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.

FISCAL NOTE ACT
MAY APPLY
AN ACT concerning business.

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

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

Section 5. Legislative findings; purpose.

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

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

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

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

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

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

(g) Retail marketers of motor fuel must earn a margin of profit on the sale of motor fuel for reinvestment in the business because many motor fuels are flammable and combustible
liquids, that must be distributed in a safe manner, utilizing specially designed and costly explosion-proof equipment.

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

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

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

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

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

(m) The primary reason that the profit earned on the sale
of motor fuel has gone below what is reasonable and necessary
for a cost-sharing retailer to cover its costs of doing
business is the growing practice of below-cost marketing of
motor fuels.

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

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

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

(1) A retailer covers its losses on the sale of motor
fuel from profits generated by the sales of products and
services unrelated to the retail sale of motor fuels and
unrelated to the sharing of personnel and other costs
involved in the sales of motor fuel products. Examples
include, but are not necessarily limited to, bulk
distributors of motor fuel, supermarket operators and mass
merchandiser retailers who have added motor fuel as an
additional, separate product offering, and who provide
motor fuel discounts and subsidize motor fuel operations
with revenue generated on separate operations, as well as
those involved in money laundering and illegal trade. This
form of subsidization is referred to as "subsidization via
revenue sharing from diversification".
(2) Large chain retailers who cover a large geographic market and subsidize their below-cost sales in one market with profits generated in other markets. This form of subsidization is referred to as "subsidization via revenue sharing from geographic dispersion".

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

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

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

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

(s) The inability of independent motor fuel marketers to accumulate capital, due to unfair competition in the motor fuel industry, also damages local and regional suppliers of equipment, facilities, technology, and other goods and services with whom independents regularly do business, all to the detriment of local and regional economies.
(t) Unfair competition in the retail motor fuel industry also injures the ability of independent motor fuel marketers to generate money to cover the costs of regulation compliance related to underground storage tank systems, potentially endangering the environment.

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

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

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

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

(y) While the federal government has regulations dealing with predatory pricing, the regulations fail to protect businesses and consumers because the regulations are not held to be violated until long after the damage caused by predatory pricing has been done, with much of the damage (i.e. bankrupt and closed family and other independent businesses) being irreversible.
Federal regulations also fail to take into account the unique circumstances associated with the retail motor fuel industry, including but not necessarily limited to, the following:

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

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

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

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

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

(cc) While retailers of motor fuel should not be guaranteed
a financial net profit from the marketing of motor fuel, retailers of motor fuel also should not be guaranteed a financial net loss from the marketing of motor fuel.

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

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

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

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

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

(ii) In order to provide the most simplicity in determining
when a motor fuel marketer is in compliance with this Act, and
to also eliminate the need for rules and regulations governing
wholesale price discrimination, transfer pricing, commodities
trading, or related issues involved in the subsidization of
motor fuel at retail from a vertically integrated motor fuel
marketer, the General Assembly declares that there is a need
for a neutral guideline on which to base fuel prices for the
purpose of determining if below-cost pricing or price-gouging
is occurring.

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

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

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

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

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

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

Section 10. Definitions. In this Act:

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

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

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

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

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

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

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

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

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

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

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

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

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

"Cost of selling motor fuel at retail on a per gallon basis" means a per gallon cost determined mathematically by the sum of the following 2 cost items: (1) the mathematical result derived from dividing the expense costs of selling motor fuel at retail during the 24 months before the date in question by the number of gallons of motor fuel sold during the 24 months before the date in question, plus (2) the mathematical result derived from dividing the investment costs of selling motor fuel at retail by the average monthly gallons of motor fuel sold.
"Credit card and bank card related expenses" means any costs to the motor fuel retailer associated with accommodating the payment of motor fuel by way of bank and credit card transactions, including but not limited to, fixed fees, transaction fees, and network processing fees. In the event that goods and services, other than motor fuel, are sold within the same facility as motor fuel, in the event that the payment of such goods and services are also by way of bank and credit card transactions, and to the extent that any costs associated with accommodating the payment of motor fuel by way of bank and credit cards are not made separate and readily distinguishable from the costs associated with accommodating the payment of non-motor fuel items by bank and credit cards, then the portion of costs not made separate and readily distinguishable that should be allocated as motor fuel related costs shall be determined mathematically as follows: total bank card and credit card related costs incurred by the retailer for the applicable retail facility, multiplied by the total dollars associated with motor fuel purchases paid by bank or credit cards at the retail facility, divided by the total dollars associated with total purchases paid by bank or credit cards at the facility.

"Credit carrying and handling costs of the motor fuel retailer" means those costs incurred by the motor fuel retailer in providing its own credit to its customers on the sale of motor fuel, including but not limited to, the cost of tying up money, as well as billing and bad debt expenses, but excluding, credit card and bank card related expenses. Because such costs can vary from time to time and from retailer to retailer (due to fluctuating interest rates, due to fluctuations in the economy, and other factors not within the control of the motor fuel retailer), and because such costs may be very difficult to precisely calculate, such costs, for purposes of this Act, shall be deemed to equal the lowest rate available to the motor fuel retailer for the processing of general bank cards (as opposed to any bank cards that are co-branded or sponsored by
the brand of the motor fuel retailer), whether or not the motor
fuel retailer is utilizing the lowest priced bank card
processor available to the retailer. To the extent that a motor
fuel retailer is unable to provide information regarding the
lowest priced bank card processor available to the retailer,
then the credit carrying and handling costs of such motor fuel
retailer shall be presumed to be 2% of the motor fuel sale.

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

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

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

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

"Direct labor costs" means the wages and payroll taxes
associated with those personnel directly involved in the sale,
delivery, or transfer of motor fuel, including maintenance on
motor fuel facilities. Direct labor costs also include
workman's compensation, unemployment insurance, imputed health insurance costs, and other human resources costs directly related to such personnel (excluding actual health insurance costs). In the event that personnel directly involved in the sale, delivery or transfer of motor fuel from one retail facility are also directly involved in the sale, delivery or transfer of motor fuel from one or more other retail facilities, and to the extent that direct labor costs for one facility are not separate and readily distinguishable from the direct labor costs of another facility, then the portion of costs not made separate and readily distinguishable that should be allocated as direct labor costs for a given facility shall be determined mathematically as follows: total non-distinguishable direct labor costs multiplied by the total sales dollars at the given retail facility, divided by the total sales dollars of all retail facilities for whom the direct labor costs are incurred. In the further or other event that goods and services, other than motor fuel, are sold within the same facility as motor fuel, in the event that the personnel directly involved in the sale, delivery, or transfer of motor fuel are also involved in the sale or delivery of such other goods and services, and to the extent that the personnel costs associated with motor fuel are not separate and readily distinguishable from the personnel costs associated with non-motor fuel sales or service delivery, then the portion of costs not made separate and readily distinguishable that should be allocated as motor fuel related costs shall be determined mathematically as follows: total non-distinguishable direct labor costs for the retail facility multiplied by the total motor fuel sales dollars at the retail facility, divided by the total sales dollars of all products and services (motor fuel sales and non-motor fuel sales) at the retail facility. Direct labor costs do not include credit carrying and handling costs of the motor fuel retailer.

"Disaster" has the meaning given in Section 4 of the Illinois Emergency Management Agency Act.
"Expense costs of selling motor fuel at retail" means the mathematical sum obtained by adding the following costs associated with the retailing of motor fuel at a given retail facility: direct labor, plus indirect labor costs, plus credit card and bank card related expenses, plus credit carrying and handling costs of the motor fuel retailer, plus utilities expenses, plus property taxes, plus insurance expenses, plus maintenance expenses, plus supplies expenses, plus telecommunications expenses, plus inventory losses, plus regulatory compliance costs. Expense costs of selling motor fuel at retail does not include interest on borrowed capital, dividends paid on equity capital, advertising expenses, actual health insurance costs, life insurance costs, or leasing costs (since a substitute for leasing costs is provided by investment costs of selling motor fuel as defined in this Section).

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

"Fuel equipment" includes, but is not limited to, fuel pumps, fuel dispensers, fuel tanks, fuel piping, fuel tank gauge systems, fuel controllers, credit card acceptance devices on the fuel dispensers, fuel distribution boxes, pump
access modules, and fuel related signage.

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

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

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

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

"Inadvertent incident" means that the incident can be shown not to be deliberate, but, rather accidental. Examples of accidental incidents include, but are not limited to, errors or omissions on the part of the retail personnel who change the
prices, the failure on the part of clerical personnel to
properly enter pricing data into a data processing system, and
the failure to include, in computing laid-in cost of motor
fuel, the wholesale pricing of a new supplier due to a lack of
awareness of such new supplier. Failure to perform the
computations necessary to ensure compliance with this Act shall
not be deemed accidental.

"Indirect labor costs" means labor costs other than direct
labor costs, including but not limited, to supervisory,
bookkeeping, and administrative personnel who are indirectly
related to the sale, delivery, transfer, or accounting of motor
fuel, whether or not such personnel are situated at the motor
fuel facility. Indirect labor costs also include workman's
compensation, unemployment insurance, imputed health insurance
costs, and other human resources costs directly related to such
personnel (excluding actual health insurance costs). In the
event that personnel indirectly involved in the sale, delivery
or transfer of motor fuel from one retail facility also are
indirectly involved in the sale, delivery or transfer of motor
fuel from one or more other retail facilities, and to the
extent that indirect labor costs for one facility are not
separate and readily distinguishable from the indirect labor
costs of another facility, then the portion of costs not made
separate and readily distinguishable that should be allocated
as indirect labor costs for a given facility shall be
determined mathematically as follows: total
non-distinguishable indirect labor costs multiplied by the
total sales dollars at the given retail facility, divided by
the total sales dollars of all retail facilities for whom the
indirect labor costs are incurred. In the further or other
event that goods and services, other than motor fuel, are sold
within the same facility as motor fuel, and in the event that
the personnel indirectly involved in the sale, delivery, or
transfer of motor fuel at the facility are also indirectly
involved in the sale or operations of such other goods and
services, and to the extent that the personnel costs associated
with motor fuel are not separate and readily distinguishable
from the personnel costs associated with non-motor fuel sales
or operational activities, then the portion of costs not made
separate and readily distinguishable that should be allocated
as motor fuel related costs for that facility shall be
determined mathematically as follows: total
non-distinguishable indirect labor costs for that facility (as
determined above if such indirect labor costs are attributable
to more than one facility) multiplied by the total motor fuel
sales dollars at that facility, divided by the total sales
dollars of all products and services (motor fuel sales and
non-motor fuel sales) at the facility. Indirect labor costs do
not include credit carrying and handling costs of the motor
fuel retailer.

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

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

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

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

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

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

"Land holding costs" means on a monthly basis, a 7% return on the market value of the land occupied by motor fuel facilities (motor fuel facilities consisting of motor fuel improvements and equipment). Since motor fuel facilities will not always occupy all of the land at a site where motor fuel sales take place in conjunction with the sales of other goods and services, the portion of the land that the motor fueling facilities occupy (including the area of driveway entrances and driveways utilized by motor fueling motorists in their ingress to and egress from motor fueling facilities) shall be measured, in square feet, and that area shall be divided by the total
area, in square feet, of the entire developed area of land to
determine the percentage of the land occupied by motor fuel
facilities. That percentage (100% in the case of a stand-alone
motor fuel facility) shall be multiplied by the total market
value of the land to determine the value of the land
attributable to the motor fuel facility. That proportional
value shall then be multiplied by a factor of 7%, then divided
by a factor of 12 to determine the land holding costs per month
for the motor fuel facility. In the event that the land is
leased, not owned, by the motor fuel retailer, and if the
monthly leasing costs, for the portion of the land occupied by
the motor fueling facilities, is greater than the proportional
value of the land and multiplied by a factor of 7%, divided by
a factor of 12, then the land holding costs for the motor fuel
facility shall be equal to the monthly leasing costs
attributable to the land portion of the motor fuel facility.

"Land development costs" means, on a monthly basis, a 7%
return on the costs of developing land occupied by motor fuel
facilities (motor fuel facilities consisting of motor fuel
improvements and equipment). Land development costs include,
but are not limited to, paving, storm sewer, and underground
utilities costs, excluding however, any costs of motor fuel
improvements and equipment. In the event that motor fuel
facilities do not occupy all of the land development at a site
where motor fuel sales take place in conjunction with sales of
other goods and services, the portion of the costs attributable
to developing the land occupied by motor fuel facilities shall
be determined mathematically as follows: total costs of
developing the land, multiplied by the area, in square feet,
occupied by the motor fuel facility (motor fuel facility
includes fuel improvements and fuel equipment, as well as the
area of driveway entrances and driveways utilized by motor
fueling motorists in their ingress to and egress from motor
fueling facilities), divided by the total area, in square feet,
of the entire developed area of land. That percentage (100% in
the case of a stand-alone motor fuel facility) shall be
multiplied by the total costs of developing the land occupied
by motor fuel facilities to determine the value of developed
land attributable to the motor fuel facility. That proportional
value shall then be multiplied by a factor of 7%, then divided
by a factor of 12, to determine the land development costs per
month for the motor fuel facility. In the event that the land
development is leased, not owned by the motor fuel retailer,
and in the further event that the monthly leasing costs for the
portion of the land development occupied by the motor fueling
facilities, is greater than the proportional value of such land
multiplied by a factor of 7%, divided by a factor of 12, then
the land development costs for the motor fuel facility shall be
equal to the monthly leasing costs attributable to the land
development portion of the motor fuel facility.

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

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

"Maintenance expenses" means the maintenance costs
associated with a given motor fuel facility (including fuel
improvements, fuel equipment, and land improvements). In the
event that motor fuel facilities do not comprise all of the
land at a site where motor fuel sales take place in conjunction with the sales of other goods and services, the proportional cost of maintenance on the land and land improvements allocable to motor fuel retailing shall be determined mathematically as follows: total maintenance costs on the land and on the land improvements, multiplied by the area, in square feet, occupied by the motor fuel facility (including fuel improvements and fuel equipment, as well as the area of driveway entrances and driveways utilized by motor fueling motorists in their ingress to and egress from motor fueling facilities), divided by the total area, in square feet, of the entire developed area of land.

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

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

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

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

"Person" means any individual, club, firm, association, organization, partnership, business, trust, joint-stock company, company, corporation, or other entity, legal or otherwise.
"Price gouging of motor fuel", "price gouging", or "motor fuel price gouging" means the self-service sale of gasoline or No. 2 low sulfur clear diesel fuel at retail in the State at a price greater than the greater of the following: (1) the regulated maximum retail cost price of motor fuel sold at the time the motor fuel was sold, (2) 19 cents per gallon above the retailer's actual costs of selling motor fuel per gallon at the time the motor fuel was sold, or (3) 19 cents per gallon above the retailer's actual costs of selling motor fuel per gallon from a dedicated supplier at the time the motor fuel was sold.

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

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

"Regulated maximum retail cost price of motor fuel sold" or "regulated maximum price" relates to motor fuel sales at self-service, and means the greater of: (1) the regulated minimum retail cost price of motor fuel sold plus 19 cents per gallon at the time the motor fuel was sold, (2) the regulated minimum retail cost price of motor fuel sold from a dedicated supplier plus 19 cents per gallon at the time the motor fuel was sold, (3) the regulated minimum retail cost price of motor fuel sold plus 19 cents per gallon at the time the motor fuel was sold plus any extraordinary costs (on a per gallon basis) incurred by the motor fuel retailer at or for the time the motor fuel was sold, or (4) the regulated minimum retail cost price of motor fuel sold from a dedicated supplier plus 19
cents per gallon plus any extraordinary costs (on a per gallon basis) incurred by the motor fuel retailer at or for the time the motor fuel was sold.

"Regulated minimum retail cost price of motor fuel sold" or "regulated minimum price" means the lowest pump price that includes a positive gross margin to the retailer of 6% over the retailer's laid-in cost of motor fuel for the time in question. As such the regulated minimum retail cost price of motor fuel sold is the quotient of the applicable laid-in cost of motor fuel divided by 0.94 (i.e. the sum of 1.00 minus the minimum margin of 6%, or 1.00 minus 0.06 = 0.94). As an example, if the laid-in cost of motor fuel on a given day is $1.738, the regulated minimum retail cost price of motor fuel sold for that day is $1.849, calculated as follows: $1.738, laid-in cost divided by 0.94, (gross margin factor of 6%), equals $1.849.

Since laid-in cost of motor fuel includes taxes and fees imposed on the sale of motor fuel at the pump (these taxes and fees are, at the time of passage of this Act, Illinois State sales tax of 6.25%, state motor fuel tax of $0.19 per gallon, Environmental Impact Fee of $0.008 per gallon, and the Illinois Underground Storage Tank Fee of $0.003 per gallon), and since the taxes and fees imposed on the sale of motor fuel at the pump are both percentage taxes and flat taxes or fees (Illinois state sales tax being a percentage tax and the remainder, at the time of passage of this Act, being flat taxes and fees) and since the State, at the time of passage of this Act, imposes sales tax on only two of the three flat taxes (at the time of passage of this Act, Illinois imposes sales tax on the Environmental Impact Fee and the Illinois Underground Storage Tank Fee, but does not impose sales tax on the state motor fuel tax), the following is provided as an additional aid in calculating regulated minimum price: THE FOLLOWING IS PROVIDED AS AN AID ONLY AND THE FOLLOWING DOES NOT SHOW MUNICIPAL TAXES IMPOSED ON THE SALE OF MOTOR FUEL THAT WOULD NEED TO BE INCLUDED TO THE EXTENT APPLICABLE. IN THE EVENT THAT, AFTER THE DATE OF PASSAGE OF THIS ACT, THERE ARE CHANGES IN THE AMOUNT,
STRUCTURE, CALCULATION, TIME OF IMPOSITION OR TYPE OF TAXES OR
FEES IMPOSED ON THE DELIVERY OF MOTOR FUEL TO A RETAILER, ON
THE PURCHASE OF MOTOR FUEL BY A RETAILER, AND/OR ON THE SALE OF
MOTOR FUEL AT THE PUMP, THE REGULATED MINIMUM PRICE UNDER THIS
ACT SHALL REMAIN THE LOWEST PUMP PRICE THAT INCLUDES A POSITIVE
GROSS MARGIN TO THE RETAILER OF 6% OVER THE APPLICABLE LAID-IN
COST OF MOTOR FUEL, AS DEFINED IN THIS ACT, FOR THE TIME IN
QUESTION. Assume $1.446 is the retailer's applicable laid-in
cost of motor fuel as defined in this Act, EXCLUDING TAXES AND
FEES IMPOSED ON THE SALE OF MOTOR FUEL AT THE PUMP. Further
assume the taxes and fees imposed on the sale of motor fuel at
the pump are: state motor fuel tax of $0.19 per gallon,
Environmental Impact Fee of $0.008 per gallon, Underground
Storage Tank Fee of $0.003 per gallon, and state sales tax of
6.25%. Further assume that sales tax is levied on the entire
sale price, EXCEPT the state motor fuel tax of $0.19 per
gallon. The regulated minimum price must include ALL taxes,
plus a 6% gross margin to the retailer. The regulated minimum
price is calculated as follows: Step (1) laid-in cost of motor
fuel, EXCLUSIVE OF STATE SALES TAX, is $1.647 ($1.446 + $0.19 +
$0.008 + $0.003 = $1.647). Step (2) laid-in cost of motor fuel,
EXCLUSIVE OF STATE SALES TAX, plus a 6% gross margin, equals
$1.7521 ($1.647 divided by 0.94 = $1.7521 [rounded to the
fourth decimal]). Step (3) sales tax, on the appropriate
taxable amount, equals $0.0911 (0.0625 times $1.457 [the sum of
$1.446 + $0.008 + $0.003 is $1.457] = $0.0911 [rounded to the
fourth decimal]). Step (4) sales tax, plus a 6% gross margin
equals, $0.0969 ($0.0911 divided by 0.94 = $0.0969 [rounded to
the fourth decimal]). Step (5) the regulated minimum price is
$1.849 ($1.7521 + $0.0969 = $1.849).

"Regulated minimum retail cost price of motor fuel sold
from a dedicated supplier" or "regulated minimum price from a
dedicated supplier" is calculated the same as the regulated
minimum retail cost price of motor fuel sold, except that
laid-in cost of motor fuel is replaced by laid-in cost of motor
fuel originating from dedicated supplier.
"Regulated period for price restoration" means every Wednesday, during the period of time from 8:30 a.m. to 11:30 a.m., whenever the retailer's actual price of motor fuel is less than the retailer's regulated minimum retail cost price of motor fuel sold.

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

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

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

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

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

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

"Supplies expenses" means the costs of those items consumed
as part of a motor fuel facility operation that are not sold to consumers or are not capitalized as an asset. Supplies include, but are not limited to, windshield wash paper towels, windshield wash solvent, squeegees, driveway oil absorbent, funnels to assist customers in adding fluids to vehicles, cleaning agents and materials (for floors, counters, restrooms, food service equipment, etc.), mops, brooms, printed forms, office copy paper, tape, paper clips, pens, pencils, fuel and HVAC filters.

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

"Transportation charges" shall be defined as the rate per gallon not to exceed 1.10 times the average computed independent commercial posted tariff (common carrier) rates for delivery of motor fuel, from the relevant supply point to the relevant destination point, as a single account, in effect at the time of delivery, based on the rates of at least 2
"Utilities expenses" means all electrical, water, sewer, natural gas, fuel oil, propane, and other energy and utilities expenses incurred in the sale of motor fuel at retail. In the event that goods and services, other than motor fuel, are sold within the same facility as motor fuel, in the event that the utilities expenses are shared to accommodate sales and operations associated with the other goods and services, and to the extent that the utilities expenses associated with motor fuel are not separate and readily distinguishable from the utilities costs associated with non-motor fuel sales or operational activities, then the portion of costs not made separate and readily distinguishable that should be allocated as motor fuel related utilities costs shall be determined mathematically as follows: total utilities costs at the retail facility multiplied by the total motor fuel sales dollars at the retail facility, divided by the total sales dollars of all products and services (motor fuel sales and non-motor fuel sales at the retail facility).

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

Section 15. Illegal motor fuel price gouging.

(a) It is a violation of this 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.

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

Section 20. Illegal sale below cost. It is a violation of this Act to sell or advertise for sale motor fuel at a retail price that would constitute a below cost sale, except:
(a) In response to the equally low price of a competitor within the market area (except during regulated periods for price restoration), provided that detailed records are kept indicating the date and time of day of each change in the sale price of motor fuel and the identity of the person who recorded the price change, and if the change in price is to meet a lower price of one or more competitors, the records shall set forth the name and address of each such competitor, specifying the price which was met, and further documenting the price of each such competitor each day that the price remains below cost, to show that the retailer was responding to the equally low prices of one or more competitors as a "follower", not a leader in the below cost selling, and that the retailer made efforts to support restoration of pricing to a level at or above cost when one or more other competing retailers made such effort;

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

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

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

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

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

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

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

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

(b) Concessions offered, given, issued, distributed, provided or paid in connection with the sale of or payment for motor fuel at retail, up to a total concession not to exceed 5% of the total motor fuel sale, shall not be subtracted from the retail fuel price in determining whether the retailer is selling below cost if: (1) the concession is not given, issued, distributed, provided, or paid by the motor fuel retailer or an affiliate of the motor fuel retailer; (2) the cost of the concession is borne by a person other than the motor fuel retailer or an affiliate of the motor fuel retailer; and (3)
the concession does not reduce the pump price and does not reduce the net amount paid for the motor fuel at the time and place of sale, but, rather the concession is provided or applied separate from the time and place of sale of motor fuel. A motor fuel retailer shall not be deemed to bear the cost of a concession by the motor fuel retailer's agreement to pay or payment of a standard bank, credit or payment card processing fee of less than or equal to 3% of the motor fuel sale plus $0.10 per card transaction (hereinafter referred to as "allowable card transaction processing fee"), provided that such allowable card transaction processing fee includes any and all costs borne by the retailer in connection with the use of the bank, credit or payment card to pay for the motor fuel sale. In addition, a motor fuel retailer shall not be deemed to bear the cost of a concession by the motor fuel retailer's agreement to pay or payment of a bank, credit or payment card having a processing fee in excess of the allowable card transaction processing fee if the retailer can demonstrate, to the satisfaction of the Motor Fuel Review Board, that the processing fee paid by the retailer in excess of the allowable card transaction processing fee is not due or related to the concession, but rather is the standard processing fee of the particular bank, credit or payment card provider to which the fee is paid.

(c) If a concession meets all the requirements under subsection (b) of this Section for not being subtracted from the motor fuel retail price in determining whether the motor fuel retailer is selling below cost, except that the concession, or the sum of all concessions, exceeds 5% of the motor fuel sale ("excessive concessions"), that portion of the concession that exceeds 5% of the sale shall be subtracted from the retail motor fuel price in determining whether the motor fuel retailer is selling below cost, unless all of the following additional conditions are met: (1) the excessive concession was offered, given, issued, distributed, provided or paid by a person other than the motor fuel retailer or an
affiliate of the motor fuel retailer and without the advance
knowledge or consent and beyond the reasonable control of the
motor fuel retailer; (2) within 30 days after the motor fuel
retailer first knows or reasonably should know about the
excessive concession, the motor fuel retailer delivers a
written request to the person offering, giving, issuing,
distributing, providing or paying the excessive concession
that such person discontinue any and all excessive concessions;
and (3) if, after 90 days following the motor fuel retailer's
written request that such person discontinue the excessive
concession, the motor fuel retailer knows or reasonably should
know that such person has not discontinued the excessive
concession, the motor fuel retailer shall take all reasonable
and necessary actions that the motor fuel retailer can, in good
faith, take to discontinue any involvement in, participation in
or facilitation of the excessive concession by the motor fuel
retailer. If the motor fuel retailer's only involvement in the
excessive concession is the retailer's acceptance of a
particular bank, credit, or other payment card as payment for
motor fuel sales, the retailer shall stop accepting such
particular bank, credit or other payment card as payment for
motor fuel sales, unless the retailer cannot stop accepting
such particular card without being required to stop accepting
cards of card providers that are not offering, giving, issuing,
distributing, providing or paying excessive concessions, in
which event the excessive concession of the particular card
provider shall not be subtracted from the retail motor fuel
price in determining whether the motor fuel retailer is selling
below cost if the motor fuel retailer, within 120 days after
the motor fuel retailer's request to the particular card
provider to discontinue the excessive concession, shall send
written notice to the Department of Revenue at an address
specified by the Department stating: (a) the identity of the
person offering, giving, issuing, distributing, providing or
paying excessive concessions, and (b) the motor fuel retailer's
inability to discriminatingly stop accepting the card of the
person offering, giving, issuing, distributing, providing or paying the excessive concession.


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

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

1. the Director of Revenue or his or her designated representative;
2. a resident of Illinois who is an active retailer of motor fuel and a member in good standing with the Illinois Petroleum Marketers Association;
3. an Illinois resident who is a member in good standing with the Illinois Retail Merchants Association;
4. a certified managerial accountant licensed to practice public accounting in the State; and
5. a resident of the State, retired from the petroleum retailing industry, having had a minimum of 10 years experience working in the retail motor fuel industry before retiring.

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

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

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

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

(a) If a retailer is selling motor fuel in a given market
area below the regulated minimum retail cost price of motor
fuel sold for another retailer in the same market, the
complaining retailer may file a complaint with the Department
of Revenue. The complaint shall include, at minimum, the name,
contact person, address and telephone number of the complaining
retailer, and the name, address and telephone number of the
competing retailer (also referred to as "alleged violator"),
the name and address of each retail location subject to the
complaint, the pricing at each such location on the applicable
dates, the regulated minimum price of the complaining retailer
for each applicable date, with documentation supporting the
complaining retailer's computed regulated minimum price for
each such date. Within 30 days after receipt of the complaint,
the Department shall give written notice of the complaint to
the alleged violator. Such notice shall include a copy of the
complaint and all documentation filed. The alleged violator shall have 60 days from the date of the notice to respond to the Department with evidence that the alleged violator, for any and all periods of time subject to the complaint, and for any and all periods of time following the last date named in the complaint to the date of the notice, was not selling below its regulated minimum price, or that any sale below the regulated minimum price meets one of the exceptions under subsections (a) through (f) of Section 20. The Department shall have 90 days from the date of the Department's receipt of the alleged violator's response to provide to the complainant and to the alleged violator written findings of: (i) whether the complaining retailer has made a prima facie showing in its complaint that the alleged violator sold below the complaining retailer's regulated minimum price, and, if such prima facie showing is made, then (ii), whether the alleged violator has proven in its response, by a preponderance of the evidence, that it did not sell below its regulated minimum price, or that it meets one of the Section 20 exceptions.

(b) If the Department finds: (i) that the complainant has failed to make a prima facie showing under subsection (a), (ii) that the alleged violator has proven either an exception under Section 20, or (iii) that it did not sell below its regulated minimum price, the complaint shall be closed. If the Department finds that the complainant has made the required prima facie showing and that the alleged violator has neither rebutted that showing nor proven an exception under Section 20, the alleged violator shall be given the opportunity to provide full disclosure and cost-accounting documentation that it did not sell below cost. Certified by either a certified managerial accountant or certified public accountant hired by the alleged violator, the alleged violator shall file such documentation with the Department within 90 days after the date of the Department's written findings under subsection (a), and shall, on the same day, serve the complainant with a copy. The Department shall then have a period of 180 days in which to
review the data provided by the alleged violator, during which time the Department may, at its option, submit the matter to the Motor Fuel Cost Review Board for advisory comment. At any time during this 180-day period, the Department may request further data and clarification from the alleged violator, and the alleged violator shall have a period of 60 days after each additional request in which to respond with service of a copy of each additional response upon the complainant. After the final response, the Department shall have an additional period of 180 days in which to review the supplemental data. If the Department finds that the documentation provided by the alleged violator proves by a preponderance of the evidence that it did not sell below cost, then the complaint shall be closed. If the Department shall find otherwise, or if the alleged violator shall fail to provide data and documentation to support that it did not sell below cost, the Department shall conclude that the alleged violator violated this Act. The Department shall promptly provide written notice to the alleged violator and the complainant of the Department's conclusion, and fine the violator in accordance with this Act.

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

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

(e) Any person in competition with a person suspected of below cost selling or threatening to sell below cost under this Act may file and maintain an action in any court of competent jurisdiction to prevent, restrain, or enjoin such violation or threatened violation and recover damages for the violation or threatened violation, whether or not such person has filed a complaint under subsection (a) of this Section of this Act and whether or not an action is pending under subsection (c) of this Section. Upon proper application by the plaintiff in any action under this subsection (e), the court shall grant preliminary injunctive relief if the plaintiff shows that he or she is a proper person to seek the relief requested and that the defendant is selling motor fuel below the plaintiff's regulated minimum price for the time in question. In such
action, there shall be a rebuttable presumption that the
defendant has violated this Act if the plaintiff can show that,
on a given day, the defendant sold or offered for sale, motor
fuel at a price below the plaintiff's regulated minimum price.
The defendant may rebut such presumption by proving by a
preponderance of the evidence that: (i) the plaintiff's
calculation of the regulated minimum price was inaccurate and
the defendant did not in fact sell below the actual regulated
minimum price; (ii) that the defendant qualifies for one of the
exceptions under Section 20; or (iii) that the defendant did
not in fact sell or offer for sale motor fuel below cost. If
the plaintiff proves a prima facie violation of this Act, and
the defendant does not rebut such proof, the court shall enjoin
and restrain, or otherwise prohibit, such violation or
threatened violation and, in addition, the court shall assess
in favor of the plaintiff and against the defendant the costs
of the lawsuit, including reasonable attorney's fees. It shall
not be necessary that actual damages to the plaintiff be
alleged or proved, but if damages are alleged and proved, the
plaintiff shall also be entitled to actual damages, exemplary
or punitive damages, and restitution. If the plaintiff fails to
make a prima facie showing that the defendant sold motor fuel
below the plaintiff's regulated minimum price, or if the
defendant proves that the plaintiff's calculation of
plaintiff's regulated minimum price was inaccurate, the court
may award court costs and reasonable attorney's fees to the
defendant.

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

(g) If any action is brought for a violation of a
below-cost sale, the burden of proof, upon a prima facie
showing of a violation, shall shift to the defendant to show
justification. A prima facie showing of a violation shall be
made if the plaintiff shows that the retail price of motor fuel
of the defendant-retailer was below the regulated minimum retail cost price of motor fuel sold of the plaintiff retailer. Unless justification is shown by the defendant by a preponderance of the evidence, the court shall award judgment to the plaintiff.

Section 40. Remedies and penalties for price gouging.
(a) Complaints of price gouging shall be made to the Department of Revenue, specifying the name and address of each retail location subject to the complaint, and the pricing at each location on applicable dates that the violations are alleged to have occurred. Within 30 days of receipt of the complaint, the Department shall make contact with the alleged violator, and the alleged violator shall have 60 days after receipt of notice in which to provide evidence that for any and all periods of time subject to the complaint, and for any and all periods of time from the date of the last violation alleged in the complaint to the date of the notice, the alleged violator was not pricing above the regulated maximum price. Upon a prima facie showing that the alleged violator sold or offered for sale motor fuel at a price above the regulated maximum price on the date in question, the alleged violator shall have the burden to prove, by a preponderance of the evidence that he or she did not price above the regulated maximum price on the date in question. If the alleged violator can show, by a preponderance of the evidence, that he or she did not price in excess of the regulated maximum price, the complaint shall be closed. If the Department shall find that the alleged violator did not prove that he or she did not price in excess of the regulated maximum price for each day subject to the complaint, the alleged violator shall be given the opportunity to provide full disclosure and cost-accounting documentation, certified by either a certified managerial accountant or certified public accountant hired by the alleged violator, that it did not engage in motor fuel price gouging. The Department shall then have a period of 180 days in which to
review the data provided by the alleged violator, during which time, the Department may, at its option, submit the matter to the Motor Fuel Cost Review Board, for advisory comment. At any time during this 180-day period, the Department may request further data and clarification from the alleged violator, and the alleged violator shall have a period of 60 days, after each such request, in which to respond. After receipt of the final response, the Department shall have an additional period of 180 days in which to review the supplemental data. If the Department finds that the documentation provided by the alleged violator proves by a preponderance of the evidence that he or she did not engage in motor fuel price gouging, then the complaint shall be closed. If the Department shall find otherwise, or if the alleged violator shall fail to provide data and documentation to support that he or she did not engage in price gouging, the Department shall conclude that the alleged violator violated this Act. The Department shall then notify the alleged violator of the Department's conclusion, and fine the violator in accordance with this Act.

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

(c) Any person who is found to have committed a violation of price gouging, as defined by this Act, shall be subject to a civil penalty not to exceed $5,000 per violation for each offense. Any such violator shall also be liable for the fees of
accountants, expert witness fees, and investigative expenses, incurred by the State, if the State prevails in an action under this Act. Each day that a violation of price gouging under this Act occurs is considered a separate violation. If brought by a State's Attorney, the entire amount of the fine shall be paid to the treasury of the county in which the judgment was entered. If brought by the Attorney General, one-half of the penalty shall be paid to the treasury of the county where the action was brought and one-half shall be paid to the State Treasury, earmarked for the Attorney General's State Project and Court Order Distribution Fund. Fines paid to the Department without involvement of the Attorney General shall go to the General Revenue Fund.

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

Section 50. Recordkeeping.

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

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

Section 55. Witnesses; production of books and records. Any defendant, or any witness, in any civil action brought under the provisions of this Act may be required to testify, and any defendant, or any witness, may, upon proper process, be
compelled to produce his books, records, invoices, and all
other documents of any such defendant or witness into court and
the same may be introduced as evidence, but no testimony given
or produced shall be received against such defendant upon any
criminal proceeding or investigation against the defendant.

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

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

Section 70. Powers and duties.
(a) The Department of Revenue has the following powers and
duties:
(1) to investigate complaints regarding violations of
this Act;
(2) to seek injunctive relief as appropriate;
(3) to levy fines for a violation of this Act;
(4) to determine what rates of compensation are usual
and customary for certified managerial or cost accountants
practicing in the State, and to set the hourly fee of the
managerial or cost-accountant serving on the Motor Fuel
(5) to select the entity to provide the benchmark pricing services provided for in conjunction with this Act. The following criteria shall be utilized to choose the benchmark pricing service provider from the alternatives available at the time of choosing: (i) which entity provides for the most complete coverage of wholesale terminal suppliers not only within the State, but also within neighboring states having wholesale supply racks or terminals within the area relevant to the calculation of the regional benchmark pricing service average price, (ii) which entity will make its information the easiest to access for Illinois motor fuel retailers and the Department, and (iii) which entity will make access to its information the least costly for Illinois motor fuel retailers and the Department. The Department shall coordinate presentations to be made by the available reporting services to the Department and to the Motor Fuel Cost Review Board. The Motor Fuel Cost Review Board shall provide an advisory recommendation to the Department as to the benchmark service provider to be selected or what performance standards should be required of the service provider to be selected. The Department will then utilize this advisory input to make the selection of the benchmark pricing service and to develop performance responsibilities for the benchmark pricing service. Any benchmark service provider selected in this manner shall remain the benchmark service provider under this Act for at least 24 months without formal review of other providers, unless such benchmark service provider defaults on its obligations, or unless two-thirds of the Motor Fuel Cost Review Board votes to reactivate the selection process to reconvene.

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

(1) to investigate complaints regarding violations of
this Act;
(2) to seek injunctive relief as appropriate;
(3) to seek restitution for victims of motor fuel price
  gouging and other violations of this Act;
(4) to institute an action to collect a civil penalty
  for a violation of this Act; and
(5) to delegate to any appropriate State's Attorney its
  powers and duties.

Section 75. Confidentiality.
(a) Information obtained by the Department, Attorney
  General, or State's Attorney in the course of an investigation
  under this Act, including information from a person who
  responds to the investigation and designates the information as
  confidential, must be maintained as confidential until the
  investigation is completed and a course of action is
  determined. Neither the Department, Attorney General, or
  State's Attorney may make known in any manner information
  obtained in the course of the investigation to persons other
  that those specified in subsection (c) of this Section or the
  members of the Motor Fuel Cost Review Board. Once the
  investigation is completed, if there is a settlement or if a
  civil action is filed, the information may be made public.
(b) This Section does not prohibit the use of confidential
  information to prepare statistics of other general data for
  publication, if the information is presented in a manner that
  prevents identification of particular persons or locations
  under investigation.
(c) For purposes of this Section, references to the
  Department, Attorney General, or State's Attorney include
  other individuals designated to write and act on their behalf
  during an investigation. A person designated shall preserve the
  confidentiality of information as provided for in subsection
  (a) of this Section.
(d) A person who is served a subpoena with a request for
  information, to give testimony orally or in writing, or to
produce books, papers, correspondence, memoranda, agreements, or other documents or records under this Act may apply to the appropriate circuit court for protection against abuse or undue hardship.

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

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

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

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

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

Section 90. Rulemaking authority and duty to inform. The Department of Revenue may issue rules to administer and enforce this Act. The Department shall also have the duty to inform motor fuel marketers of this Act, including the requirements to not sell below cost and to not engage in price gouging, though failure to receive such notice shall not be a defense under
this Act. This duty shall be performed by the following: (1) between the time that the Act is signed into law and its effective date, the Department of Revenue shall issue written notification to all persons who are currently filing motor fuel tax returns, as well as all persons listed on prepaid sales tax forms as being retailers from whom prepaid sales taxes have been collected on motor fuels, informing them of this Act, and the requirements to not sell below cost and to not engage in price gouging as defined in this Act, (2) within one year of the effective date of this Act, the Department shall have revised and issued forms requiring filers of motor fuel tax returns to certify their awareness of the Motor Fuel Fair Marketing Practices Act, including the requirements to not sell below cost and to not engage in price gouging, and (3) at the time that new motor fuel licenses are issued, the Department shall include a notice of the existence of this Act, such notice including the requirements not to sell below cost and not to engage in price gouging.

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