



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

HB4107

Introduced 9/12/2005, by Rep. Bill Mitchell

#### SYNOPSIS AS INTRODUCED:

New Act

815 ILCS 505/2Z

815 ILCS 505/10a

from Ch. 121 1/2, par. 262Z

from Ch. 121 1/2, par. 270a

Creates the Consumer Protection Fuel Price Gouging Act. Provides that, upon a declaration of disaster by the Governor, it is unlawful for any motor-fuel vendor to sell or offer to sell motor fuel within the State at a price that is increased because of the vendor's knowledge of a perceived disruption in the motor-fuel market. An increase in the price of motor fuel during the period of a disaster declaration is rebuttably presumed to be based upon the vendor's knowledge of a perceived disruption in the motor-fuel market if: (1) the amount charged represents a gross disparity between the price at which the motor fuel was readily obtainable within the vendor's trade area during the 7 days immediately before the disaster declaration; and (2) the increase in the amount charged is not attributable to cost factors to the vendor, including replacement costs, taxes, and transportation costs incurred by the vendor. Provides that a violation of this Act constitutes a violation of the Consumer Fraud and Deceptive Business Practices Act, but nothing in this Act creates a private cause of action in favor of any person damaged by a violation of this Act, but individuals may complain to the Attorney General. Preempts home rule. Amends the Consumer Fraud and Deceptive Business Practices Act to make corresponding changes. Effective immediately.

LRB094 14073 BDD 48982 b

FISCAL NOTE ACT  
MAY APPLY

1 AN ACT concerning motor fuel.

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

4 Section 1. Short title. This Act may be cited as the  
5 Consumer Protection Fuel Price Gouging Act.

6 Section 5. Definitions. As used in this Act:

7 "Distributor" has the definition set forth in Section 1.2  
8 of the Motor Fuel Tax Law.

9 "Motor fuel" has the definition set forth in Section 1.1 of  
10 the Motor Fuel Tax Law.

11 "Motor-fuel vendor" or "vendor" means a distributor,  
12 supplier, receiver, reseller, or retailer.

13 "Receiver" has the definition set forth in Section 1.20 of  
14 the Motor Fuel Tax Law.

15 "Reseller" has the definition set forth in Section 1.21 of  
16 the Motor Fuel Tax Law.

17 "Retailer" means a person who holds himself or herself out  
18 as being engaged (or who habitually engages) in selling motor  
19 fuel at retail.

20 "Supplier" has the definition set forth in Section 1.14 of  
21 the Motor Fuel Tax Law.

22 Section 10. Motor fuel emergency declarations;  
23 unconscionable prices prohibited.

24 (a) Upon a declaration of a disaster by the Governor under  
25 Section 7 of the Illinois Emergency Management Agency Act, it  
26 is unlawful for any motor-fuel vendor to sell or offer to sell  
27 motor fuel within the State at a price that is increased  
28 because of the vendor's knowledge of a perceived disruption in  
29 the motor-fuel market.

30 (b) An increase in the price of motor fuel during the  
31 period of a disaster declaration is rebuttably presumed to be

1 based upon the vendor's knowledge of a perceived disruption in  
2 the motor-fuel market if:

3 (1) the amount charged represents a gross disparity  
4 between the price at which the motor fuel was readily  
5 obtainable within the vendor's trade area during the 7 days  
6 immediately before the disaster declaration; and

7 (2) the increase in the amount charged is not  
8 attributable to cost factors to the vendor, including  
9 replacement costs, taxes, and transportation costs  
10 incurred by the vendor.

11 (c) A price increase approved by an appropriate government  
12 agency is not a violation of this Section.

13 Section 15. Construction with the Consumer Fraud and  
14 Deceptive Business Practices Act. A violation of this Act  
15 constitutes a violation of the Consumer Fraud and Deceptive  
16 Business Practices Act, and the Attorney General may take any  
17 action consistent with the provisions of that Act.  
18 Notwithstanding Section 10a of the Consumer Fraud and Deceptive  
19 Business Practices Act, however, nothing in this Act creates a  
20 private cause of action in favor of any person damaged by a  
21 violation of this Act, but individuals may make a complaint to  
22 the Attorney General alleging a violation of this Act.

23 Section 35. Home rule. The regulation of motor fuel prices  
24 during a disaster is an exclusive power and function of the  
25 State. A unit of local government, including a home rule unit,  
26 may not regulate the price of motor fuel during a disaster, as  
27 declared by the Governor. This Section is a denial and  
28 limitation of home rule powers and functions under subsection  
29 (h) of Section 6 of Article VII of the Illinois Constitution.

30 Section 900. The Consumer Fraud and Deceptive Business  
31 Practices Act is amended by changing Sections 2Z and 10a as  
32 follows:

1 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

2 Sec. 2Z. Violations of other Acts. Any person who knowingly  
3 violates the Automotive Repair Act, the Automotive Collision  
4 Repair Act, the Home Repair and Remodeling Act, the Dance  
5 Studio Act, the Physical Fitness Services Act, the Hearing  
6 Instrument Consumer Protection Act, the Illinois Union Label  
7 Act, the Job Referral and Job Listing Services Consumer  
8 Protection Act, the Travel Promotion Consumer Protection Act,  
9 the Credit Services Organizations Act, the Automatic Telephone  
10 Dialers Act, the Pay-Per-Call Services Consumer Protection  
11 Act, the Telephone Solicitations Act, the Illinois Funeral or  
12 Burial Funds Act, the Cemetery Care Act, the Safe and Hygienic  
13 Bed Act, the Pre-Need Cemetery Sales Act, the High Risk Home  
14 Loan Act, the Payday Loan Reform Act, subsection (a) or (b) of  
15 Section 3-10 of the Cigarette Tax Act, the Payday Loan Reform  
16 Act, subsection (a) or (b) of Section 3-10 of the Cigarette Use  
17 Tax Act, the Electronic Mail Act, paragraph (6) of subsection  
18 (k) of Section 6-305 of the Illinois Vehicle Code, Article 3 of  
19 the Residential Real Property Disclosure Act, the Automatic  
20 Contract Renewal Act, the Consumer Protection Fuel Price  
21 Gouging Act, or the Personal Information Protection Act commits  
22 an unlawful practice within the meaning of this Act.

23 (Source: P.A. 93-561, eff. 1-1-04; 93-950, eff. 1-1-05; 94-13,  
24 eff. 12-6-05; 94-36, eff. 1-1-06; 94-280, eff. 1-1-06; 94-292,  
25 eff. 1-1-06; revised 8-19-05.)

26 (815 ILCS 505/10a) (from Ch. 121 1/2, par. 270a)

27 Sec. 10a. Action for actual damages.

28 (a) Any person who suffers actual damage as a result of a  
29 violation of this Act committed by any other person may bring  
30 an action against such person. The court, in its discretion may  
31 award actual economic damages or any other relief which the  
32 court deems proper; provided, however, that no award of  
33 punitive damages may be assessed under this Section against a  
34 party defendant who is a new vehicle dealer or used vehicle  
35 dealer within the meaning of Chapter 5 of the Illinois Vehicle

1 Code or who is the holder of a retail installment contract  
2 within the meaning of Section 2.12 of the Motor Vehicle Retail  
3 Installment Sales Act, unless the conduct engaged in was  
4 willful or intentional and done with evil motive or reckless  
5 indifference to the rights of others. Proof of a public injury,  
6 a pattern, or an effect on consumers and the public interest  
7 generally shall be required in order to state a cause of action  
8 under this Section against a party defendant who is a new  
9 vehicle dealer or used vehicle dealer within the meaning of  
10 Chapter 5 of the Illinois Vehicle Code or who is the holder of  
11 a retail installment contract within the meaning of Section  
12 2.12 of the Motor Vehicle Retail Installment Sales Act. Proof  
13 of such public injury may be shown by any one of the following  
14 factors:

15 (1) Violation of a statute that has a public interest  
16 impact.

17 (2) Repeated acts prior to the act involving the  
18 plaintiff.

19 (3) Potential for repetition.

20 (b) Such action may be commenced in the county in which the  
21 person against whom it is brought resides, has his principal  
22 place of business, or is doing business, or in the county where  
23 the transaction or any substantial portion thereof occurred.

24 (c) Except as provided in subsections (f), (g), and (h) of  
25 this Section, in any action brought by a person under this  
26 Section, the Court may grant injunctive relief where  
27 appropriate and may award, in addition to the relief provided  
28 in this Section, reasonable attorney's fees and costs to the  
29 prevailing party.

30 (d) Upon commencement of any action brought under this  
31 Section the plaintiff shall mail a copy of the complaint or  
32 other initial pleading to the Attorney General and, upon entry  
33 of any judgment or order in the action, shall mail a copy of  
34 such judgment or order to the Attorney General.

35 (e) Any action for damages under this Section shall be  
36 forever barred unless commenced within 3 years after the cause

1 of action accrued; provided that, whenever any action is  
2 brought by the Attorney General or a State's Attorney for a  
3 violation of this Act, the running of the foregoing statute of  
4 limitations, with respect to every private right of action for  
5 damages which is based in whole or in part on any matter  
6 complained of in said action by the Attorney General or State's  
7 Attorney, shall be suspended during the pendency thereof, and  
8 for one year thereafter.

9 (f) At any time more than 30 days before the commencement  
10 of trial, a party, who is a new vehicle dealer or used vehicle  
11 dealer within the meaning of Chapter 5 of the Illinois Vehicle  
12 Code or who is the holder of a retail installment contract  
13 within the meaning of Section 2.12 of the Motor Vehicle Retail  
14 Installment Sales Act and who is defending a claim under this  
15 Act, may serve upon the party seeking relief under this Act an  
16 offer to allow judgment to be taken against the defending party  
17 to the effect specified in the offer with costs then accrued.  
18 If within 10 days after service of the offer, the offeree  
19 serves written notice that the offer is accepted, either party  
20 may then file the offer and notice of acceptance together with  
21 proof of service of the notice; the court shall then enter  
22 judgment. An offer not accepted shall be deemed withdrawn and  
23 evidence of the offer is not admissible except in a proceeding  
24 to determine costs. When a party seeking relief under this Act  
25 does not accept an offer filed with the clerk and served upon  
26 the attorney for that party more than 30 days before the  
27 commencement of trial and when that party fails to obtain a  
28 judgment in an amount more than the total offer of settlement,  
29 that party shall forfeit and the court may not award any  
30 compensation for attorney's fees and costs incurred after the  
31 date of the offer.

32 (g) At any time more than 30 days before the commencement  
33 of trial, a party who is seeking relief under this Act from a  
34 new vehicle dealer or used vehicle dealer within the meaning of  
35 Chapter 5 of the Illinois Vehicle Code or from the holder of a  
36 retail installment contract within the meaning of Section 2.12

1 of the Motor Vehicle Retail Installment Sales Act may serve the  
2 dealer or holder an offer to allow judgment to be taken against  
3 the dealer or holder to the effect specified in the offer with  
4 costs then accrued. If within 10 days after service of the  
5 offer, the offeree serves written notice that the offer is  
6 accepted, either party may then file the offer and notice of  
7 acceptance together with proof of service of the notice; the  
8 court shall then enter judgment. An offer not accepted shall be  
9 deemed withdrawn and evidence of the offer is not admissible  
10 except in a proceeding to determine costs. When a dealer or  
11 holder does not accept an offer filed with the clerk and served  
12 upon the attorney for the dealer or holder more than 30 days  
13 before the commencement of trial and if the party seeking  
14 relief against a dealer or holder obtains a judgment in an  
15 amount equal to or in excess of the offer amount, the party  
16 seeking relief shall be paid interest on the offer amount at  
17 the rate as provided in Section 2-1303 of the Code of Civil  
18 Procedure from the date of the offer until the judgment is  
19 paid.

20 (h) At least 30 days prior to the filing of an action under  
21 this Section, a party who is seeking relief shall serve a  
22 written notice of the nature of the alleged violation and  
23 demand for relief upon the prospective party, who is a new  
24 vehicle dealer or used vehicle dealer within the meaning of  
25 Chapter 5 of the Illinois Vehicle Code or who is the holder of  
26 a retail installment contract within the meaning of Section  
27 2.12 of the Motor Vehicle Retail Installment Sales Act, against  
28 whom such action will be commenced. Any person receiving such a  
29 demand for relief may, within 30 days of service of the demand  
30 for relief, submit a written offer of settlement, which offer  
31 is to be exclusive of attorney's fees, to the party serving the  
32 notice and demand. The party who is seeking relief must certify  
33 in any cause of action that the notice and demand was served  
34 upon the named defendants and the substance of their response,  
35 if any. If the offer of settlement is rejected in writing by  
36 the party who is seeking relief, then, in any subsequent

1 action, the court shall deny any award of attorney's fees and  
2 costs requested by the party seeking relief under this Act  
3 incurred after the rejection of the written offer of  
4 settlement, if the judgment is less than the amount contained  
5 within the offer of settlement. All written offers of  
6 settlement under this subsection shall be presumed to be  
7 offered without prejudice in compromise of a disputed matter.

8 (i) This Section does not apply to any violation of the  
9 Consumer Protection Fuel Price Gouging Act.

10 (Source: P.A. 91-270, eff. 1-1-00.)

11 Section 999. Effective date. This Act takes effect upon  
12 becoming law.