fuel" means those products upon which the State
25 excise tax levied, or defined, in the Motor Fuel Tax Law, as
26 amended, is imposed.

27 "Oil Price Information Service (OPIS)" means the
28 independent reporting service located in the state of Maryland,
29 which provides daily reports of prices of refined motor fuel,
30 including the gasoline grades being sold as well as No. 2 low
31 sulfur clear diesel fuel that is widely accepted as an
32 independent fuel price benchmark for supply.

33 "Person" means any individual, club, firm, association,
34 organization, partnership, business, trust, joint-stock
35 company, company, corporation, or other entity, legal or
36 otherwise.

1 "Price gouging of motor fuel", "price gouging", or "motor
2 fuel price gouging" means the self-service sale of gasoline or
3 No. 2 low sulfur clear diesel fuel at retail in the State at a
4 price greater than the greater of the following: (1) the
5 regulated maximum retail cost price of motor fuel sold at the
6 time the motor fuel was sold, (2) 19 cents per gallon above the
7 retailer's actual costs of selling motor fuel per gallon at the
8 time the motor fuel was sold, or (3) 19 cents per gallon above
9 the retailer's actual costs of selling motor fuel per gallon
10 from a dedicated supplier at the time the motor fuel was sold.

11 "Property taxes" means taxes on land, real estate,
12 improvements, and personal property.

13 "Regional benchmark pricing service average price" for an
14 applicable retail motor fuel station means the average price of
15 all wholesale rack or terminal suppliers actively supplying and
16 offering for sale motor fuel within a 70-mile radius of the
17 motor fuel station being supplied, excluding, the one highest
18 priced terminal supplier within that 70-mile radius.
19 Notwithstanding the foregoing, in the event that there are not
20 at least 3 wholesale rack suppliers actively supplying and
21 offering for sale motor fuel within a 70-mile radius of a motor
22 fuel station being supplied, the radius shall be extended until
23 there are at least 3 such wholesale rack suppliers.

24 "Regulated maximum retail cost price of motor fuel sold" or
25 "regulated maximum price" relates to motor fuel sales at
26 self-service, and means the greater of: (1) the regulated
27 minimum retail cost price of motor fuel sold plus 19 cents per
28 gallon at the time the motor fuel was sold, (2) the regulated
29 minimum retail cost price of motor fuel sold from a dedicated
30 supplier plus 19 cents per gallon at the time the motor fuel
31 was sold, (3) the regulated minimum retail cost price of motor
32 fuel sold plus 19 cents per gallon at the time the motor fuel
33 was sold plus any extraordinary costs (on a per gallon basis)
34 incurred by the motor fuel retailer at or for the time the
35 motor fuel was sold, or (4) the regulated minimum retail cost
36 price of motor fuel sold from a dedicated supplier plus 19

1 cents per gallon plus any extraordinary costs (on a per gallon
2 basis) incurred by the motor fuel retailer at or for the time
3 the motor fuel was sold.

4 "Regulated minimum retail cost price of motor fuel sold" or
5 "regulated minimum price" means the lowest pump price that
6 includes a positive gross margin to the retailer of 6% over the
7 retailer's laid-in cost of motor fuel for the time in question.
8 As such the regulated minimum retail cost price of motor fuel
9 sold is the quotient of the applicable laid-in cost of motor
10 fuel divided by 0.94 (i.e. the sum of 1.00 minus the minimum
11 margin of 6%, or $1.00 - 0.06 = 0.94$). As an example, if the
12 laid-in cost of motor fuel on a given day is \$1.738, the
13 regulated minimum retail cost price of motor fuel sold for that
14 day is \$1.849, calculated as follows: \$1.738, laid-in cost
15 divided by 0.94, (gross margin factor of 6%), equals \$1.849.
16 Since laid-in cost of motor fuel includes taxes and fees
17 imposed on the sale of motor fuel at the pump (these taxes and
18 fees are, at the time of passage of this Act, Illinois State
19 sales tax of 6.25%, state motor fuel tax of \$0.19 per gallon,
20 Environmental Impact Fee of \$0.008 per gallon, and the Illinois
21 Underground Storage Tank Fee of \$0.003 per gallon), and since
22 the taxes and fees imposed on the sale of motor fuel at the
23 pump are both percentage taxes and flat taxes or fees (Illinois
24 state sales tax being a percentage tax and the remainder, at
25 the time of passage of this Act, being flat taxes and fees) and
26 since the State, at the time of passage of this Act, imposes
27 sales tax on only two of the three flat taxes (at the time of
28 passage of this Act, Illinois imposes sales tax on the
29 Environmental Impact Fee and the Illinois Underground Storage
30 Tank Fee, but does not impose sales tax on the state motor fuel
31 tax), the following is provided as an additional aid in
32 calculating regulated minimum price: THE FOLLOWING IS PROVIDED
33 AS AN AID ONLY AND THE FOLLOWING DOES NOT SHOW MUNICIPAL TAXES
34 IMPOSED ON THE SALE OF MOTOR FUEL THAT WOULD NEED TO BE
35 INCLUDED TO THE EXTENT APPLICABLE. IN THE EVENT THAT, AFTER THE
36 DATE OF PASSAGE OF THIS ACT, THERE ARE CHANGES IN THE AMOUNT,

1 STRUCTURE, CALCULATION, TIME OF IMPOSITION OR TYPE OF TAXES OR
2 FEES IMPOSED ON THE DELIVERY OF MOTOR FUEL TO A RETAILER, ON
3 THE PURCHASE OF MOTOR FUEL BY A RETAILER, AND/OR ON THE SALE OF
4 MOTOR FUEL AT THE PUMP, THE REGULATED MINIMUM PRICE UNDER THIS
5 ACT SHALL REMAIN THE LOWEST PUMP PRICE THAT INCLUDES A POSITIVE
6 GROSS MARGIN TO THE RETAILER OF 6% OVER THE APPLICABLE LAID-IN
7 COST OF MOTOR FUEL, AS DEFINED IN THIS ACT, FOR THE TIME IN
8 QUESTION. Assume \$1.446 is the retailer's applicable laid-in
9 cost of motor fuel as defined in this Act, EXCLUDING TAXES AND
10 FEES IMPOSED ON THE SALE OF MOTOR FUEL AT THE PUMP. Further
11 assume the taxes and fees imposed on the sale of motor fuel at
12 the pump are: state motor fuel tax of \$0.19 per gallon,
13 Environmental Impact Fee of \$0.008 per gallon, Underground
14 Storage Tank Fee of \$0.003 per gallon, and state sales tax of
15 6.25%. Further assume that sales tax is levied on the entire
16 sale price, EXCEPT the state motor fuel tax of \$0.19 per
17 gallon. The regulated minimum price must include ALL taxes,
18 plus a 6% gross margin to the retailer. The regulated minimum
19 price is calculated as follows: Step (1) laid-in cost of motor
20 fuel, EXCLUSIVE OF STATE SALES TAX, is \$1.647 ($\$1.446 + \$0.19 +$
21 $\$0.008 + \$0.003 = \$1.647$). Step (2) laid-in cost of motor fuel,
22 EXCLUSIVE OF STATE SALES TAX, plus a 6% gross margin, equals
23 \$1.7521 ($\1.647 divided by $0.94 = \$1.7521$ [rounded to the
24 fourth decimal]). Step (3) sales tax, on the appropriate
25 taxable amount, equals \$0.0911 (0.0625 times $\$1.457$ [the sum of
26 $\$1.446 + \$0.008 + \$0.003$ is $\$1.457$] = $\$0.0911$ [rounded to the
27 fourth decimal]). Step (4) sales tax, plus a 6% gross margin
28 equals, \$0.0969 ($\0.0911 divided by $0.94 = \$0.0969$ [rounded to
29 the fourth decimal]). Step (5) the regulated minimum price is
30 \$1.849 ($\$1.7521 + \$0.0969 = \1.849).

31 "Regulated minimum retail cost price of motor fuel sold
32 from a dedicated supplier" or "regulated minimum price from a
33 dedicated supplier" is calculated the same as the regulated
34 minimum retail cost price of motor fuel sold, except that
35 laid-in cost of motor fuel is replaced by laid-in cost of motor
36 fuel originating from dedicated supplier.

1 "Regulated period for price restoration" means every
2 Wednesday, during the period of time from 8:30 a.m. to 11:30
3 a.m., whenever the retailer's actual price of motor fuel is
4 less than the retailer's regulated minimum retail cost price of
5 motor fuel sold.

6 "Regulatory compliance costs" means those costs incurred
7 by the motor fuel retailer to comply with regulations governing
8 the storage and sale of motor fuel at a retail facility,
9 including, but not limited to, costs associated with meter
10 accuracy, leak detection of tanks or piping, and corrosion
11 protection of tanks or piping, but only to the extent that such
12 costs are not already included in depreciation allowance on
13 fuel equipment.

14 "Relevant geographic market" means the geographic area of
15 effective competition.

16 "Retailer" means a person engaged in the business of
17 selling motor fuel to a member of the motoring public for
18 consumption.

19 "Sale" or "sell" means a transfer of money or other value
20 or combination, exchange, barter, gift, sale, offer for sale,
21 advertisement for sale, soliciting an order, and distribution
22 in any manner or by any means whatsoever, of motor fuel,
23 including a transfer of motor fuel by a person to another
24 person, or by a person to that person, to a member of that
25 person, or to an affiliate of that person.

26 "Sales tax" means the retailer's occupation tax, use tax,
27 or other applicable tax that may be imposed in connection with
28 the sale or use of motor fuel, whether it be imposed by or to
29 the benefit of the State of Illinois or a municipality thereof.

30 "Supply point" or "terminal facility" means any inland,
31 waterfront, or offshore appurtenance on land used for the
32 purpose of storing, handling, or transferring motor fuel, but
33 does not include, wholesale bulk storage facilities owned or
34 operated by a retailer, unless other retailers are also
35 supplied from such wholesale bulk storage facilities.

36 "Supplies expenses" means the costs of those items consumed

1 as part of a motor fuel facility operation that are not sold to
2 consumers or are not capitalized as an asset. Supplies include,
3 but are not limited to, windshield wash paper towels,
4 windshield wash solvent, squeegees, driveway oil absorbent,
5 funnels to assist customers in adding fluids to vehicles,
6 cleaning agents and materials (for floors, counters,
7 restrooms, food service equipment, etc.), mops, brooms,
8 printed forms, office copy paper, tape, paper clips, pens,
9 pencils, fuel and HVAC filters.

10 "Telecommunications expenses" means all communications
11 expenses incurred to accommodate the sale of motor fuel at
12 retail, including but not limited to, telephone line and use
13 expenses, Internet access fees, satellite service expenses,
14 cable fees, and other wire and wireless communications
15 expenses. In the event that goods and services, other than
16 motor fuel, are sold within the same facility as motor fuel, in
17 the event that the telecommunications expenses are shared to
18 accommodate sales and operations associated with the other
19 goods and services, and to the extent that the
20 telecommunications costs associated with motor fuel are not
21 separate and readily distinguishable from the
22 telecommunications costs associated with non-motor fuel sales
23 or operational activities, then the portion of costs not made
24 separate and readily distinguishable that should be allocated
25 as telecommunications expenses for the motor fuel facility
26 shall be determined mathematically as follows: total
27 telecommunications costs for the facility multiplied by the
28 total motor fuel sales dollars at the facility, divided by the
29 total sales dollars of all products and services (motor fuel
30 sales and non-motor fuel sales at the facility).

31 "Transportation charges" shall be defined as the rate per
32 gallon not to exceed 1.10 times the average computed
33 independent commercial posted tariff (common carrier) rates
34 for delivery of motor fuel, from the relevant supply point to
35 the relevant destination point, as a single account, in effect
36 at the time of delivery, based on the rates of at least 2

1 eligible carriers.

2 "Utilities expenses" means all electrical, water, sewer,
3 natural gas, fuel oil, propane, and other energy and utilities
4 expenses incurred in the sale of motor fuel at retail. In the
5 event that goods and services, other than motor fuel, are sold
6 within the same facility as motor fuel, in the event that the
7 utilities expenses are shared to accommodate sales and
8 operations associated with the other goods and services, and to
9 the extent that the utilities expenses associated with motor
10 fuel are not separate and readily distinguishable from the
11 utilities costs associated with non-motor fuel sales or
12 operational activities, then the portion of costs not made
13 separate and readily distinguishable that should be allocated
14 as motor fuel related utilities costs shall be determined
15 mathematically as follows: total utilities costs at the retail
16 facility multiplied by the total motor fuel sales dollars at
17 the retail facility, divided by the total sales dollars of all
18 products and services (motor fuel sales and non-motor fuel
19 sales at the retail facility).

20 "Wholesaler" means a person engaged in the business of
21 making sales of motor fuel at wholesale to a reseller of motor
22 fuel.

23 Section 15. Illegal motor fuel price gouging.

24 (a) It is a violation of this Act to engage in motor fuel
25 price gouging in response to the occurrence of a national
26 disaster or State emergency, except where the sale is both an
27 isolated and inadvertent incident.

28 (b) Motor fuel price gouging that occurs within the 7 days
29 immediately following the occurrence of a disaster or emergency
30 is rebuttably presumed to have been in response to the
31 occurrence of the disaster or emergency.

32 Section 20. Illegal sale below cost. It is a violation of
33 this Act to sell or advertise for sale motor fuel at a retail
34 price that would constitute a below cost sale, except:

1 (a) In response to the equally low price of a competitor
2 within the market area (except during regulated periods for
3 price restoration), provided that detailed records are kept
4 indicating the date and time of day of each change in the sale
5 price of motor fuel and the identity of the person who recorded
6 the price change, and if the change in price is to meet a lower
7 price of one or more competitors, the records shall set forth
8 the name and address of each such competitor, specifying the
9 price which was met, and further documenting the price of each
10 such competitor each day that the price remains below cost, to
11 show that the retailer was responding to the equally low prices
12 of one or more competitors as a "follower", not a leader in the
13 below cost selling, and that the retailer made efforts to
14 support restoration of pricing to a level at or above cost when
15 one or more other competing retailers made such effort;

16 (b) During a publicized grand opening to introduce a new or
17 remodeled business not to exceed 72 consecutive hours in length
18 once every 3 years;

19 (c) During and in conjunction with the introduction period
20 of a new or improved motor fuel product, where coupon discounts
21 shall be permitted of up to \$2 off on the customer purchase of
22 10 or more gallons of such new or improved motor fuel, provided
23 that the redemptive acceptance of the permitted coupons is
24 limited in time to one calendar month within any given calendar
25 year;

26 (d) During a bona fide clearance sale or final business
27 liquidation sale, not exceeding one week in length, for the
28 purpose of discontinuing trade in such motor fuel. (This
29 exception shall not be considered as the price of a competitor
30 and shall not be used as a basis for establishing a below cost
31 sale by another retailer);

32 (e) During a sale of motor fuel by a fiduciary or other
33 officer under the order or direction of any court from a good
34 faith effort to dispose of a grade, brand, or blend of motor
35 fuel. (This exception shall not be considered as the price of a
36 competitor and shall not be used as a basis for establishing a

1 below cost sale by another retailer);

2 (f) Where motor fuel is advertised, offered for sale, or
3 sold as imperfect or damaged, and the advertising, offer for
4 sale, or sale shall state the reason and the quantity of such
5 motor fuel advertised, offered for sale, or to be sold; or

6 (g) Where such sale is both an isolated and inadvertent
7 incident.

8 Section 25. Rebates, discounts, gifts, premiums,
9 promotional items, and other concessions subtracted from
10 retail price.

11 (a) Except as hereinafter provided in this Section 25, the
12 payment or allowance of rebates, refunds, gifts, premiums,
13 promotional items, commissions, discounts or other concessions
14 of any kind, in connection with the sale of or payment for
15 motor fuel at retail (hereinafter referred to as "concession"
16 or "concessions"), whether in the form of money, coupons,
17 discounts, or the value of items, articles, premiums, or
18 commodities gifted or price-subsidized in connection with the
19 sale of or payment for motor fuel at retail, shall be
20 mathematically subtracted from the retail fuel price to
21 determine whether a retailer is selling below cost, whether or
22 not such concessions are actually subtracted from the retail
23 fuel price at the time or place of the sale, and whether or not
24 such concessions are offered or given by the retailer or by
25 another person.

26 (b) Concessions offered, given, issued, distributed,
27 provided or paid in connection with the sale of or payment for
28 motor fuel at retail, up to a total concession not to exceed 5%
29 of the total motor fuel sale, shall not be subtracted from the
30 retail fuel price in determining whether the retailer is
31 selling below cost if: (1) the concession is not given, issued,
32 distributed, provided, or paid by the motor fuel retailer or an
33 affiliate of the motor fuel retailer; (2) the cost of the
34 concession is borne by a person other than the motor fuel
35 retailer or an affiliate of the motor fuel retailer; and (3)

1 the concession does not reduce the pump price and does not
2 reduce the net amount paid for the motor fuel at the time and
3 place of sale, but, rather the concession is provided or
4 applied separate from the time and place of sale of motor fuel.
5 A motor fuel retailer shall not be deemed to bear the cost of a
6 concession by the motor fuel retailer's agreement to pay or
7 payment of a standard bank, credit or payment card processing
8 fee of less than or equal to 3% of the motor fuel sale plus
9 \$0.10 per card transaction (hereinafter referred to as
10 "allowable card transaction processing fee"), provided that
11 such allowable card transaction processing fee includes any and
12 all costs borne by the retailer in connection with the use of
13 the bank, credit or payment card to pay for the motor fuel
14 sale. In addition, a motor fuel retailer shall not be deemed to
15 bear the cost of a concession by the motor fuel retailer's
16 agreement to pay or payment of a bank, credit or payment card
17 having a processing fee in excess of the allowable card
18 transaction processing fee if the retailer can demonstrate, to
19 the satisfaction of the Motor Fuel Review Board, that the
20 processing fee paid by the retailer in excess of the allowable
21 card transaction processing fee is not due or related to the
22 concession, but rather is the standard processing fee of the
23 particular bank, credit or payment card provider to which the
24 fee is paid.

25 (c) If a concession meets all the requirements under
26 subsection (b) of this Section for not being subtracted from
27 the motor fuel retail price in determining whether the motor
28 fuel retailer is selling below cost, except that the
29 concession, or the sum of all concessions, exceeds 5% of the
30 motor fuel sale ("excessive concessions"), that portion of the
31 concession that exceeds 5% of the sale shall be subtracted from
32 the retail motor fuel price in determining whether the motor
33 fuel retailer is selling below cost, unless all of the
34 following additional conditions are met: (1) the excessive
35 concession was offered, given, issued, distributed, provided
36 or paid by a person other than the motor fuel retailer or an

1 affiliate of the motor fuel retailer and without the advance
2 knowledge or consent and beyond the reasonable control of the
3 motor fuel retailer; (2) within 30 days after the motor fuel
4 retailer first knows or reasonably should know about the
5 excessive concession, the motor fuel retailer delivers a
6 written request to the person offering, giving, issuing,
7 distributing, providing or paying the excessive concession
8 that such person discontinue any and all excessive concessions;
9 and (3) if, after 90 days following the motor fuel retailer's
10 written request that such person discontinue the excessive
11 concession, the motor fuel retailer knows or reasonably should
12 know that such person has not discontinued the excessive
13 concession, the motor fuel retailer shall take all reasonable
14 and necessary actions that the motor fuel retailer can, in good
15 faith, take to discontinue any involvement in, participation in
16 or facilitation of the excessive concession by the motor fuel
17 retailer. If the motor fuel retailer's only involvement in the
18 excessive concession is the retailer's acceptance of a
19 particular bank, credit, or other payment card as payment for
20 motor fuel sales, the retailer shall stop accepting such
21 particular bank, credit or other payment card as payment for
22 motor fuel sales, unless the retailer cannot stop accepting
23 such particular card without being required to stop accepting
24 cards of card providers that are not offering, giving, issuing,
25 distributing, providing or paying excessive concessions, in
26 which event the excessive concession of the particular card
27 provider shall not be subtracted from the retail motor fuel
28 price in determining whether the motor fuel retailer is selling
29 below cost if the motor fuel retailer, within 120 days after
30 the motor fuel retailer's request to the particular card
31 provider to discontinue the excessive concession, shall send
32 written notice to the Department of Revenue at an address
33 specified by the Department stating: (a) the identity of the
34 person offering, giving, issuing, distributing, providing or
35 paying excessive concessions, and (b) the motor fuel retailer's
36 inability to discriminately stop accepting the card of the

1 person offering, giving, issuing, distributing, providing or
2 paying the excessive concession.

3 Section 30. Establishment of Motor Fuel Cost Review Board.

4 (a) A Motor Fuel Cost Review Board shall be established to
5 consider matters brought before the Board relating to issues of
6 motor fuel price gouging and below-cost selling including the
7 selection of the entity to provide benchmark pricing services
8 as provided for in this Act.

9 (b) The Board shall be comprised of 5 members, including:

10 (1) the Director of Revenue or his or her designated
11 representative;

12 (2) a resident of Illinois who is an active retailer of
13 motor fuel and a member in good standing with the Illinois
14 Petroleum Marketers Association;

15 (3) an Illinois resident who is a member in good
16 standing with the Illinois Retail Merchants Association;

17 (4) a certified managerial accountant licensed to
18 practice public accounting in the State; and

19 (5) a resident of the State, retired from the petroleum
20 retailing industry, having had a minimum of 10 years
21 experience working in the retail motor fuel industry before
22 retiring.

23 (c) Appointments to the Board shall be by the Governor,
24 with the advice and consent of at least a majority of the
25 Illinois Senate. Appointments shall be for a term of 3 years.

26 (d) The Board shall meet and be under the direction of the
27 Director of Revenue, or his or her designated representative,
28 who shall serve as chairperson of the Board. The Board shall
29 meet, at minimum one time a year and at maximum 5 times a year,
30 at which time the members of the Board shall receive an annual
31 report from the Director of Revenue or his or her designated
32 representative, about complaints and matters relating to price
33 gouging below cost selling, reports of excessive concessions,
34 and the activities of the Department.

35 (e) The certified managerial accountant shall be

1 compensated at a rate that is usual and customary for
2 professional services provided by a certified managerial
3 accountant in the State, while other non-government employee
4 members of the Board shall be compensated at the rate of \$40
5 per hour (such hourly rate to be increased every 3 years by a
6 factor based on one-half the rate of increase in the consumer
7 price index over the prior 3-year period) for time spent in
8 meetings of the Board, whether meetings be conducted in person
9 or by telephone conference call, with a minimum compensation
10 payment of \$100 per person per meeting, such minimum to help
11 offset some of the outside preparation time and considerations
12 involved prior to meetings of short duration. While members of
13 the Board shall not be compensated for the time traveling to
14 and from meetings, members of the Board shall be reimbursed for
15 reasonable travel and lodging expenses upon request, the rates
16 of reimbursement for such expenses not to exceed those allowed
17 of State employees. Payments relating to this Section shall be
18 made by the Department.

19 Section 35. Remedies and penalties for below-cost sales.

20 (a) If a retailer is selling motor fuel in a given market
21 area below the regulated minimum retail cost price of motor
22 fuel sold for another retailer in the same market, the
23 complaining retailer may file a complaint with the Department
24 of Revenue. The complaint shall include, at minimum, the name,
25 contact person, address and telephone number of the complaining
26 retailer, and the name, address and telephone number of the
27 competing retailer (also referred to as "alleged violator"),
28 the name and address of each retail location subject to the
29 complaint, the pricing at each such location on the applicable
30 dates, the regulated minimum price of the complaining retailer
31 for each applicable date, with documentation supporting the
32 complaining retailer's computed regulated minimum price for
33 each such date. Within 30 days after receipt of the complaint,
34 the Department shall give written notice of the complaint to
35 the alleged violator. Such notice shall include a copy of the

1 complaint and all documentation filed. The alleged violator
2 shall have 60 days from the date of the notice to respond to
3 the Department with evidence that the alleged violator, for any
4 and all periods of time subject to the complaint, and for any
5 and all periods of time following the last date named in the
6 complaint to the date of the notice, was not selling below its
7 regulated minimum price, or that any sale below the regulated
8 minimum price meets one of the exceptions under subsections (a)
9 through (f) of Section 20. The Department shall have 90 days
10 from the date of the Department's receipt of the alleged
11 violator's response to provide to the complainant and to the
12 alleged violator written findings of: (i) whether the
13 complaining retailer has made a prima facie showing in its
14 complaint that the alleged violator sold below the complaining
15 retailer's regulated minimum price, and, if such prima facie
16 showing is made, then (ii), whether the alleged violator has
17 proven in its response, by a preponderance of the evidence,
18 that it did not sell below its regulated minimum price, or that
19 it meets one of the Section 20 exceptions.

20 (b) If the Department finds: (i) that the complainant has
21 failed to make a prima facie showing under subsection (a), (ii)
22 that the alleged violator has proven either an exception under
23 Section 20, or (iii) that it did not sell below its regulated
24 minimum price, the complaint shall be closed. If the Department
25 finds that the complainant has made the required prima facie
26 showing and that the alleged violator has neither rebutted that
27 showing nor proven an exception under Section 20, the alleged
28 violator shall be given the opportunity to provide full
29 disclosure and cost-accounting documentation that it did not
30 sell below cost. Certified by either a certified managerial
31 accountant or certified public accountant hired by the alleged
32 violator, the alleged violator shall file such documentation
33 with the Department within 90 days after the date of the
34 Department's written findings under subsection (a), and shall,
35 on the same day, serve the complainant with a copy. The
36 Department shall then have a period of 180 days in which to

1 review the data provided by the alleged violator, during which
2 time the Department may, at its option, submit the matter to
3 the Motor Fuel Cost Review Board for advisory comment. At any
4 time during this 180-day period, the Department may request
5 further data and clarification from the alleged violator, and
6 the alleged violator shall have a period of 60 days after each
7 additional request in which to respond with service of a copy
8 of each additional response upon the complainant. After the
9 final response, the Department shall have an additional period
10 of 180 days in which to review the supplemental data. If the
11 Department finds that the documentation provided by the alleged
12 violator proves by a preponderance of the evidence that it did
13 not sell below cost, then the complaint shall be closed. If the
14 Department shall find otherwise, or if the alleged violator
15 shall fail to provide data and documentation to support that it
16 did not sell below cost, the Department shall conclude that the
17 alleged violator violated this Act. The Department shall
18 promptly provide written notice to the alleged violator and the
19 complainant of the Department's conclusion, and fine the
20 violator in accordance with this Act.

21 (c) If the alleged violator fails or refuses to respond in
22 a timely manner to the requests of the Department or fails to
23 pay fines to the Department within 30 days after notice of the
24 imposition of a fine, the Department shall refer the matter to
25 the Office of the Illinois Attorney General for prosecution.
26 Upon receipt of such referral, the Office of the Illinois
27 Attorney General, or at its discretion, the State's Attorney
28 for the county in which the alleged below-cost sale occurred,
29 shall commence a civil action to enforce the findings of and
30 fines imposed by the Department. While the civil action is
31 pending, the Attorney General or the State's Attorney shall
32 seek to enjoin the violator from below cost pricing, and upon a
33 proper showing, a temporary restraining order, preliminary
34 injunction, or permanent injunction shall be issued without the
35 necessity of a bond.

36 (d) Any person who has been found by the Department to have

1 committed a violation of below-cost selling under this Act
2 shall be listed as a "below cost seller" by the Department. If
3 such person is found to have committed another act of below
4 cost selling within 18 months after the date of the first act
5 of below-cost selling, the Department shall fine the violator a
6 sum not to exceed \$5,000 per violation, unless a violation was
7 determined accidental, in which case the civil penalty shall
8 not exceed \$2,500. The violator shall also be liable for
9 accountant's fees, expert witness fees, and investigative
10 expenses incurred by the Department, and shall be subject to
11 injunctive relief. Each day that a violation of below-cost
12 selling under this Act occurs is considered a separate
13 violation. If an action is brought by a State's Attorney, the
14 entire amount of the fine shall be paid to the treasury of the
15 county in which the judgment was entered. If such action is
16 brought by the Attorney General, one-half of the penalty shall
17 be paid to the treasury of the county where the action was
18 brought and one-half shall be paid to the State Treasury,
19 earmarked for the Attorney General's State Project and Court
20 Order Distribution Fund. Fines paid to the Department without
21 involvement of the Attorney General shall go to the General
22 Revenue Fund.

23 (e) Any person in competition with a person suspected of
24 below cost selling or threatening to sell below cost under this
25 Act may file and maintain an action in any court of competent
26 jurisdiction to prevent, restrain, or enjoin such violation or
27 threatened violation and recover damages for the violation or
28 threatened violation, whether or not such person has filed a
29 complaint under subsection (a) of this Section of this Act and
30 whether or not an action is pending under subsection (c) of
31 this Section. Upon proper application by the plaintiff in any
32 action under this subsection (e), the court shall grant
33 preliminary injunctive relief if the plaintiff shows that he or
34 she is a proper person to seek the relief requested and that
35 the defendant is selling motor fuel below the plaintiff's
36 regulated minimum price for the time in question. In such

1 action, there shall be a rebuttable presumption that the
2 defendant has violated this Act if the plaintiff can show that,
3 on a given day, the defendant sold or offered for sale, motor
4 fuel at a price below the plaintiff's regulated minimum price.
5 The defendant may rebut such presumption by proving by a
6 preponderance of the evidence that: (i) the plaintiff's
7 calculation of the regulated minimum price was inaccurate and
8 the defendant did not in fact sell below the actual regulated
9 minimum price; (ii) that the defendant qualifies for one of the
10 exceptions under Section 20; or (iii) that the defendant did
11 not in fact sell or offer for sale motor fuel below cost. If
12 the plaintiff proves a prima facie violation of this Act, and
13 the defendant does not rebut such proof, the court shall enjoin
14 and restrain, or otherwise prohibit, such violation or
15 threatened violation and, in addition, the court shall assess
16 in favor of the plaintiff and against the defendant the costs
17 of the lawsuit, including reasonable attorney's fees. It shall
18 not be necessary that actual damages to the plaintiff be
19 alleged or proved, but if damages are alleged and proved, the
20 plaintiff shall also be entitled to actual damages, exemplary
21 or punitive damages, and restitution. If the plaintiff fails to
22 make a prima facie showing that the defendant sold motor fuel
23 below the plaintiff's regulated minimum price, or if the
24 defendant proves that the plaintiff's calculation of
25 plaintiff's regulated minimum price was inaccurate, the court
26 may award court costs and reasonable attorney's fees to the
27 defendant.

28 (f) The circuit courts of this State are empowered with
29 jurisdiction to hear and determine all cases brought under this
30 Section. Venue lies in the county in which the alleged
31 violation occurred.

32 (g) If any action is brought for a violation of a
33 below-cost sale, the burden of proof, upon a prima facie
34 showing of a violation, shall shift to the defendant to show
35 justification. A prima facie showing of a violation shall be
36 made if the plaintiff shows that the retail price of motor fuel

1 of the defendant-retailer was below the regulated minimum
2 retail cost price of motor fuel sold of the plaintiff retailer.
3 Unless justification is shown by the defendant by a
4 preponderance of the evidence, the court shall award judgment
5 to the plaintiff.

6 Section 40. Remedies and penalties for price gouging.

7 (a) Complaints of price gouging shall be made to the
8 Department of Revenue, specifying the name and address of each
9 retail location subject to the complaint, and the pricing at
10 each location on applicable dates that the violations are
11 alleged to have occurred. Within 30 days of receipt of the
12 complaint, the Department shall make contact with the alleged
13 violator, and the alleged violator shall have 60 days after
14 receipt of notice in which to provide evidence that for any and
15 all periods of time subject to the complaint, and for any and
16 all periods of time from the date of the last violation alleged
17 in the complaint to the date of the notice, the alleged
18 violator was not pricing above the regulated maximum price.
19 Upon a prima facie showing that the alleged violator sold or
20 offered for sale motor fuel at a price above the regulated
21 maximum price on the date in question, the alleged violator
22 shall have the burden to prove, by a preponderance of the
23 evidence that he or she did not price above the regulated
24 maximum price on the date in question. If the alleged violator
25 can show, by a preponderance of the evidence, that he or she
26 did not price in excess of the regulated maximum price, the
27 complaint shall be closed. If the Department shall find that
28 the alleged violator did not prove that he or she did not price
29 in excess of the regulated maximum price for each day subject
30 to the complaint, the alleged violator shall be given the
31 opportunity to provide full disclosure and cost-accounting
32 documentation, certified by either a certified managerial
33 accountant or certified public accountant hired by the alleged
34 violator, that it did not engage in motor fuel price gouging.
35 The Department shall then have a period of 180 days in which to

1 review the data provided by the alleged violator, during which
2 time, the Department may, at its option, submit the matter to
3 the Motor Fuel Cost Review Board, for advisory comment. At any
4 time during this 180-day period, the Department may request
5 further data and clarification from the alleged violator, and
6 the alleged violator shall have a period of 60 days, after each
7 such request, in which to respond. After receipt of the final
8 response, the Department shall have an additional period of 180
9 days in which to review the supplemental data. If the
10 Department finds that the documentation provided by the alleged
11 violator proves by a preponderance of the evidence that he or
12 she did not engage in motor fuel price gouging, then the
13 complaint shall be closed. If the Department shall find
14 otherwise, or if the alleged violator shall fail to provide
15 data and documentation to support that he or she did not engage
16 in price gouging, the Department shall conclude that the
17 alleged violator violated this Act. The Department shall then
18 notify the alleged violator of the Department's conclusion, and
19 fine the violator in accordance with this Act.

20 (b) If the alleged violator fails or refuses to respond in
21 a timely manner to the requests of the Department or fails to
22 pay fines to the Department within 30 days after notice of the
23 imposition of the fine, the Department shall refer the matter
24 to the Attorney General for prosecution. Upon receipt of such
25 referral, the Attorney General, or at its discretion, the
26 State's Attorney of the county in which the violation occurred,
27 shall commence a civil action to enforce the findings of and
28 fines imposed by the Department. While the civil action is
29 pending, the Attorney General shall seek to enjoin the violator
30 from price gouging, and upon a proper showing, a temporary
31 restraining order, preliminary injunction, or permanent
32 injunction shall be issued without the necessity of a bond.

33 (c) Any person who is found to have committed a violation
34 of price gouging, as defined by this Act, shall be subject to a
35 civil penalty not to exceed \$5,000 per violation for each
36 offense. Any such violator shall also be liable for the fees of

1 accountants, expert witness fees, and investigative expenses,
2 incurred by the State, if the State prevails in an action under
3 this Act. Each day that a violation of price gouging under this
4 Act occurs is considered a separate violation. If brought by a
5 State's Attorney, the entire amount of the fine shall be paid
6 to the treasury of the county in which the judgment was
7 entered. If brought by the Attorney General, one-half of the
8 penalty shall be paid to the treasury of the county where the
9 action was brought and one-half shall be paid to the State
10 Treasury, earmarked for the Attorney General's State Project
11 and Court Order Distribution Fund. Fines paid to the Department
12 without involvement of the Attorney General shall go to the
13 General Revenue Fund.

14 Section 45. Illegal contracts. Any contract, express or
15 implied, made by any person in violation of any of the
16 provisions of this Act is illegal and void, and recovery shall
17 not be awarded.

18 Section 50. Recordkeeping.

19 (a) Persons engaged in commerce within this State who sell
20 or offer to sell motor fuel shall maintain records accurately
21 indicating the date and the time of day of each change in the
22 sale price of motor fuel and the identity of the person who
23 recorded the price change. In the event the change in price is
24 to meet a lower price of a competitor, the record shall set
25 forth the competitor's name and address, specifying the price
26 which was met. These records shall be maintained for a period
27 of 3 years.

28 (b) The records shall be made available to the Department
29 of Revenue and Attorney General on request.

30 Section 55. Witnesses; production of books and records. Any
31 defendant, or any witness, in any civil action brought under
32 the provisions of this Act may be required to testify, and any
33 defendant, or any witness, may, upon proper process, be

1 compelled to produce his books, records, invoices, and all
2 other documents of any such defendant or witness into court and
3 the same may be introduced as evidence, but no testimony given
4 or produced shall be received against such defendant upon any
5 criminal proceeding or investigation against the defendant.

6 Section 60. Trade association may file suit. Any duly
7 organized and existing trade association, whether incorporated
8 or not, is authorized to institute and prosecute a suit or
9 suits for injunctive relief and costs provided for under the
10 terms of this Act, as the real party in interest for and on
11 behalf of one or more of the association's members, when a
12 violation of this Act directly or indirectly affects or
13 threatens to affect or injure such member or members, or where
14 violation of this Act threatens to impair fair competition or
15 otherwise affects the member.

16 Section 65. Limitations period. Any action brought by the
17 Attorney General or any State's Attorney shall be brought
18 within 2 years after the alleged violation occurred or should
19 reasonably have been discovered. Any action brought by any
20 other person or entity shall be brought within 3 years after
21 the alleged violation occurred or should reasonably have been
22 discovered.

23 Section 70. Powers and duties.

24 (a) The Department of Revenue has the following powers and
25 duties:

26 (1) to investigate complaints regarding violations of
27 this Act;

28 (2) to seek injunctive relief as appropriate;

29 (3) to levy fines for a violation of this Act;

30 (4) to determine what rates of compensation are usual
31 and customary for certified managerial or cost accountants
32 practicing in the State, and to set the hourly fee of the
33 managerial or cost-accountant serving on the Motor Fuel

1 Cost Review Board; and

2 (5) to select the entity to provide the benchmark
3 pricing services provided for in conjunction with this Act.
4 The following criteria shall be utilized to choose the
5 benchmark pricing service provider from the alternatives
6 available at the time of choosing: (i) which entity
7 provides for the most complete coverage of wholesale
8 terminal suppliers not only within the State, but also
9 within neighboring states having wholesale supply rack or
10 terminals within the area relevant to the calculation of
11 the regional benchmark pricing service average price, (ii)
12 which entity will make its information the easiest to
13 access for Illinois motor fuel retailers and the
14 Department, and (iii) which entity will make access to its
15 information the least costly for Illinois motor fuel
16 retailers and the Department. The Department shall
17 coordinate presentations to be made by the available
18 reporting services to the Department and to the Motor Fuel
19 Cost Review Board. The Motor Fuel Cost Review Board shall
20 provide an advisory recommendation to the Department as to
21 the benchmark service provider to be selected or what
22 performance standards should be required of the service
23 provider to be selected. The Department will then utilize
24 this advisory input to make the selection of the benchmark
25 pricing service and to develop performance
26 responsibilities for the benchmark pricing service. Any
27 benchmark service provider selected in this manner shall
28 remain the benchmark service provider under this Act for at
29 least 24 months without formal review of other providers,
30 unless such benchmark service provider defaults on its
31 obligations, or unless two-thirds of the Motor Fuel Cost
32 Review Board votes to reactivate the selection process to
33 reconvene.

34 (b) The Attorney General has the following powers and
35 duties:

36 (1) to investigate complaints regarding violations of

1 this Act;

2 (2) to seek injunctive relief as appropriate;

3 (3) to seek restitution for victims of motor fuel price
4 gouging and other violations of this Act;

5 (4) to institute an action to collect a civil penalty
6 for a violation of this Act; and

7 (5) to delegate to any appropriate State's Attorney its
8 powers and duties.

9 Section 75. Confidentiality.

10 (a) Information obtained by the Department, Attorney
11 General, or State's Attorney in the course of an investigation
12 under this Act, including information from a person who
13 responds to the investigation and designates the information as
14 confidential, must be maintained as confidential until the
15 investigation is completed and a course of action is
16 determined. Neither the Department, Attorney General, or
17 State's Attorney may make known in any manner information
18 obtained in the course of the investigation to persons other
19 than those specified in subsection (c) of this Section or the
20 members of the Motor Fuel Cost Review Board. Once the
21 investigation is completed, if there is a settlement or if a
22 civil action is filed, the information may be made public.

23 (b) This Section does not prohibit the use of confidential
24 information to prepare statistics of other general data for
25 publication, if the information is presented in a manner that
26 prevents identification of particular persons or locations
27 under investigation.

28 (c) For purposes of this Section, references to the
29 Department, Attorney General, or State's Attorney include
30 other individuals designated to write and act on their behalf
31 during an investigation. A person designated shall preserve the
32 confidentiality of information as provided for in subsection
33 (a) of this Section.

34 (d) A person who is served a subpoena with a request for
35 information, to give testimony orally or in writing, or to

1 produce books, papers, correspondence, memoranda, agreements,
2 or other documents or records under this Act may apply to the
3 appropriate circuit court for protection against abuse or undue
4 hardship.

5 Section 80. Banning of government subsidies for motor fuel
6 marketers.

7 (a) It is the policy of this State that no development
8 containing a facility for selling motor fuel shall receive any
9 government subsidy, State or local, to aid in the cost of
10 development, when the motor fuel facility being developed would
11 be in competition with another Illinois-based facility within
12 the same market area.

13 (b) For any facility that has been built with any
14 government subsidy, before a motor fuel facility shall be added
15 to, about, or in affiliation with such facility, all government
16 subsidies received before, shall be paid back to each
17 governmental body providing any such subsidy.

18 (c) Any competitor of a person suspected of receiving a
19 government subsidy in violation of this Act shall have standing
20 to prosecute a civil action to enjoin a violation of this
21 Section and to compel restitution of any such subsidy received
22 or government monies foregone in violation of this Section.

23 Section 85. Severability. If any provision of this Act or
24 its application to any person or circumstance is held invalid,
25 the invalidity of that provision or application does not affect
26 other provisions or applications of this Act that can be given
27 effect without the invalid provision or application.

28 Section 90. Rulemaking authority and duty to inform. The
29 Department of Revenue may issue rules to administer and enforce
30 this Act. The Department shall also have the duty to inform
31 motor fuel marketers of this Act, including the requirements to
32 not sell below cost and to not engage in price gouging, though
33 failure to receive such notice shall not be a defense under

1 this Act. This duty shall be performed by the following: (1)
2 between the time that the Act is signed into law and its
3 effective date, the Department of Revenue shall issue written
4 notification to all persons who are currently filing motor fuel
5 tax returns, as well as all persons listed on prepaid sales tax
6 forms as being retailers from whom prepaid sales taxes have
7 been collected on motor fuels, informing them of this Act, and
8 the requirements to not sell below cost and to not engage in
9 price gouging as defined in this Act, (2) within one year of
10 the effective date of this Act, the Department shall have
11 revised and issued forms requiring filers of motor fuel tax
12 returns to certify their awareness of the Motor Fuel Fair
13 Marketing Practices Act, including the requirements to not sell
14 below cost and to not engage in price gouging, and (3) at the
15 time that new motor fuel licenses are issued, the Department
16 shall include a notice of the existence of this Act, such
17 notice including the requirements not to sell below cost and
18 not to engage in price gouging.

19 Section 95. Appropriations. The Department of Revenue and
20 Office of the Illinois Attorney General shall request, by way
21 of appropriations, the costs and expenses necessary to comply
22 with this Act.