



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB1933

Introduced 2/23/2007, by Rep. Roger L. Eddy

SYNOPSIS AS INTRODUCED:

New Act

Creates the Renewable Motor Fuels Retail Infrastructure Development and Maintenance Act. Makes it a violation to sell motor fuel below cost. 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 and that the cost of the concessions do not reduce the pump price and net amount paid for the motor fuel at the time of the sale. Establishes a Motor Fuel Cost and Bio-Fuels Blend Ratio Review Board. Removes, after the listed time period, the protection against predatory pricing for any retail motor fuel facility that fails to either offer motor fuels at retail with the required blend ratios or to have upgraded or installed an infrastructure at the retail motor fuel station that can safely store and dispense motor fuel containing ethanol alcohol or biodiesel in the required blend ratios. Sets out the duties and powers of the Department of Revenue, the Department of Agriculture, the Office of the State Fire Marshal, and the Attorney General. Effective 90 days after becoming law.

LRB095 08973 LCT 31746 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning business.

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

4 Section 1. Short title. This Act may be cited as the
5 Renewable Motor Fuels Retail Infrastructure Development and
6 Maintenance Act.

7 Section 5. Legislative Findings; Purpose.

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

10 (b) Motor fuels are essential to the transportation system
11 of the State and its citizenry.

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

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

21 (e) Communities also benefit from financial, equipment,
22 and manpower support from independent retailers and
23 wholesalers to not-for-profit organizations operating within

1 such communities.

2 (f) Currently, motor fuels in America are largely produced
3 from non-renewable sources of energy, which are largely
4 imported from areas outside of this nation.

5 (g) Hostilities in those parts of the world have the
6 potential to disrupt the vital flow of oil and to potentially
7 compromise the security interests of this nation and of this
8 State.

9 (h) The public has an especial interest in reducing the
10 dependency on foreign sources of motor fuel energy. Given the
11 limited supply of available petroleum reserves in this nation,
12 and given that petroleum is a non-renewable fossil fuel, the
13 public has a further interest in the development and use of
14 renewable forms of motor fuel energy.

15 (i) In recognition of the public's interest in reducing the
16 public's dependency on foreign sources of motor fuel energy,
17 and in utilization of renewable sources of motor fuel energy,
18 the major auto manufacturers have recently introduced flexible
19 fuel vehicles that will enable passenger vehicles to utilize
20 gasoline containing larger blend ratios of ethanol than
21 commonly available to motorists in motor fuels today, such
22 vehicles that can operate on motor fuel blended with up to 85%
23 ethanol alcohol (known as "E-85" gasoline), said blending ratio
24 of ethanol depending on the ambient temperatures occurring
25 during the time of year.

26 (j) Passenger vehicles and trucks are also being

1 manufactured to operate on diesel fuel containing greater
2 blends of bio-fuel, which, when these fuels are blended, they
3 are known as blended "biodiesel".

4 (k) Midwestern states that are agriculturally based,
5 including the State of Illinois, have an especial economic
6 interest in the use of motor fuels containing blends of
7 bio-fuels that are produced from agricultural products, and,
8 therefore, have an especial economic interest in the consumer's
9 use of ethanol and biodiesel blended fuels within the State.

10 (l) Since increasing numbers of motor vehicles can flexibly
11 operate on fuel containing up to 85% ethanol, since other motor
12 vehicles can operate on bio-fuel blended with conventional
13 diesel, and given the State's objective to become less
14 dependent on non-renewable motor fuel, consumers should have
15 access to motor fuels containing bio-fuels including motor
16 fuels containing 85% ethanol.

17 (m) Overall, the retail motor fuel infrastructure that is
18 currently in place, cannot safely accommodate motor fuel
19 containing blend ratios of up to 85% ethanol alcohol. In fact,
20 much of the existing infrastructure may not even accommodate
21 blending with ethanol in even the conventionally small ratio of
22 10% due to moisture infiltration. Water infiltration into fuel
23 containing ethanol is a problem because water and ethanol bond
24 with each other, and then separate as a compound from gasoline.
25 Fuel that has undergone this phase separation can potentially
26 damage motor vehicles and, therefore, is unmarketable,

1 necessitating that costly, remedial action be taken on the part
2 of the motor fuel retailer in order to safeguard the motoring
3 public. Water infiltration is not a problem with non-ethanol
4 motor fuel because water, which is heavier than gasoline, will
5 not blend with such fuel. Instead, water falls to and collects
6 at the bottom of the fuel tank, where it can be readily
7 detected by in-place tank gauging technology, prompting
8 remedial measures before the problem becomes as costly as it
9 otherwise could.

10 (n) Excessive water infiltration into an underground
11 storage tank containing ethanol, due to its concealing
12 detection of water infiltration (the concealment being due to
13 water bonding with the ethanol), can, with enough infiltration,
14 also potentially result in motor fuel product being pushed out
15 of the top of a tank, potentially impacting the underground
16 environment.

17 (o) Water can also adversely affect biodiesel, as water in
18 biodiesel promotes the growth of hydrocarbon-degrading
19 bacteria and mold that can use biodiesel as food. However, in a
20 tank of biodiesel, water will fall to and collect at the bottom
21 of the tank, where it can be detected by tank-gauging
22 technology, thereby prompting remedial measures.

23 (p) The retail motor fuel infrastructure commonly includes
24 underground storage tanks, fill-piping, spill prevention
25 equipment, submerged pumps, piping from the submerged pumps to
26 fuel dispensers, blending valves, leak detection and

1 prevention equipment, and other components.

2 (q) To safeguard against water and moisture infiltration
3 into motor fuel containing ethanol (and potentially, even
4 biodiesel), improvements may need to be made to certain
5 components of the retail motor fuel infrastructure, or
6 additional components added, all at considerable investment
7 cost to the motor fuel retailer.

8 (r) To accommodate motor fuel with greater blend ratios of
9 ethanol at retail, not only should certain components of the
10 motor fuel infrastructure be improved to safeguard against
11 moisture infiltration, but also a special motor fuel
12 infrastructure can be required to safely receive, store, pipe,
13 blend, and dispense the ethanol or ethanol blended fuel at
14 retail. This is largely because of the chemical properties of
15 ethanol differ from that of conventional gasoline.

16 (s) The special retail infrastructure to accommodate the
17 motor fuel containing greater blend ratios of ethanol,
18 including, but not limited to, E-85 gasoline, necessitates a
19 significant financial investment by the motor fuel retailer,
20 given that a significant portion of the fuel tanks in existence
21 at the retail level are not currently compatible with E-85
22 gasoline, given that the majority of the fuel piping in
23 existence at retail is likewise not currently compatible, and
24 given that virtually all of the blend valves, leak detection
25 equipment, probes, sensors, and fuel dispensing equipment in
26 existence at retail are also not compatible with E-85.

1 (t) Nationally, less than 1% of all retail motor fuels
2 stations offer E-85 gasoline, and the overwhelming majority of
3 motor fuel stations do not offer gasoline containing ethanol in
4 a blend ratio greater than 10%.

5 (u) Motor fuel retailers, when able to generate sufficient
6 revenue from the sale of motor fuel to cover the costs of
7 selling motor fuel, have a track record for providing the motor
8 fuel infrastructure needed at the retail level, as evidenced by
9 the investment efforts in the past when unleaded gasoline was
10 introduced into the marketplace.

11 (v) Despite actual differences in motor fuel production and
12 quality, motor fuel is considered largely to be a commodity
13 product, with price having evolved as the primary basis of
14 competition at the retail level, as evidenced by, and in part
15 due to, the fact that the price of motor fuel is uniquely
16 advertised 365 days a year on large, illuminated price signs.

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

21 (x) In addition, many motor fuels are flammable and
22 combustible liquids, which must be distributed in a safe
23 manner, utilizing specially designed and costly
24 explosion-proof equipment.

25 (y) Motor fuels are also potentially hazardous to the
26 underground environment, such that specially designed and

1 costly equipment must be used to contain and monitor the
2 containment of motor fuels and to comply with
3 governmentally-imposed regulations.

4 (z) Retail marketers of motor fuel must have an opportunity
5 to earn a margin of profit on the sale of motor fuel to enable
6 development and maintenance of a retail infrastructure that
7 will accommodate low ratio and high blend ratios of renewable
8 fuels in a manner that is safe for the motoring public as well
9 as the environment.

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

20 (bb) Given today's cost of doing business and the average
21 volume motor fuel station facility, the sharing of personnel to
22 accommodate transactions of both convenience store items and
23 motor fuel sales has legitimately allowed for a significant
24 reduction in the minimum needed profit margin on a motor fuel
25 operation, a profit reduction that is sustainable without
26 subsidy or later recoupment.

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

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

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

16 (ff) With price as the number one basis of competition in
17 the retailing of motor fuel, below-cost retailing by the
18 competition leaves the independent retailer of motor fuel with
19 only 2 choices: (1) join in the below-cost retailing of motor
20 fuel to keep its customer base, which will eventually cause the
21 independent retailer to become financially unsound or not
22 competitive because it cannot generate capital to reinvest in
23 its business; or (2) do not join in the below-cost retailing of
24 motor fuel, and lose customers and sales volumes as a result
25 thereof, eventually becoming financially unsound or not
26 competitive through the inability to generate reinvestment

1 capital. Either way, many independent retailers will be selling
2 out, closing up, and failing to upgrade their facilities,
3 including upgrades to accommodate motor fuels with low or high
4 blend ratios of ethanol gasoline or biodiesel.

5 (gg) Those who initiate below-cost marketing of motor fuel
6 are able to do so either from subsidized pricing unrelated to
7 cost-sharing, from wholesale price discrimination, or from
8 having greater financial resources enabling the initiator to
9 outlast those with fewer financial resources.

10 (hh) Subsidized pricing stems from one of the following 4
11 sources:

12 (1) A retailer covers its losses on the sale of motor
13 fuel from profits generated by the sales of products or
14 services unrelated to the retail sale of motor fuels and
15 unrelated to the sharing of personnel and other costs
16 involved in the sales of motor fuel products. Examples
17 include, but are not necessarily limited to, bulk
18 distributors of motor fuel, supermarket operators, and
19 mass merchandiser retailers who have added motor fuel as an
20 additional, separate, product offering, and who provide
21 motor fuel discounts or subsidize motor fuel operations
22 with revenue generated on separate operations, as well as
23 those involved in money laundering or illegal trade. This
24 form of subsidization can result in higher prices of the
25 products that are subsidizing the below-cost sales of motor
26 fuels. This form of subsidization is hereinafter referred

1 to as "subsidization via revenue sharing from
2 diversification".

3 (2) Large chain retailers who cover a large geographic
4 market and subsidize their below-cost sales in one market
5 with profits generated in other markets. This form of
6 subsidization can result in motor fuel prices being higher
7 in the markets where the profits are being generated than
8 would otherwise be the case had there not been below-cost
9 sales of motor fuel in the markets being subsidized. This
10 form of subsidization is hereinafter referred to as
11 "subsidization via revenue sharing from geographic
12 dispersion".

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

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

24 (ii) Wholesale price discrimination occurs when refiners
25 or other originators of motor fuel sell to one wholesaler or
26 retailer in a market area at an advantaged price over another

1 wholesaler or retailer in the same market area, when the
2 pricing differential is not cost-justified.

3 (jj) Below-cost marketing of motor fuel is unfair
4 competition, because it injures and threatens the viability of
5 motor fuel retailers who do not engage in subsidization, even
6 those possessing the highest degree of competence and who are
7 engaging in cost-sharing by way of diversified retail
8 operations, and deprives them of the ability to accumulate the
9 capital necessary for reinvestment in the motor fuel operation.

10 (kk) Below-cost selling of motor fuels is dangerous and
11 detrimental to the public because it discourages motor fuel
12 retailers from making the financial investments necessary to
13 develop and maintain the infrastructure necessary to store and
14 dispense motor fuels in the safest, most
15 environmental-friendly manner, including the infrastructure to
16 safely store, blend, and dispense varying blend ratios of
17 renewable bio-fuels.

18 (ll) The inability of motor fuel retailers to accumulate
19 capital, due to unfair competition in the motor fuel industry
20 also damages local and regional suppliers of equipment,
21 facilities, technology, and other goods and services with whom
22 the motor fuel retailers regularly do business, all to the
23 detriment of local and regional economies.

24 (mm) Unfair competition in the retail motor fuel industry
25 also injures the ability of motor fuel retailers to generate
26 money to cover the costs of regulation compliance related to

1 underground storage tank systems, potentially endangering the
2 environment.

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

9 (oo) Unfair competition in the retail motor fuel industry
10 also adversely affects the State because it adversely affects
11 business spending by motor fuel retailers in the high-wage
12 sectors of construction, manufacturing, and technology, and it
13 adversely affects the revenue-generating abilities of the
14 State through lower sales and income tax collections.

15 (pp) Below-cost selling of motor fuel is inherently
16 predatory and stands to injure competition by reducing the
17 number of competitors in petroleum marketing, especially the
18 number of independently-owned motor fuel retailers who do not
19 engage in subsidization, rendering the market susceptible to
20 increased retail prices in the long-term.

21 (qq) Unfair competition by way of the predatory practice of
22 below-cost pricing also tends to create barriers to entry or
23 re-entry into the motor fuel marketplace by
24 independently-owned motor fuel retailers, resulting in a
25 marketplace that is not truly free as a result of said economic
26 barriers.

1 (rr) Below-cost pricing of motor fuel creates a financial
2 barrier to motor fuel retailers developing the infrastructure
3 to safely accommodate low and high blend ratios of renewable
4 bio-fuels, as well as a financial barrier to maintaining the
5 infrastructure once developed.

6 (ss) Even when governmental income tax credits exist to
7 provide an incentive for private companies to invest in a
8 retail infrastructure to accommodate greater blends of
9 bio-fuels, the credits are of little use if the retailer is
10 unable to earn taxable income from which the credit would be
11 deducted.

12 (tt) Governmental grants that pay for only a small
13 percentage of the infrastructure costs can be limited in
14 effectiveness in helping to stimulate the infrastructure
15 development if, and to the extent that, the retailer is unable
16 to obtain the resources necessary to pay for the portion of
17 costs not covered by the grants.

18 (uu) Federal regulations dealing with predatory pricing do
19 not adequately protect businesses and consumers because these
20 regulations are not held to be violated until the damage caused
21 by predatory pricing, much of which is irreversible, has been
22 done, such as the bankrupting or closing of family and other
23 independently-owned businesses.

24 (vv) Federal regulations also fail to take into account the
25 unique circumstances associated with the retail motor fuel
26 industry that create significant economic barriers including,

1 but not necessarily limited to, the following: (1) motor fuel
2 is perceived largely as a commodity product, where product
3 differentiation is small and price is the number one basis of
4 competition, providing little for the independent motor fuel
5 marketer to do on a strategy of differentiation; (2) there is a
6 high investment cost required to enter the motor fuel industry
7 (with the average cost, for fuel improvements and fuel
8 equipment running approximately \$300,000 and the cost for land,
9 land development, and improvements and equipment for
10 cost-sharing running easily as much as \$900,000, for a total
11 entry cost being easily as much as \$1.2 million, more or less,
12 depending on the geographic area of the State), requiring those
13 entering into the motor fuel business to have a reasonable
14 opportunity to earn a positive return on investment, rather
15 than treat motor fuel as a loss leader; and (3) the threat of
16 continued or repeated predatory pricing practices, creates a
17 significant barrier to re-entry into the business by those
18 previously run out of business, as well as a significant
19 barrier to entry by rational, law-abiding persons wanting to
20 enter the market for the first time.

21 (ww) On the other end of the spectrum, in the past,
22 following times of national crisis, an isolated number of motor
23 fuel retailers have engaged in price gouging, which has
24 exacerbated the crisis by causing public panic over the
25 purchase of motor fuel.

26 (xx) Competent, fair, law-abiding, independent motor fuel

1 marketers (dealers, retailers, distributors, jobbers, and
2 wholesalers) are vital to a healthy, competitive marketplace
3 and are important to the economic viability of the State and
4 its local communities.

5 (yy) Competent retailers of motor fuel should have a
6 reasonable opportunity to earn sufficient revenue to cover the
7 reasonable costs of doing business from the marketing of motor
8 fuel when striving to be price competitive with others.

9 (zz) Insofar as the retail segment of motor fuel is
10 concerned, generally, consumers are inherently protected from
11 motor fuel price gouging, because motor fuel is largely a
12 commodity product, where price has become the primary basis of
13 competition, where the prices of motor fuels are uniquely
14 advertised continuously on large, illuminated signs.

15 (aaa) Because price is the primary basis of competition,
16 and because of the large investment costs necessary to develop
17 and maintain motor fuel facilities, independently-owned motor
18 fuel retailers are subject to exploitation by other motor fuel
19 retailers who, because of their advantaged financial resources
20 and sources of subsidy, can sell below cost.

21 (bbb) A retail environment that enables the development and
22 maintenance of a retail infrastructure to safely accommodate
23 the retail storage and sale of motor fuels containing low and
24 high blend ratios of bio-fuels, including ethanol gasoline and
25 biodiesel, is also important to the State.

26 (ccc) The General Assembly recognizes that without such an

1 infrastructure, motorist acceptance of motor fuels containing
2 bio-fuels can be impeded, as can retailer offering of such
3 fuels, and the underground environment can be adversely
4 impacted.

5 (ddd) The General Assembly declares that there is a need to
6 reduce dependence on foreign sources of non-renewable energy,
7 by relying increasingly on renewable sources of energy from
8 bio-fuels, especially those produced from agricultural
9 products in Illinois and other Midwestern states, including
10 ethanol and biodiesel.

11 (eee) The General Assembly declares that there may need to
12 be rules promulgated regarding underground storage tank
13 systems to better safeguard against water and moisture
14 infiltration, so that the underground storage tank systems will
15 be able to safely accommodate ethanol and ethanol blended motor
16 fuel.

17 (fff) The General Assembly recognizes that there may need
18 to be rules developed regarding underground storage tanks and
19 dispensing systems to safely accommodate the receipt, storage,
20 in-line flow, blending, and dispensing of motor fuels
21 containing high blend ratios of bio-fuels.

22 (ggg) The General Assembly recognizes that retailer
23 compliance with the rules will be costly.

24 (hhh) The General Assembly recognizes that the practice of
25 below-cost pricing of motor fuels creates a significant
26 impediment to the development of a retail infrastructure to

1 accommodate bio-fuels.

2 (iii) The General Assembly recognizes that other states
3 have laws that attempt to address below-cost pricing.

4 (jjj) The General Assembly declares that there is a need
5 for public policy in this State to encourage an improved
6 economic environment for the private development and
7 maintenance of a motor fuels infrastructure at retail motor
8 fuel stations and to safely accommodate motor fuels containing
9 both low and high blend ratios of bio-fuels, including ethanol
10 and biodiesel.

11 (kkk) The General Assembly declares that there is a need to
12 set a floor below which the retail price of motor fuel shall
13 not be set, unless the motor fuel retailer can demonstrate that
14 the price of motor fuel, below the floor, is not below the
15 retailer's selling cost of the motor fuel, or that the motor
16 fuel retailer is meeting the equally low price of a competitor,
17 thereby allowing retail motor fuel prices to be set by those
18 who are able to establish the lowest cost of selling motor
19 fuel.

20 (lll) The General Assembly declares that there is a need
21 for public policy to prevent predatory pricing of motor fuels
22 in order to encourage increased use of bio-fuels and thereby
23 reduce our State's dependence on foreign, non-renewable
24 sources of energy.

25 (mmm) To achieve the purpose of this Act, the protection
26 provided to retailers under this Act must be tied to the

1 retailer's development and maintenance of a retail motor fuel
2 infrastructure to safely accommodate the receipt, storage,
3 in-line flow, blending, and dispensing of low and high blend
4 ratios of bio-fuels.

5 (nnn) The General Assembly recognizes that a significant
6 number of motor fuel retailers have not been profitable in
7 recent years, largely due to below-cost pricing of motor fuel
8 during those years. The lack of profitability has significantly
9 hindered the ability of the motor fuel retailers to internally
10 generate the capital necessary to make improvements to the
11 motor fuel infrastructure, as well as hindered the ability of
12 motor fuel retailers to secure necessary bank financing to do
13 the same.

14 (ooo) The General Assembly recognizes that many motor fuel
15 retailers must have time and opportunity to generate future
16 financial performance to demonstrate to financiers the
17 worthiness of the motor fuel retailers to be awarded bank
18 financing to make the improvements provided for in this Act.

19 (ppp) The General Assembly recognizes that motor fuel
20 retailers must have time to make and pay for the improvements
21 to prevent moisture infiltration or to otherwise make
22 improvements to accommodate the safe storage and dispensing of
23 low and high blend ratios of bio-fuels.

24 (qqq) The General Assembly declares that a 7-year period,
25 from the effective date of this Act, or from the effective date
26 of any applicable rules promulgated by the Office of the State

1 Fire Marshal under this Act, whichever date is the later, is
2 adequate time for the improvements provided for in this Act.

3 (rrr) The General Assembly recognizes that time is of the
4 essence in the effective date of this Act, given that the
5 longer that enactment of this Act is delayed, the longer it
6 will take for motor fuel retailers to have an opportunity to
7 restore to financial health, to qualify for bank financing, and
8 to make and pay for the costly retail motor fuel infrastructure
9 improvements hoped for in this Act.

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

17 (ttt) In order to provide the most simplicity in
18 determining when a motor fuel retailer is or is not in
19 compliance with this Act, and to also eliminate the need for
20 rules governing wholesale price discrimination, transfer
21 pricing, commodities trading, and related issues involved in
22 the subsidization of motor fuel at retail from a vertically
23 integrated motor fuel marketer, the General Assembly further
24 declares that there is a need for a neutral guideline on which
25 to base fuel prices for the purpose of determining if
26 below-cost pricing or price-gouging is occurring.

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

15 (vvv) Because this Act allows a motor fuel retailer to meet
16 the equally low price of another motor fuel retailer, there
17 must be a mechanism for the periodic restoration of pricing of
18 motor fuel to a level that is not below cost.

19 (www) One purpose of this Act is to substantially lessen
20 subsidized pricing of petroleum and related products, while
21 allowing the reduction of motor fuel pricing through
22 cost-sharing over the sales of other products and services,
23 where cost-savings are the result of sharing personnel and
24 other relevant cost factors in motor fuel retailing, including
25 sales, management, maintenance, accounting, and property
26 costs.

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

10 (yyy) Because motor fueling constitutes one of the most
11 competitive industries in the marketplace, it is important that
12 one motor fuel marketer not be advantaged over another motor
13 fuel marketer as a result of any type of governmental subsidy;
14 therefore, the development of a motor fuel facility, or the
15 development of a facility that has, as a part thereof, a
16 facility for the sale of motor fuel, should not be
17 government-subsidized when the facility would be in
18 competition with another non-subsidized facility in the same
19 market area, except for assistance available to all such area
20 facilities and limited to the development of a retail
21 infrastructure to accommodate the bio-fuels blending
22 prescribed in this Act.

23 (zzz) While this Act attempts to address the problems that
24 impede the development of the retail infrastructure to
25 accommodate the storage and sale of motor fuels containing
26 greater blend ratios of bio-fuels, it is important to recognize

1 that the ability of motor fuel retailers to blend with
2 bio-fuels shall, in large part, be dependent on the production
3 and availability, at the time, of the bio-fuels at the
4 wholesale level.

5 (aaaa) It is anticipated that additional ethanol and
6 biodiesel production facilities will be built in the time
7 ahead, which will increase supply and make additional ethanol
8 and biodiesel available for blending.

9 (bbbb) As added ethanol and biodiesel comes available (in
10 supply), it is anticipated that more retail facilities will
11 have an opportunity to offer blended fuels, and that retail
12 facilities that offer blended fuels will have an opportunity to
13 offer the fuels in greater blend ratios (demand). What the
14 specific blend ratios will be will depend on tax incentives, as
15 well as the supply and demand balance of ethanol and biodiesel,
16 not only in this State, but in other states that comprise the
17 demand for ethanol and biodiesel at the time.

18 (cccc) Because the supply and demand balance cannot be
19 definitively known too far ahead of time, because there is a
20 7-year time frame provided for in this Act, after which
21 protection to retailers can be ended unless an affected
22 facility of a retailer meets certain infrastructure and blend
23 ratio objectives of this Act, and because the supply and demand
24 balance may not necessarily warrant a widespread blend offering
25 of the conventional blend of 70% to 85% ethanol comprising E-85
26 gasoline by the beginning of the fourth year of enactment of

1 this Act, but may warrant a smaller minimum blend of ethanol
2 than the conventional range of 70% provided for E-85, the
3 Department of Agriculture is given the obligation to monitor
4 supply and demand factors, and, if the Department of
5 Agriculture determines that the supply and demand factors
6 warrant a lesser minimum blend ratio of ethanol in E-85
7 gasoline, then the Department of Agriculture shall coordinate
8 with industry standards setters including, but not limited to,
9 the American Society for Testing and Materials (ASTM), and
10 shall make effort to prescribe a minimum alternative blend
11 ratio for E-85, and, to the extent that there is also a supply
12 and demand imbalance for high-ratio blended biodiesel, to make
13 effort to prescribe a minimum alternative blend ratio for high
14 blend ratio blended biodiesel, such prescription or
15 prescriptions to be made no earlier than the fourth year and no
16 later than the beginning of the eighth year of this Act, and
17 for each year thereafter, with the understanding that upon
18 commencement of the eighth year of this Act, certain minimum
19 blends must be met in order for motor fuel retailers to be able
20 to continue to qualify for protection under this Act.

21 (dddd) Whenever motor fuel is offered at retail containing
22 a greater blend ratio of bio-fuels than that recommended by the
23 automobile manufacturer, there is a risk of damage, especially
24 if a motor vehicle, which is not a flexible fuel vehicle, is
25 fueled with a higher ratio bio-fuel. Because of this,
26 dispensers that dispense fuels containing greater blends than

1 10%, must contain printed warnings against using the fuel in
2 vehicles that are not flexible fuel vehicles and that are not
3 otherwise designed for blends greater than 10%. If, despite
4 these warnings, an unobservant motorist fuels his or her
5 vehicle with the wrong fuel, and causes damage to the
6 motorist's vehicle, the motorist may seek money damages from
7 the retailer. The risk of the unwarranted claims from motorists
8 is a deterrent to retailers who would otherwise offer high
9 ratio bio-fuels in accordance with this Act. To minimize the
10 deterrence, retailers who offer high ratio bio-fuels with
11 appropriate signage should be immune from liability for damages
12 caused if a motorist improperly fuels his or her vehicle with a
13 higher ratio bio-fuel than what is recommended by the vehicle's
14 manufacturer.

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

19 Section 10. Definitions. In this Act:

20 (a) "Actual costs of selling motor fuel" means any costs
21 and expenses reasonably incurred by a retailer of motor fuel
22 associated with the selling of motor fuel at a retail motor
23 fuel facility, including the following costs and expenses
24 defined in this Act: the applicable laid-in cost of motor fuel,
25 plus expense costs of selling motor fuel, plus investment costs

1 of selling motor fuel, plus costs or expenses excluded from
2 expense costs of selling motor fuel, plus extraordinary costs
3 of selling motor fuel, plus other costs reasonably incurred.

4 (b) "Actual costs of selling motor fuel from dedicated
5 supplier" means any and all costs and expenses reasonably
6 incurred by a retailer of motor fuel associated with the
7 selling of motor fuel at a retail motor fuel facility,
8 including the applicable laid-in cost of motor fuel originating
9 from dedicated supplier, plus expense costs of selling motor
10 fuel, plus investment costs of selling motor fuel, plus costs
11 or expenses excluded from expense costs of selling motor fuel,
12 plus extraordinary costs of selling motor fuel, plus other
13 costs reasonably incurred.

14 (c) "Actual costs of selling motor fuel per gallon" means
15 the actual costs of selling motor fuel, divided by the number
16 of gallons sold, during the period in which motor fuel was
17 sold.

18 (d) "Actual costs of selling motor fuel per gallon from
19 dedicated supplier" means the actual costs of selling motor
20 fuel from dedicated supplier, divided by the number of gallons
21 sold, during the period in which motor fuel was sold.

22 (e) "Actual health insurance costs" means the health
23 insurance costs, if any, actually incurred.

24 (f) "Advertising expenses" means the following forms of
25 advertising: newspaper, internet, magazine, television, radio,
26 direct-mail, billboard, and other forms of off-premises

1 advertising related to motor fuel.

2 (g) "Affiliate" means any person who is related to another
3 person through common ownership or common control. Franchisees
4 and licensees of branded motor fuel suppliers are not
5 "affiliates" of their branded fuel suppliers.

6 (h) "Average monthly gallons of motor fuel sold" means the
7 mathematical result obtained by dividing the total number of
8 gallons of motor fuel sold at a given retail motor fuel
9 facility over the 12 calendar months preceding the date in
10 question, by the number of months that motor fuel was sold from
11 that facility over the 12-month period.

12 (i) "AXXIS petroleum" (AXXIS) is an independent reporting
13 service, located in the state of Minnesota, providing daily
14 reports of prices of refined motor fuel, including the gasoline
15 grades or blends, or both, being sold as well as the diesel
16 fuel grades or blends, or both, being sold, that is a widely
17 accepted as an independent fuel price benchmark for supply.

18 (j) "Benchmark pricing service" means the independent
19 reporting service providing daily reports of supplier
20 wholesale prices of refined motor fuel from wholesale rack
21 terminals, including the gasoline grades or blends, or both,
22 being sold as well as the diesel fuel grades or blends, or both
23 being sold, whichever service is selected by the Department
24 under this Act. OPIS and AXXIS are the only 2 such pricing
25 services known to be available at the time of passage of this
26 Act. If one or more other such pricing services become

1 available, the Department shall have discretion to select any
2 other such pricing service in accordance with this Act.

3 (k) "Below-cost sale", "below-cost selling", "selling
4 below cost", "to sell below cost", and "sell below cost" means
5 the selling of applicable grades or blends, or both, of
6 gasoline or diesel fuel at retail in this State at a price that
7 is below the lower of (1) the regulated minimum retail cost
8 price of motor fuel sold, or (2) the mathematical sum of the
9 applicable laid-in cost of motor fuel plus the cost of selling
10 the motor fuel at retail on a per gallon basis.

11 (l) "Biodiesel" is a renewable, biodegradable fuel derived
12 from agricultural plant oils or animal fats that meets the
13 American Society for Testing and Materials specification D6751
14 Standard Specification for Biodiesel Fuel (B-100) Blend Stock
15 for Distillate Fuels. Blended biodiesel is a blend of biodiesel
16 with petroleum diesel fuel so that the volume percentage of
17 biodiesel in the blend is at least 2% (petroleum diesel blended
18 with 2% biodiesel is B-2). B-2 and B-99 are the types of
19 biodiesel blends with the least and most volume percentage of
20 biodiesel fuel, respectively. B-100 is 100% bio-diesel without
21 any petroleum diesel blended therewith.

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

25 (n) "Competitor" means any person who vies for motor fuel
26 sales against another person in the same market area at the

1 same level of distribution.

2 (o) "Cost of selling motor fuel at retail on a per gallon
3 basis" means a per gallon cost determined mathematically by the
4 sum of the following 2 cost items: (1) the mathematical result
5 derived from dividing the expense costs of selling motor fuel
6 at retail during the 24 months preceding the date in question
7 by the number of gallons of motor fuel sold during the 24
8 months preceding the date in question, plus (2) the
9 mathematical result derived from dividing the investment costs
10 of selling motor fuel at retail by the average monthly gallons
11 of motor fuel sold.

12 (p) "Credit card and bank card related expenses" means any
13 costs to the motor fuel retailer associated with accommodating
14 the payment of motor fuel by way of bank and credit card
15 transactions including, but not limited to, fixed fees,
16 transaction fees, and network processing fees. In the event
17 that goods and services, other than motor fuel, are sold within
18 the same facility as motor fuel, in the event that the payment
19 of the goods and services are also by way of bank or credit
20 card transactions, and to the extent that any costs associated
21 with accommodating the payment of motor fuel by way of bank or
22 credit cards are not made separate and readily distinguishable
23 from the costs associated with accommodating the payment of
24 non-motor fuel items by bank or credit cards, then the portion
25 of costs not made separate and readily distinguishable that
26 should be allocated as motor fuel related costs shall be

1 determined mathematically as follows: total bank card and
2 credit card related costs incurred by the retailer for the
3 applicable retail facility, multiplied by the total dollars
4 associated with motor fuel purchases paid by bank and credit
5 cards at the retail facility, divided by the total dollars
6 associated with total purchases paid by bank and credit cards
7 at the facility.

8 (q) "Credit carrying and handling costs of the motor fuel
9 retailer" means those costs incurred by the motor fuel retailer
10 in providing its own credit to its customers on the sale of
11 motor fuel including, but not necessarily limited to, the cost
12 of tying up money, as well as billing and bad debts expenses,
13 but excluding credit card and bank card related expenses.
14 Because the costs can vary from time to time and from retailer
15 to retailer, from time to time (due to fluctuating interest
16 rates, due to fluctuations in the economy, and other factors
17 not within the control of the motor fuel retailer), and because
18 the costs may be very difficult to precisely calculate, the
19 costs, for purposes of this Act, shall be deemed to equal the
20 lowest rate available to the motor fuel retailer for the
21 processing of general bank cards (as opposed to any bank cards
22 that are co-branded or sponsored by the brand of the motor fuel
23 retailer), whether or not the motor fuel retailer is utilizing
24 the lowest priced bank card processor available to the
25 retailer. To the extent that a motor fuel retailer is unable to
26 provide information regarding the lowest priced bank card

1 processor available to the retailer, then the credit carrying
2 and handling costs of the motor fuel retailer shall be presumed
3 to be 2% of the motor fuel sale.

4 (r) "Dedicated supplier" means a motor fuel supplier of a
5 motor fuel retailer (for the retail facility in question) to
6 which the retailer is contractually committed at the time of
7 the motor fuel purchase by the retailer from the retailer's
8 supplier (for the retail facility in question).

9 (s) "Department of Agriculture" and "Department" means the
10 Department of Agriculture of the State of Illinois.

11 (t) "Department of Revenue" means the Department of Revenue
12 of the State of Illinois.

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

21 (v) "Depreciation allowance on fuel improvements" means,
22 on a monthly basis, the original cost value of all fuel
23 improvements (including, but not limited to, fuel canopy, fuel
24 canopy fixtures, fuel canopy and fuel canopy breezeway
25 fixtures, pavement above the underground storage tanks and
26 piping, pavement below the fuel canopy and canopy breezeway,

1 fuel islands, and fuel related electrical conduit and wiring,
2 fuel kiosk, and that portion of any other building where motor
3 fuel transactions are accommodated), divided by a factor of 240
4 months.

5 (w) "Diesel" means motor fuel commonly classified and
6 labeled as diesel, which is derived largely from petroleum
7 hydrocarbons. "Diesel", under this Act, shall also include
8 bio-fuels when such serve as a fuel-source in diesel-type motor
9 vehicle engines including, but not necessarily limited to,
10 bio-diesel.

11 (x) "Direct labor costs" means the wages and payroll taxes
12 associated with those personnel directly involved in the sale,
13 delivery, or transfer of motor fuel, including maintenance on
14 motor fuel facilities. Direct labor costs also include
15 workman's compensation, unemployment insurance, imputed health
16 insurance costs, and other human resources costs directly
17 related to personnel, excluding actual health insurance costs.
18 In the event that personnel directly involved in the sale,
19 delivery, or transfer of motor fuel from one retail facility
20 also are directly involved in the sale, delivery, or transfer
21 of motor fuel from one or more other retail facilities, and to
22 the extent that direct labor costs for one facility are not
23 separate and readily distinguishable from the direct labor
24 costs of another facility, then the portion of costs not made
25 separate and readily distinguishable that should be allocated
26 as direct labor costs for a given facility shall be determined

1 mathematically as follows: total non-distinguishable direct
2 labor costs multiplied by the total sales dollars at the given
3 retail facility, divided by the total sales dollars of all
4 retail facilities for whom the direct labor costs are incurred.
5 In the further or other event that goods and services, other
6 than motor fuel, are sold within the same facility as motor
7 fuel, in the event that the personnel directly involved in the
8 sale, delivery, or transfer of motor fuel are also involved in
9 the sale or delivery of the other goods and services, and to
10 the extent that the personnel costs associated with motor fuel
11 are not separate and readily distinguishable from the personnel
12 costs associated with non-motor fuel sales or service delivery,
13 or both, then the portion of costs not made separate and
14 readily distinguishable that should be allocated as motor fuel
15 related costs shall be determined mathematically as follows:
16 total non-distinguishable direct labor costs for the retail
17 facility multiplied by the total motor fuel sales dollars at
18 the retail facility, divided by the total sales dollars of all
19 products and services (motor fuels sales and non-motor fuel
20 sales) at the retail facility. "Direct labor costs" do not
21 include credit carrying and handling costs of the motor fuel
22 retailer.

23 (y) "Disaster" has the meaning given in Section 4 of the
24 Illinois Emergency Management Agency Act.

25 (z) "E-85" means a fuel blend that meets the American
26 Society for Testing and Materials standard specification

1 5798-99 for fuel ethanol, nominally consisting of one of the
2 following a) 85% ethanol and 15% hydrocarbon gasoline (1)
3 typical blend ratio in warm weather months), (2) 70% ethanol
4 and 30% hydrocarbon gasoline (a typical blend ratio in some
5 areas in cold weather months), or (3) some blend ratio between
6 the foregoing (when transitioning from one blend ratio to
7 another). "E-85", or "alternative E-85", shall consist of a
8 blend containing less than 70% fuel ethanol, but equal to or
9 greater than 20% fuel ethanol, for use in automotive spark
10 engines, with the remainder of the blend being hydrocarbon
11 gasoline, when and to the extent that a lesser blend is
12 permitted or prescribed by the Department of Agriculture as
13 provided for in this Act.

14 (aa) "Expense costs of selling motor fuel at retail" means
15 the mathematical sum obtained by adding the following costs
16 associated with the retailing of motor fuel at a given retail
17 facility: direct labor, plus indirect labor costs, plus credit
18 card and bank card related expenses, plus credit carrying and
19 handling costs of the motor fuel retailer, plus utilities
20 expenses, plus property taxes, plus insurance expenses, plus
21 maintenance expenses, plus supplies expenses, plus
22 telecommunications expenses, plus inventory losses, plus
23 regulatory compliance costs. "Expense costs of selling motor
24 fuel at retail" does not include interest on borrowed capital,
25 dividends paid on equity capital, advertising expenses, actual
26 health insurance costs, life insurance costs, or leasing costs

1 (since a substitute for leasing costs is provided by investment
2 costs of selling motor fuel as defined herein).

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

21 (cc) "Flexible fuel vehicle" means any vehicle equipped to
22 operate on fuel blended or not blended with ethanol alcohol,
23 and, if blended with ethanol alcohol, then with any blend above
24 0% and up to 85% ethanol.

25 (dd) "Fuel equipment" includes, but is not necessarily
26 limited to, fuel pumps, fuel dispensers, fuel tanks, fuel

1 piping, fuel tank gauge systems, fuel controllers, credit card
2 acceptance devices on the fuel dispensers, fuel distribution
3 boxes, pump access modules, and fuel related signage.

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

11 (ff) "Gasoline" means motor fuel commonly classified and
12 labeled as gasoline, which is derived largely from petroleum
13 hydrocarbons. "Gasoline" shall also include bio-fuels when
14 such serve individually or in combination with fuel as a
15 fuel-source in gasoline-type motor vehicle engines including,
16 but not necessarily limited to, fuel ethanol alcohol (whether
17 the ethanol is derived from corn or from plant waste materials
18 including, but not limited to, corn husks and wood pulp, the
19 latter also known as or "cellulosic ethanol").

20 (gg) "Government subsidy" means any State or local
21 governmental money disbursed to develop a facility or to
22 develop the infrastructure contained on property of the
23 facility, as well as any State or local government money
24 foregone by any governmental entity as a result of the
25 development of a facility or the infrastructure of the land on
26 which the facility is located including, but not be limited to,

1 reduced taxes stemming from incremental tax districts and
2 enterprise zones.

3 (hh) "Grade" means a specific classification of either
4 gasoline or diesel that is common at the time among and between
5 the majority of fuel suppliers. Examples of "grades" of
6 gasoline include regular, mid-grade (also referred to as plus),
7 and premium.

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

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

23 (kk) "Inadvertent incident" means that the incident can be
24 shown to be not deliberate, but, rather, accidental. Examples
25 of accidental include, but are not necessarily limited to,
26 errors or inadvertent omissions on the part of the retail

1 personnel who change the retail prices, failure on the part of
2 clerical personnel to accurately enter retail or wholesale
3 pricing data into a data processing system, and the failure to
4 include, in computing laid-in cost of motor fuel, the wholesale
5 pricing of a new supplier due to a lack of awareness of the new
6 supplier. Mere failure to perform the computations necessary to
7 ensure compliance with this Act shall not be deemed accidental.
8 Even if an incident is an inadvertent incident, an alleged
9 violator cannot rely on the inadvertency of the incident as an
10 excuse under this Act (whether in response to a complaint filed
11 with the Department of Agriculture or in response to any
12 lawsuit filed in court) more than 3 times during any 18-month
13 period for the same retail facility, unless each such multiple
14 inadvertent incident occurs prior to the alleged violator's
15 receipt of the initial notice of the filing of a
16 below-cost-selling complaint against the alleged violator, as
17 provided in subsection (a) of Section 40 of this Act, and the
18 fifth day following the alleged violator's receipt of the
19 initial notice, in which case, the number of inadvertent
20 incidents shall not be limited.

21 (11) "Indirect labor costs" means labor costs other than
22 direct labor costs including, but not necessarily limited to,
23 supervisory, bookkeeping, and administrative personnel who are
24 indirectly related to the sale, delivery, transfer, or
25 accounting of motor fuel, whether or not the personnel are
26 situated at the motor fuel facility. "Indirect labor costs"

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

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

12 (mm) "Insurance expenses" means all insurance costs
13 associated with the retail sale of motor fuel at a given retail
14 facility including liability insurance, property insurance,
15 employer's liability, costs, and expenses on direct and
16 indirect labor. "Insurance expenses" does not include actual
17 health insurance costs, imputed health insurance costs, life
18 insurance costs, or the labor related insurance expenses of
19 workman's compensation and unemployment compensation.

20 (nn) "Inventory losses" means losses due to breakage,
21 damage, shrink, or theft.

22 (oo) "Investment costs of selling motor fuel at retail"
23 means a monthly cost obtained by adding land holding costs,
24 plus land development costs, plus depreciation allowance on
25 fuel improvements, plus depreciation allowance on fuel
26 equipment.

1 (pp) "Isolated incident" as it relates to selling below
2 cost means that the occurrence was exceptional and not
3 repeated, as evidenced by the fact that the motor fuel
4 retailer, prior to this occurrence, had never previously been
5 determined by the Department to engage in a below-cost sale
6 within 18 months immediately preceding the occurrence, for the
7 facility in question. Even if an incident is determined to be
8 exceptional and not repeated, and even if the motor fuel
9 retailer had not been determined to have engaged in a
10 below-cost sale within the prior 18 months, the incident shall
11 not be considered to be an "isolated incident" as it relates to
12 below-cost selling if the Department of Agriculture had
13 provided notice to the retailer about a complaint within 18
14 months immediately preceding the incident, for the facility in
15 question, that, after investigation by the Department of
16 Agriculture of that prior complaint, the motor fuel retailer
17 was determined to have been selling below cost. "Isolated
18 incident" as it relates to motor fuel price gouging means that
19 the occurrence was exceptional and not repeated, as evidenced
20 by the fact that the motor fuel retailer, prior to this
21 occurrence, had never previously been determined by the
22 Department to engage in motor fuel price gouging within 18
23 months immediately preceding the occurrence, for the facility
24 in question.

25 (qq) "Labor costs" means direct labor costs plus indirect
26 labor costs.

1 (rr) "Laid-in cost of motor fuel" means the regional
2 benchmark pricing service average price per gallon on the day
3 preceding the sale in question for the gasoline grade or blend
4 being sold or for the diesel fuel grade or blend being sold,
5 whichever is applicable, plus all applicable taxes and
6 governmentally-imposed fees applicable to the motor fuel
7 purchase by or delivery to the retailer, plus transportation
8 charges to transport the motor fuel from the applicable
9 wholesale or supply point to the retail point, plus one quarter
10 of \$0.01 per gallon (for ordering and other inventory
11 management costs associated with motor fuel) plus sales taxes
12 and other taxes and fees imposed by the government on the sale
13 of the fuel at the pump.

14 (ss) "Laid-in cost of motor fuel originating from dedicated
15 supplier" means the actual price per gallon charged to the
16 retailer by the retailer's dedicated supplier on the day
17 preceding the sale in question for the gasoline grade or blend
18 being sold or for diesel fuel grade or blend being sold,
19 whichever is applicable, plus all applicable taxes and
20 governmentally imposed fees applicable to the motor fuel
21 purchase by or delivery to the retailer, plus transportation
22 charges to transport the motor fuel from the applicable
23 wholesale or supply point to the retail point, plus one quarter
24 of \$0.01 per gallon (for ordering and other inventory
25 management costs associated with motor fuel), plus sales taxes
26 and other taxes and fees imposed by the government on the sale

1 of the fuel at the pump.

2 (tt) "Land holding costs" means, on a monthly basis, a 7%
3 return on the market value of the land occupied by motor fuel
4 facilities (motor fuel facilities consisting of motor fuel
5 improvements and equipment). Since motor fuel facilities will
6 not always occupy all of the land at a site where motor fuel
7 sales take place in conjunction with the sales of other goods
8 and services, the portion of the land that the motor fueling
9 facilities occupy, including the area of driveway entrances and
10 driveways utilized by motor fueling motorists in their ingress
11 to and egress from motor fueling facilities, shall be measured,
12 in square feet, and that area shall be divided by the total
13 area, in square feet, of the entire developed area of land to
14 determine the percentage of the land occupied by motor fuel
15 facilities. That percentage (100% in the case of a stand-alone
16 motor fuel facility) shall be multiplied by the total market
17 value of the land to determine the value of the land
18 attributable to the motor fuel facility. That proportional
19 value shall then be multiplied by a factor of 7%, then divided
20 by a factor of 12, to determine the land holding costs per
21 month for the motor fuel facility. In the event that the land
22 is leased, not owned, by the motor fuel retailer, and in the
23 further event that the monthly leasing costs, for the portion
24 of the land occupied by the motor fueling facilities, is
25 greater than the proportional value of the land multiplied by a
26 factor of 7%, divided by a factor of 12, then the land holding

1 costs for the motor fuel facility shall be equal to the monthly
2 leasing costs attributable to the land portion of the motor
3 fuel facility.

4 (uu) "Land development costs" means, on a monthly basis, a
5 7% return on the costs of developing land occupied by motor
6 fuel facilities (motor fuel facilities consisting of motor fuel
7 improvements and equipment). "Land development costs" include,
8 but are not limited to, paving, storm sewer, and underground
9 utilities costs, excluding any costs of motor fuel improvements
10 and equipment. In the event that motor fuel facilities do not
11 occupy all of the land development at a site where motor fuel
12 sales take place in conjunction with sales of other goods and
13 services, the portion of the costs attributable to developing
14 the land occupied by motor fuel facilities shall be determined
15 mathematically as follows: total costs of developing the land,
16 multiplied by the area, in square feet, occupied by the motor
17 fuel facility (motor fuel facility including fuel improvements
18 and fuel equipment, as well as the area of driveway entrances
19 and driveways utilized by motor fueling motorists in their
20 ingress to and egress from motor fueling facilities), divided
21 by the total area, in square feet, of the entire developed area
22 of land. That percentage (100% in the case of a stand-alone
23 motor fuel facility) shall be multiplied by the total costs of
24 developing the land occupied by motor fuel facilities to
25 determine the value of developed land attributable to the motor
26 fuel facility. That proportional value shall then be multiplied

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

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

1 (ww) "Life insurance costs" means those costs associated
2 with providing life insurance on personnel related to the
3 applicable retail motor fuel facility.

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

20 (yy) "Market area" means, absent a preponderance of the
21 evidence to the contrary, a distance of 4 miles by road in
22 non-urban areas; a distance of 2.5 miles by road in a standard
23 metropolitan statistical area; and a distance of 60 miles by
24 road for truck stop outlets with more than 60% of fuel sales to
25 vehicles with gross weight of over 50,000 lbs.

26 (zz) "Market value of land" means the appraised valuation

1 of the land occupied by a retail motor fueling facility, such
2 appraisal to have been given by a certified, MAI appraiser
3 sometime within a 48-month period prior to the date or within
4 an 18-month period following the date that the appraisal is
5 used to document land holding costs under this Act.

6 (aaa) "Motor fuel" means those products upon which the
7 state excise tax levied, or defined, in the Motor Fuel Tax Law,
8 as amended, is imposed.

9 (bbb) "Oil Price Information Service" (OPIS) means the
10 independent reporting service, located in the state of
11 Maryland, providing daily reports of prices of refined motor
12 fuel, including the gasoline grades or blends, being sold as
13 well as the diesel fuel grades or blends being sold, that is a
14 widely accepted as an independent fuel price benchmark for
15 supply.

16 (ccc) "Person" means any individual, club, firm,
17 association, organization, partnership, business, trust,
18 joint-stock company, company, corporation, or other entity,
19 legal or otherwise.

20 (ddd) "Price gouging of motor fuel", "price gouging", or
21 "motor fuel price gouging" means the self-service sale of
22 gasoline grade or blend or diesel fuel grade or blend at retail
23 in this State at a price greater than the greater of the
24 following: (1) the regulated maximum retail cost price of motor
25 fuel sold at the time the motor fuel was sold; (2) \$0.19 cents
26 per gallon above the retailer's actual costs of selling motor

1 fuel per gallon at the time the motor fuel was sold; or (3)
2 \$0.19 cents per gallon above the retailer's actual costs of
3 selling motor fuel per gallon from a dedicated supplier at the
4 time the motor fuel was sold.

5 (eee) "Property taxes" means taxes on land, real estate,
6 improvements, and personal property.

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

19 (ggg) "Regulated maximum retail cost price of motor fuel
20 sold" or "regulated maximum price" relates to motor fuel sales
21 at self-service, and means the greater of: (1) the regulated
22 minimum retail cost price of motor fuel sold plus \$0.19 cents
23 per gallon at the time the motor fuel was sold; (2) the
24 regulated minimum retail cost price of motor fuel sold from a
25 dedicated supplier plus \$0.19 cents per gallon at the time the
26 motor fuel was sold; (3) the regulated minimum retail cost

1 price of motor fuel sold plus \$0.19 cents per gallon at the
2 time the motor fuel was sold plus any extraordinary costs (on a
3 per gallon basis) incurred by the motor fuel retailer at or for
4 the time the motor fuel was sold; or (4) the regulated minimum
5 retail cost price of motor fuel sold from a dedicated supplier
6 plus \$0.19 cents per gallon plus any extraordinary costs (on a
7 per gallon basis) incurred by the motor fuel retailer at or for
8 the time the motor fuel was sold.

9 (hhh) "Regulated minimum retail cost price of motor fuel
10 sold" or "regulated minimum price" means the lowest pump price
11 that includes a positive gross margin to the retailer of 7%
12 over the retailer's laid-in cost of motor fuel for the time in
13 question. The "regulated minimum retail cost price of motor
14 fuel sold" is the quotient of the applicable laid-in cost of
15 motor fuel divided by 0.94 (i.e. the sum of 1.00 minus the
16 minimum margin of 7%, or 1.00 minus .07 = 0.93). As an example,
17 if the laid-in cost of motor fuel (as it relates to motor fuel
18 being gasoline) on a given day is \$1.738, the regulated minimum
19 retail cost price of motor fuel sold for that day is \$1.849,
20 calculated as follows: \$1.738 (laid-in cost divided by 0.94
21 (gross margin factor of 6%), equals \$1.849. Since laid-in cost
22 of motor fuel includes taxes and governmentally-imposed fees
23 applicable to the motor fuel purchase by or delivery to the
24 retailer (including, at the time of passage of this Act,
25 federal imposed motor fuel taxes and fees), as well as taxes
26 and fees imposed on the sale of motor fuel at the pump (the

1 taxes and fees in this latter category are, at the time of
2 passage of this Act, Illinois State sales tax of 6.25%, State
3 motor fuel tax on gasoline of \$0.19 per gallon, environmental
4 impact fee of \$0.008 per gallon, and the Illinois underground
5 storage tank fee of \$0.003 per gallon), and since the taxes and
6 fees imposed on the sale of motor fuel at the pump are both
7 percentage taxes and flat taxes or fees (Illinois State sales
8 tax being a percentage tax and the remainder, at the time of
9 passage of this Act, being flat taxes and fees) and since the
10 State, at the time of passage of this Act, imposes sales tax on
11 only 2 of the 3 flat taxes (at the time of passage of this Act,
12 Illinois imposes sales tax on the environmental impact fee and
13 the Illinois underground storage tank fee, but does not impose
14 sales tax on the State motor fuel tax) the following is
15 provided as an additional aid in calculating regulated minimum
16 price.

17 The following is provided as an aid only and the following
18 does not show municipal taxes imposed on the sale of motor fuel
19 that would need to be included to the extent applicable. In the
20 event that, after the date of passage of this Act, there are
21 changes in the amount, structure, calculation, time of
22 imposition, or type of taxes or fees imposed on the delivery of
23 an applicable grade or blend of motor fuel to a retailer, on
24 the purchase of and applicable grade or blend of motor fuel by
25 a retailer, or on the sale of and applicable grade or blend of
26 motor fuel at the pump, the "regulated minimum price" under

1 this Act shall remain the lowest pump price that includes a
2 positive gross margin to the retailer of 7% over the applicable
3 laid-in cost of motor fuel, as defined in this Act, for the
4 time in question. Assume \$1.446 is the retailer's applicable
5 laid-in cost of motor fuel as defined in this Act, excluding
6 taxes and fees imposed on the sale of motor fuel at the pump.
7 Further assume, the motor fuel in question is gasoline that is
8 not blended with any other gasoline grade nor with ethanol, and
9 that taxes and fees imposed on the sale of motor fuel at the
10 pump are: State motor fuel tax of \$0.19 per gallon,
11 environmental impact fee of \$0.008 per gallon, underground
12 storage tank fee of \$0.003 per gallon, and State sales tax of
13 6.25%. Further assume that sales tax is levied on the entire
14 sale price, except the State motor fuel tax on gasoline of
15 \$0.19 per gallon. The "regulated minimum price" (for this grade
16 of gasoline not blended with ethanol) must include all taxes,
17 plus a 7% gross margin to the retailer. The "regulated minimum
18 price" is calculated as follows: (step 1) laid-in cost of motor
19 fuel, exclusive of State sales tax, is \$1.647 ($\$1.446 + \$0.19 +$
20 $\$0.008 + \$0.003 = \$1.647$); (step 2) laid-in cost of motor fuel,
21 exclusive of State sales tax, plus a 6% gross margin, equals
22 \$1.7710 ($\1.647 divided by $0.93 = \$1.7710$ [rounded to the
23 fourth decimal]); (step 3) sales tax, on the appropriate
24 taxable amount, equals \$0.0911 (0.0625 times $\$1.457$ [the sum of
25 $\$1.446 + \$0.008 + \$0.003$ is $\$1.457$] = $\$0.0911$ [rounded to the
26 fourth decimal]); (step 4) sales tax, plus a 7% gross margin

1 equals, $\$0.0979$ ($\$0.0911$ divided by $0.93 = \$0.0979$ [rounded to
2 the fourth decimal]); and (step 5) the regulated minimum price
3 is $\$1.8689$ ($\$1.7710 + \$0.0979 = \$1.8689$).

4 Regarding taxation, it is important to note that the actual
5 sales tax on the retail sale of motor fuel will be slightly
6 greater than the amount of sales tax calculated from cost in
7 the example above, given that the sales tax is actually
8 computed from the final retail sales price, which includes the
9 margin that had been added atop the taxes, and, as a result,
10 the gross margin to the retailer will be slightly less than the
11 a perfect 7% on the sale. For example, presuming the actual
12 retail sales price was equal to the regulated minimum price of
13 $\$1.8689$ as computed above, the actual sales tax on the sale
14 shall be $\$0.0988$ rather than the sales tax amount computed
15 forward from cost of $\$0.911$, with the monetary difference
16 between the actual sales tax and the computed sales tax being
17 how much less than what the retailer would have grossed had the
18 margin to the retailer been a perfect 7% on the sale. The
19 actual sales tax of $\$0.0988$ on the sale is calculated in the
20 following steps: (step 1) retail sales price of motor fuel
21 ($\$1.8689$) less the state motor fuel tax that is not subject to
22 sales tax ($\$0.19$), equals the portion of the sale price of
23 motor fuel that is sales taxable ($\$1.6789$); (step 2) the
24 portion of the sales price that is sales taxable ($\$1.6789$)
25 divided by one plus the assumed tax rate of 6.25% (1.0625),
26 equals the sale price less State motor fuel tax and sales tax

1 (\$1.5801); (step 3) the portion of the sales price that is
2 sales taxable (\$1.6789) less the foregoing computed sales price
3 less State motor fuel tax and sales tax (\$1.5801), equals the
4 amount of actual sales tax on the sale (\$0.0988); and (step 4)
5 the monetary margin earned by the retailer shall be less in
6 amount what the retailer would have grossed had the margin to
7 the retailer been a perfect 7%, by subtracting the calculated
8 sales tax when it is computed forward from cost (\$0.0911) from
9 the actual sales tax on the sale when computing backward from
10 the actual sale price (\$0.0988), or equal to or approximately
11 equal to \$0.0077. If, in the above example, the motor fuel had
12 been a grade being blended with another grade or with ethanol,
13 the result could have been different, given that the laid-in
14 cost could have differed (due to the proportionate inclusion of
15 either the other grade or of ethanol), and the tax calculations
16 would have been different (due to taxation on ethanol blended
17 fuel being different than non-ethanol blended gasoline).
18 Likewise, had the motor fuel in the above example been diesel
19 or blended biodiesel, the calculations would have been
20 different, given that the taxation on diesel and blended
21 biodiesel vary from that of gasoline. It is also important to
22 note that retailers shall be allowed to pass on the benefit of
23 any tax exemptions applicable to a customer who is legally
24 exempt from any and all taxes otherwise applicable on the
25 retail sale of motor fuel.

26 (iii) "Regulated minimum retail cost price of motor fuel

1 sold from a dedicated supplier" or "regulated minimum price
2 from a dedicated supplier" is calculated the same as the
3 regulated minimum retail cost price of motor fuel sold, except
4 that laid-in cost of motor fuel is replaced by laid-in cost of
5 motor fuel originating from dedicated supplier.

6 (jjj) "Regulated period for price restoration" means every
7 Wednesday, during the period of time from 8:30 a.m. to 11:30
8 a.m., whenever the retailer's actual price of motor fuel is
9 less than the retailer's regulated minimum retail cost price of
10 motor fuel sold.

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

19 (lll) "Relevant geographic market" means the geographic
20 area of effective competition.

21 (mmm) "Retailer" means a person engaged in the business of
22 selling motor fuel to a member of the motoring public for
23 consumption.

24 (nnn) "Sale" or "sell" means a transfer for money or other
25 value or combination, exchange, barter, gift, sale, offer for
26 sale, advertisement for sale, soliciting an order, and

1 distribution in any manner or by any means whatsoever, of motor
2 fuel, including a transfer of motor fuel by a person to another
3 person, or by a person to that person, to a member of that
4 person, or to an affiliate of that person.

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

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

21 (qqq) "Telecommunications expenses" means all
22 communications expenses incurred to accommodate the sale of
23 motor fuel at retail including, but not necessarily limited to,
24 telephone line and use expenses, internet access fees,
25 satellite service expenses, cable fees, and other wire and
26 wireless communications expenses. In the event that goods and

1 services, other than motor fuel, are sold within the same
2 facility as motor fuel, in the event that the
3 telecommunications expenses are shared to accommodate sales
4 and operations associated with the other goods and services,
5 and to the extent that the telecommunications costs associated
6 with motor fuel are not separate and readily distinguishable
7 from the telecommunications costs associated with non-motor
8 fuel sales or operational activities, then the portion of costs
9 not made separate and readily distinguishable that should be
10 allocated as "telecommunications expenses" for the motor fuel
11 facility shall be determined mathematically as follows: total
12 telecommunications costs for the facility multiplied by the
13 total motor fuel sales dollars at the facility, divided by the
14 total sales dollars of all products and services (motor fuels
15 sales and non-motor fuel sales at the facility).

16 (rrr) "Transportation charges" shall be defined as a rate
17 per gallon not to exceed 1.10 times the average computed
18 independent commercial posted tariff (common carrier) rates
19 for delivery of motor fuel, from the relevant supply point to
20 the relevant destination point, as a single account, in effect
21 at time of delivery, based on the rates of at least 2 eligible
22 carriers.

23 (sss) "Utilities expenses" means all electrical, water,
24 sewer, natural gas, fuel oil, propane, and other energy and
25 utilities expenses incurred in the sale of motor fuel at
26 retail. In the event that goods and services, other than motor

1 fuel, are sold within the same facility as motor fuel, in the
2 event that the utilities expenses are shared to accommodate
3 sales and operations associated with the other goods and
4 services, and to the extent that the utilities expenses
5 associated with motor fuel are not separate and readily
6 distinguishable from the utilities costs associated with
7 non-motor fuel sales or operational activities, then the
8 portion of costs not made separate and readily distinguishable
9 that should be allocated as motor fuel related utilities costs
10 shall be determined mathematically as follows: total utilities
11 costs at the retail facility multiplied by the total motor fuel
12 sales dollars at the retail facility, divided by the total
13 sales dollars of all products and services (motor fuels sales
14 and non-motor fuel sales at the retail facility).

15 (ttt) "Wholesale rack terminal supplier" means any entity
16 that sells motor fuel, on a wholesale basis, to multiple,
17 separate retailers; for a retailer to be considered separate,
18 the retailer must not be an affiliate of the wholesale rack
19 terminal supplier, nor an affiliate of a fellow retailer
20 purchasing fuel from a terminal facility.

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

24 Section 15. Illegal motor fuel price gouging.

25 (a) It is a violation of this Act to engage in motor fuel

1 price gouging in response to the occurrence of a national
2 disaster or State emergency, except where the sale is
3 determined to mutually meet the criteria for both an isolated
4 incident and an inadvertent incident.

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

9 Section 20. Illegal sale below cost; exceptions. It is a
10 violation of this Act to sell, offer to sell, or advertise for
11 sale motor fuel at a retail price that would constitute a
12 below-cost sale, except:

13 (1) in response to the equally low price of a
14 competitor within the market area (except during regulated
15 periods for price restoration), provided that detailed
16 records are kept indicating the date and time of day of
17 each change in the sale price of motor fuel and the
18 identity of the person who recorded the price change, the
19 name and address of each competitor, the price of each
20 competitor that was met, and the price of each competitor
21 each day that the price remains below cost, to show that
22 the retailer was responding to the equally low prices of
23 one or more competitors as a follower, not a leader in the
24 below-cost selling, and that the retailer made efforts to
25 support restoration of pricing to a level at or above cost

1 during the regulated period for price restoration, or at
2 other times within a period of 24 hours after at least 50%
3 of competing retailers in the market area have made the
4 effort to restore motor fuel prices to a level that does
5 not represent a below-cost sale;

6 (2) during a publicized grand opening to introduce a
7 new or remodeled business not to exceed 72 consecutive
8 hours in length once every 3 years;

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

16 (4) during a bona fide clearance sale or final business
17 liquidation sale, not exceeding one week in length, for the
18 purpose of discontinuing trade in the motor fuel. This
19 exception shall not be considered as the price of a
20 competitor and shall not be used as a basis for
21 establishing a below-cost sale by another retailer;

22 (5) during a sale of motor fuel by a fiduciary or other
23 officer under the order or direction of any court from a
24 good faith effort to dispose of a grade, brand, or blend of
25 motor fuel. This exception shall not be considered as the
26 price of a competitor and shall not be used as a basis for

1 establishing a below-cost sale by another retailer;

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

7 (7) where the sale is both an isolated incident and an
8 inadvertent incident as defined in this Act.

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

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

1 given by the retailer or any by another person.

2 (b) Concessions offered, given, issued, distributed,
3 provided, or paid in connection with the sale of or payment for
4 motor fuel at retail, up to a total concession or concessions
5 not to exceed 5% of the total motor fuel sale, shall not be
6 subtracted from the retail fuel price in determining whether
7 the retailer is selling below cost if: (1) the concession or
8 concessions are not given, issued, distributed, provided, or
9 paid by the motor fuel retailer or an affiliate of the motor
10 fuel retailer; (2) the cost of the concession or concessions
11 are borne by a person other than the motor fuel retailer or an
12 affiliate of the motor fuel retailer; and (3) the concession or
13 concessions do not reduce the pump price and do not reduce the
14 net amount paid for the motor fuel at the time and place of
15 sale, but, rather, the concession or concessions are provided
16 or applied separate from the time and place of sale of motor
17 fuel. A motor fuel retailer shall not be deemed to bear the
18 cost of a concession by the motor fuel retailer's agreement to
19 pay or payment of a standard bank, credit, or payment card
20 processing fee of less than or equal to 3% of the motor fuel
21 sale plus \$0.10 per card transaction (hereinafter referred to
22 as "allowable card transaction processing fee"), provided that
23 the allowable card transaction processing fee includes any
24 costs borne by the retailer in connection with the use of the
25 bank, credit, or payment card to pay for the motor fuel sale.
26 In addition, a motor fuel retailer shall not be deemed to bear

1 the cost of a concession by the motor fuel retailer's agreement
2 to pay or payment of a bank, credit, or payment card having a
3 processing fee in excess of the allowable card transaction
4 processing fee if the retailer can demonstrate, to the
5 satisfaction of the Department of Agriculture, following
6 consultation with and input of the Motor Fuel Cost and
7 Bio-Fuels Blend Ratio Review Board, that the processing fee
8 paid by the retailer in excess of the allowable card
9 transaction processing fee is not due or related to the
10 concession, but rather is the standard processing fee of the
11 particular bank, credit, or payment card provider to which the
12 fee is paid.

13 (c) If a concession meets all the requirements of
14 subsection (b) of this Section for not being subtracted from
15 the motor fuel retail price in determining whether the motor
16 fuel retailer is selling below cost, except that the
17 concession, or the sum of all concessions, exceeds 5% of the
18 motor fuel sale ("excessive concession or concessions"), that
19 portion of the concession or concessions that exceeds 5% of the
20 sale shall be subtracted from the retail motor fuel price in
21 determining whether the motor fuel retailer is selling below
22 cost, unless all of the following additional conditions are
23 met: (1) the excessive concession or concessions were offered,
24 given, issued, distributed, provided, or paid by a person other
25 than the motor fuel retailer or an affiliate of the motor fuel
26 retailer and without the advance knowledge or consent and

1 beyond the reasonable control of the motor fuel retailer; (2)
2 within 30 days after the motor fuel retailer first knows or
3 reasonably should know about the excessive concession or
4 concessions, the motor fuel retailer delivers a written request
5 to the person offering, giving, issuing, distributing,
6 providing or paying the excessive concession or concessions
7 that such person discontinue any and all excessive concessions;
8 and (3) if, after 90 days following the motor fuel retailer's
9 written request that the person discontinue the excessive
10 concession or concessions, the motor fuel retailer knows or
11 reasonably should know that the person has not discontinued the
12 excessive concession or concessions, the motor fuel retailer
13 shall take all reasonable and necessary actions that the motor
14 fuel retailer can, in good faith, take to discontinue any
15 involvement in, participation in, or facilitation of the
16 excessive concession or concessions by the motor fuel retailer.
17 If the motor fuel retailer's only involvement in the excessive
18 concession or concessions is the retailer's acceptance of a
19 particular bank, credit, or other payment card as payment for
20 motor fuel sales, the retailer shall stop accepting that
21 particular bank, credit, or other payment card as payment for
22 motor fuel sales, unless the retailer cannot stop accepting the
23 particular card without being required to stop accepting cards
24 of card providers that are not offering, giving, issuing,
25 distributing, providing, or paying excessive concession or
26 concessions, in which event the excessive concession or

1 concessions of the particular card provider shall not be
2 subtracted from the retail motor fuel price in determining
3 whether the motor fuel retailer is selling below cost if the
4 motor fuel retailer, within 120 days after the motor fuel
5 retailer's request to the particular card provider to
6 discontinue the excessive concession or concessions, shall
7 send written notice to the Department of Agriculture at an
8 address specified by the Department (i) the identity of the
9 person offering, giving, issuing, distributing, providing or
10 paying excessive concession or concessions, and (ii) the motor
11 fuel retailer's inability to discriminately stop accepting the
12 card or cards of the person offering, giving, issuing,
13 distributing, providing, or paying the excessive concession or
14 concessions.

15 Section 30. Establishment of Motor Fuel Cost and Bio-Fuels
16 Blend Ratio Review Board.

17 (a) A Motor Fuel Cost and Bio-Fuels Blend Ratio Review
18 Board shall be established to consider matters brought before
19 the Board relating to issues of motor fuel price gouging and
20 below-cost selling, including the selection of the entity to
21 provide benchmark pricing services as provided for in this Act,
22 to establish blending-ratios of bio-fuels within motor fuels
23 sold at retail motor fuel facilities, to provide input whether
24 an incident is an inadvertent incident, and to provide input to
25 rules under consideration or already promulgated by the

1 Department of Agriculture relating to this Act.

2 (b) The Motor Fuel Cost and Bio-Fuels Blend Ratio Review
3 Board shall be comprised of 7 members, including: (1) the
4 Director of Agriculture or his or her designated
5 representative; (2) a resident of Illinois who is an active
6 retailer of motor fuel and a member in good standing with the
7 Illinois Petroleum Marketers Association, or its successor
8 organization; (3) a resident of Illinois who is an active
9 retailer of motor fuel who may or may not be a member in good
10 standing with the Illinois Petroleum Marketers Association, or
11 its successor organization; (4) a resident of Illinois who is
12 an active member of the Illinois Renewable Energy Association,
13 or its successor organization (and if there is no such
14 association in Illinois, then a resident of Illinois who is a
15 member of the National Renewable Fuels Association); (5) a
16 resident of Illinois who is an active member of the Illinois
17 Biodiesel Board, or its successor organization (if there is not
18 such organization in Illinois, then a resident of Illinois who
19 is a member of the National Biodiesel Board); (6) a certified
20 managerial accountant licensed to practice public accounting
21 in the State; and (7) a resident of the State, retired from the
22 motor fuels retailing industry, having had a minimum of 10
23 years experience working in the retail motor fuel industry
24 before retiring. Appointments to the Board shall be by the
25 governor, with the advice and consent of at least a 51%
26 majority of the Illinois Senate.

1 (c) Each member shall, upon accepting appointment to the
2 Board, take an oath to uphold the intent and spirit of this
3 Act. Should a member be unable or unwilling to uphold this oath
4 or to otherwise fulfill his or her duties as a member of the
5 Board, said member may be replaced by a new appointee, who will
6 fulfill the remainder of the term of the replaced member.

7 (d) Appointments shall be for a term of 3 years. The Board
8 shall meet and be under the direction of the Director of
9 Agriculture, or his or her designated representative who shall
10 serve as chairperson of the Board.

11 (e) The Board shall meet, at minimum, one time a year, at
12 which time the members of the Board shall receive an annual
13 report from the Director, or his or her designated
14 representative, about complaints and matters relating to price
15 gouging, below-cost selling, reports of excessive concessions,
16 supply and demand balance and resulting implications for
17 prescribed bio-fuels blend ratios, promulgated rules, and the
18 activities of the Department as it relates thereto, and, at
19 maximum, 5 times a year.

20 (f) The certified managerial accountant shall be
21 compensated at a rate that is usual and customary for
22 professional services provided by a certified managerial
23 accountant in the State, while other non-government employee
24 members of the Board shall be compensated at the rate of \$40
25 per hour (the hourly rate to be increased every 3 years by a
26 factor based on one-half the rate of increase in the consumer

1 price index over the prior 3 year period) for time spent in
2 meetings of the Board, whether meetings be conducted in person
3 or by telephone conference call, with a minimum compensation
4 payment of \$100 per person per meeting, the minimum to help
5 offset some of the outside preparation time and considerations
6 involved prior to meetings of short duration. While members of
7 the Board shall not be compensated for the time traveling to
8 and from meetings, members of the Board shall be reimbursed for
9 reasonable other travel, as well as lodging expenses, upon
10 request, the rates of reimbursement for such expenses to not
11 exceed those allowed of State employees. Payments relating to
12 this Section shall be made by the Department.

13 Section 35. Rules governing development and maintenance of
14 the retail infrastructure to safely accommodate motor fuels
15 blended with bio-fuels. If it has not already done so by the
16 effective date of this Act, the Office of the State Fire
17 Marshal shall develop the following rules governing the
18 infrastructure necessary to safely accommodate motor fuels
19 blended with bio-fuels at retail motor fuel facilities:

20 (1) The Office of the State Fire Marshal shall research
21 whether motor fuel blended with ethanol, in ratios varying
22 from any ratio greater than 0% to 20% ethanol, requires any
23 special rules to safeguard against water infiltration into
24 storage tank systems, or to safeguard against
25 phase-separation of ethanol and water from gasoline. If it

1 finds that special rules are required, then the Office of
2 the State Fire Marshal shall promulgate rules accordingly.
3 The rules, if any, shall be written with the intent to
4 reduce moisture or water infiltration into any underground
5 storage tank system containing ethanol, to safeguard the
6 motoring public from taking receipt of the portion of the
7 phase-separated fuel containing the ethanol mixed with
8 water that has been separated from the gasoline, and to
9 further protect the public from incurring the higher motor
10 fuel pricing that can occur if a motor fuel retailer is
11 forced to recoup costs associated with disposal of the
12 ethanol-water bonded portion of the fuel affected by phase
13 separation (hereinafter referred to as "rules to safeguard
14 against water infiltration and phase-separation"). The
15 rules to safeguard against water infiltration and
16 phase-separation may take into consideration factors that
17 will vary on a facility-by-facility basis including, but
18 not limited to, ground water table levels in the area of
19 the affected tanks, elevation levels of water within the
20 tank pit relevant to the comparative elevations of piping
21 (including, for example, riser, vent, and vapor recovery
22 piping that, before this Act have not been subject to
23 corrosion protection rules), standing water and surface
24 water drainage in the area of the fuel fill manholes, and
25 other relevant factors, where the rules may warrant a
26 variance of application. All new underground motor fuel

1 storage tanks, as well as all replacement components of
2 existing motor fuel tanks, permitted by the Office of the
3 State Fire Marshal after the effective date of the rules to
4 safeguard against water infiltration and phase-separation,
5 must conform to such rules prior to the addition or
6 dispensing of gasoline containing ethanol. Any underground
7 tank in place and permitted by the Office of the State Fire
8 Marshal prior to the effective date of the rules shall be
9 allowed to receive and contain gasoline containing up to
10 20% ethanol without being in compliance with the rules to
11 safeguard against water infiltration and phase-separation,
12 provided that the motor fuel retailer equips all connected
13 motor fuel dispensers with filters that will not allow the
14 phase-separated ethanol-water mixture to pass through the
15 filters and into a motorist's vehicle. After the seventh
16 year, provided that the facility has had the continuous
17 protection of this Act from below-cost pricing of motor
18 fuels, the existing underground storage tank and
19 dispensing systems must be upgraded so as to conform to the
20 rules to safeguard against water infiltration and
21 phase-separation, in order to continue taking receipt,
22 storing, or dispensing of the blends of ethanol gasoline.

23 (2) Regardless of whatever rules that are or are not
24 to be promulgated under item (1) of this Section, the
25 Office of the State Fire Marshal shall promulgate rules
26 that govern underground storage tank and dispensing

1 systems that contain any content of ethanol greater than
2 20%. The rules shall be designed to safely accommodate the
3 receipt, storage, water or moisture infiltration, pumping,
4 in-line flow, leak detection, leak prevention, blending,
5 filtering, and dispensing of a blend ratio of ethanol of
6 85% to 100% ethanol (the rules hereinafter referred to as
7 "rules to accommodate high ratio blends of ethanol"). All
8 underground storage tank systems, prior to taking receipt
9 of, storing and dispensing of gasoline containing more than
10 20% ethanol alcohol, shall meet the rules to accommodate
11 high ratio blends of ethanol, except, however, any
12 underground storage tank and dispensing systems that,
13 prior to the effective date of the rules to accommodate
14 high ratio blends of ethanol, had been permitted by the
15 Office of the State Fire Marshal to store and dispense said
16 high-ratio blends of ethanol gasoline, shall be allowed to
17 continue in use for the storage and dispensing of high
18 ratio blends of ethanol gasoline through the seventh year
19 that the facility continuously benefits from protection
20 against below-cost pricing of motor fuel as provided for in
21 this Act. After the seventh year, such existing underground
22 storage tank and dispensing systems must be upgraded to
23 conform to the rules to accommodate high ratio blends of
24 ethanol, in order to continue taking receipt of, storing,
25 and dispensing such high-ratio blends of ethanol gasoline.

26 (3) The Office of the State Fire Marshal shall also

1 research whether motor fuel with biodiesel, in varying
2 ratios of blending from greater than 0% to 100% bio-fuel,
3 necessitates any special rules to safely accommodate the
4 receiving, storage, water or moisture infiltration,
5 pumping, in-line flow, leak detection, leak prevention,
6 blending, filtering, and dispensing of the fuels at retail,
7 and the Office of the State Fire Marshal shall promulgate
8 rules accordingly. The time frames set forth in items (1)
9 and (2) of this Section for upgrading of existing
10 ethanol-blended-gasoline tank and dispensing systems shall
11 also apply to systems for storing and dispensing blended
12 biodiesel fuels.

13 Section 40. Remedies and penalties for below-cost sales.

14 (a) If a retailer is selling motor fuel in a given market
15 area below the regulated minimum retail cost price of motor
16 fuel sold for another retailer in the same market area, the
17 complaining retailer may file a complaint with the Department
18 of Agriculture, provided that the complaint is made on or
19 within a period of 30 days after the date of the incident. The
20 complaint shall include, at minimum, the name, contact person,
21 address, and telephone number of the complaining retailer; the
22 name, address, and telephone number (if the telephone number is
23 known) of the competing retailer (also referred to as "alleged
24 violator"); the name and address of each retail location
25 subject to the complaint; the pricing at each such location on

1 the applicable dates; and the believed regulated minimum price
2 of the complaining retailer for each applicable date, with
3 documentation supporting the complaining retailer's computed
4 regulated minimum price for each such date. Within 30 days
5 after receipt of the complaint, the Department shall give
6 written notice of the complaint to the alleged violator, which
7 notice shall be sent certified mail, return receipt requested.
8 Notice shall be addressed and sent to the applicable retail
9 facility, in the name of the facility, and to the retailer in
10 the name and at the address of any home office that the
11 retailer has provided to the Department for the sending of the
12 notice ("initial notice"). This initial notice shall include
13 the name and address of each retail motor fuel location subject
14 to the complaint, each date that a below-cost sale is alleged
15 to have occurred, and the retail pricing for each retail
16 location for each date. The alleged violator shall be deemed to
17 have received the initial notice on the date the notice is
18 actually received or 5 business days after the date the notice
19 is mailed by the Department, whichever occurs first. The
20 alleged violator shall have 60 days from the date of its
21 receipt of the initial notice to respond to the Department with
22 evidence that the alleged violator, for any periods of time
23 subject to the complaint, and for any periods of time following
24 the last date named in the complaint to the date of the initial
25 notice, was not selling below its regulated minimum price, or
26 that any sale below the regulated minimum price meets one of

1 the exceptions of Section 20 of this Act. The Department shall
2 then have 90 days from the date the Department receives the
3 alleged violator's response to provide to the complainant and
4 the alleged violator written findings: (1) whether the
5 complaining retailer has made a prima facie showing in its
6 complaint that the alleged violator sold below the complaining
7 retailer's regulated minimum price, and, if the prima facie
8 showing is made, then (2) whether the alleged violator has
9 proven in its response, by a preponderance of the evidence,
10 that it did not sell below its regulated minimum price, or that
11 it meets one of the Section 20 exceptions.

12 (b) If the Department finds that the complaining retailer
13 has failed to make a prima facie showing under subsection (a)
14 of this Section, and the alleged violator did not sell below
15 the complaining retailer's regulated minimum price, the
16 Department shall administratively fine the complaining
17 retailer in the amount of \$350. The Department shall notify the
18 complaining retailer in writing of the administrative fine
19 within 30 days after the Department determines that no prima
20 facie showing was made by the complaining retailer. The written
21 notice of administrative fine shall also contain a written
22 notice of the complaining retailer's rights of appeal. Within
23 45 days after the date of the written notice of the
24 administrative fine, the complaining retailer shall pay the
25 State the amount of the administrative fine, unless the
26 complaining retailer appeals the decision by following the

1 Department's requirements relating to an appeal, in which
2 latter case, the complaining retailer must state in writing the
3 basis of its appeal, and, following receipt of the appeal
4 within the time-frame prescribed by the Department, the
5 Department shall have a period of 210 days in which to render a
6 decision on the appeal, which decision of the Department shall
7 be final. The foregoing notwithstanding, the complaining
8 retailer shall not be administratively fined by the Department
9 if the alleged violator was released from further action due to
10 any exception permitted under Section 20 of this Act.

11 (c) If the Department finds: (1) that the complaining
12 retailer failed to make a prima facie showing under subsection
13 (a) of this Section; or (2) that the alleged violator either
14 qualifies for a Section 20 exception or did not sell below its
15 regulated minimum price, the complaint shall be closed. If the
16 Department finds that the complainant has made the required
17 prima facie showing and finds that the alleged violator has
18 neither rebutted that showing nor proven a Section 20
19 exception, the alleged violator shall be given the opportunity
20 to provide full disclosure and cost-accounting documentation
21 that it did not sell below cost. Certified by either a
22 certified managerial accountant or certified public accountant
23 hired by the alleged violator, the alleged violator shall file
24 such documentation with the Department within 90 days after the
25 date of the Department's written findings under subsection (a)
26 of this Section above, and shall, on the same day, serve the

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

24 (d) If the Department concludes that the alleged violator
25 sold motor fuel below cost, but that the alleged violator
26 qualifies for an exception under item (7) of Section 20, then

1 the Department shall notify the alleged violator of the
2 Department's determination, but shall warn the alleged
3 violator that the alleged violator has exhausted its use of an
4 exception under item (7) of Section 20 for the time period
5 provided for an exception in this Act.

6 (e) Until the Department makes a determination on a
7 complaint, the Department shall continue to receive other
8 complaints that may be made by either the original complaining
9 retailer or by other complaining retailers. When receiving
10 complaints, the Department shall note and take into account the
11 dates of the incidents about which a complaint is made. For any
12 incident, which is ultimately determined to be an incident of
13 below-cost selling and that occurred after the date of a prior
14 incident that is ultimately determined to be below-cost
15 selling, but before the expiration of the fifth calendar day
16 after the alleged violator has received initial notice from the
17 Department about the first incident (that the incident in
18 question is in fact at least the second incident of
19 below-cost-selling by the alleged violator at the particular
20 retail facility), the Department shall take no action against
21 the alleged violator for the latter incidents within the
22 prescribed time frame to the extent that the latter incidents
23 also are inadvertent incidents. A retailer shall therefore have
24 a safe-haven for inadvertent below-cost selling between the
25 time of the initial incident of below-cost selling and the
26 fifth calendar day after the retailer receives initial notice

1 of the initial incident from the Department, provided that the
2 initial incident is an isolated incident or an inadvertent
3 incident as defined under this Act. Except for inadvertent
4 incidents as provided in this subsection (e) of this Section,
5 time periods allowed under this Section for notification by,
6 submissions to, and determinations by the Department, shall not
7 be used as safe-havens during which a violator may continue
8 selling below cost with impunity.

9 (f) If, within the 180-day period prior to initial notice
10 of a complaint, the alleged violator, for the facility in
11 question, was given notice by the Department of another
12 complaint relating to a prior incident of alleged below-cost
13 selling at the same facility, the Department shall not rule
14 that the latter incident meets an exception under item (7) of
15 Section 20 unless and until the Department makes a
16 determination regarding the prior incident. Between the time
17 that the Department issues initial notice to the alleged
18 violator on the earlier complaint and the time that the
19 Department makes a determination on the subject complaint, the
20 Department shall continue to receive other complaints, if any,
21 that may be made by either the original complaining retailer,
22 or by any other retailers. Any incident of below-cost selling
23 that occurs after the fifth calendar day after the alleged
24 violator receives initial notice from the Department on a prior
25 complaint, but before the 180th day following the date that the
26 Department received the prior complaint, the subsequent

1 complaint shall not meet an exception under item (7) of Section
2 20 if the prior complaint is determined by the Department to
3 constitute an act of below-cost sale.

4 (g) If the alleged violator fails or refuses to respond in
5 a timely manner to the requests of the Department or fails to
6 pay the administrative fines to the Department within 45 days
7 after notice of the imposition of an administrative fine, the
8 Department shall refer the matter to the Attorney General for
9 prosecution. Upon receipt of the referral, the Attorney
10 General, or at its discretion, the State's Attorney for the
11 county in which the alleged below-cost sale occurred, shall
12 commence a civil action to enforce the findings of and
13 administrative fines imposed by the Department. While the civil
14 action is pending, the Attorney General or the State's
15 Attorney, as the case may be, shall seek to enjoin the violator
16 from below-cost pricing, and upon a proper showing, a temporary
17 restraining order, preliminary injunction, or permanent
18 injunction shall be issued without the necessity of a bond.

19 (h) Any person who has been found by the Department to have
20 committed a violation of below-cost selling under this Act
21 shall be listed as a "below-cost seller" by the Department,
22 unless the incident of below-cost selling qualifies for an
23 exception under this Act. If the person is thereafter found to
24 have committed another act of below-cost selling within 18
25 months after the date of the first act of below-cost selling
26 that does not qualify for an exception under this Act, the

1 Department shall administratively fine the violator a sum not
2 to exceed \$5,000 per violation, unless the violation was
3 determined accidental, in which case the administrative fine
4 shall not exceed \$2,500. Any such violator shall also be liable
5 for accountants fees, expert witness fees, and investigative
6 expenses incurred by the Department and shall be subject to
7 injunctive relief. Each day that a violation of below-cost
8 selling under this Act occurs shall be considered as a separate
9 violation. If an action is brought by a State's Attorney, the
10 entire amount of the administrative fine shall be paid to the
11 treasury of the county in which the judgment was entered. If an
12 action is brought by the Attorney General, one-half of the
13 penalty shall be paid to the treasury of the county where the
14 action was brought and one-half shall be paid to the State
15 Treasury, earmarked for the Attorney General's State Project
16 and Court Order Distribution Fund. Administrative fines paid to
17 the Department without involvement of the Attorney General
18 shall go to the General Revenue Fund.

19 (i) Notwithstanding anything to the contrary contained in
20 provisions (a), (b), (c), (d), (e), (f), (g), and (h) of this
21 Section 40, if, after the seventh year following the effective
22 date of this Act, or the seventh year following the effective
23 date of rules promulgated by the Office of the State Fire
24 Marshal governing underground storage and dispensing systems
25 and providing for the safe storage and dispensing of gasoline
26 containing 85% or greater in content of ethanol, whichever date

1 is later, the Department of Agriculture and the Attorney
2 General shall have no obligation to act on a gasoline-related
3 complaint from a motor fuel retailer unless (1) the complaining
4 retailer either: (A) sells E-85 gasoline to the motoring public
5 within the retail market area subject to the complaint, or (B)
6 has a retail facility, within the retail market area subject to
7 the complaint, which has an infrastructure including, but not
8 limited to, applicable tank, pump, piping, valve, leak
9 detection and prevention equipment, and other components that
10 can safely accommodate the storage and sale of gasoline
11 containing a blend of at least 85% ethanol, in accordance with
12 the rules of the Office of the State Fire Marshal, while
13 offering for sale a lesser, alternative blend of ethanol that
14 may be prescribed at the time by the Department of Agriculture
15 as an alternative minimum blend ratio for E-85 gasoline; and
16 (2) the complaining retailer has not failed to upgrade any
17 underground storage tank system in the subject market area to
18 prevent water infiltration into any tank storing any content of
19 ethanol, in accordance with the rules of the Office of the
20 State Fire Marshal. Likewise, after the seventh year, neither
21 the Department of Agriculture nor the Attorney General shall
22 have an obligation to act on a diesel-related complaint from a
23 motor fuel retailer who does not have a retail facility, within
24 the retail market area subject to the complaint, offering for
25 sale blended biodiesel containing a blend ratio of bio-fuel
26 prescribed at the time by the Department of Agriculture. Any

1 person in competition with a person suspected of below-cost
2 selling or threatening to sell below cost under this Act may
3 file and maintain an action in any court of competent
4 jurisdiction to prevent, restrain, or enjoin the violation or
5 threatened violation, or to recover damages for the violation
6 or threatened violation, whether or not the person has filed a
7 complaint under subsection (a) of this Section and whether or
8 not an action is pending under this Section of this Act. Any
9 claim for damages shall be filed within a period of 24 months
10 from the date of the alleged violation of below-cost selling.
11 Upon proper application by the plaintiff in any action against
12 a below-cost seller under this Act, the court shall grant
13 preliminary injunctive relief if the plaintiff shows that he or
14 she is a proper person to seek the relief requested and that
15 the defendant is selling motor fuel below the plaintiff's
16 regulated minimum price for the time in question. In such
17 action, there shall be a rebuttable presumption that the
18 defendant has violated this Act if the plaintiff can show that,
19 on a given day, the defendant sold or offered for sale, motor
20 fuel at a price below the plaintiff's regulated minimum price.
21 The defendant may rebut the presumption by proving by a
22 preponderance of the evidence that: (1) the plaintiff's
23 calculation of the regulated minimum price was inaccurate and
24 the defendant did not in fact sell below the actual regulated
25 minimum price; (2) that the defendant qualifies for one of the
26 exceptions contained in Section 20 of this Act; or (3) that the

1 defendant did not in fact sell or offer for sale motor fuel
2 below cost. If the plaintiff proves a prima facie violation of
3 this Act, and the defendant does not rebut the proof, the court
4 shall enjoin and restrain, or otherwise prohibit, such
5 violation or threatened violation and, in addition thereto, the
6 court shall assess in favor of the plaintiff and against the
7 defendant the costs of suit, including reasonable attorneys'
8 fees. It shall not be necessary that actual damages to the
9 plaintiff be alleged or proved, but if damages are alleged and
10 proved, the plaintiff shall also be entitled to actual damages,
11 exemplary or punitive damages, and restitution. If the
12 plaintiff fails to make a prima facie showing that the
13 defendant sold motor fuel below the plaintiff's regulated
14 minimum price, or if the defendant proves that the plaintiff's
15 calculation of plaintiff's regulated minimum price was
16 inaccurate, the court may award court costs and reasonable
17 attorneys' fees to the defendant.

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

22 (k) If any action is brought for a violation of a
23 below-cost sale, the burden of proof, upon a prima facie
24 showing of a violation, shall shift to the defendant to show
25 justification. A prima facie showing of a violation shall be
26 made if the plaintiff shows that the retail price of motor fuel

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

6 Section 45. Remedies and penalties for price gouging.

7 (a) Complaints of price gouging shall be made to the
8 Department of Agriculture, specifying the name and address of
9 each retail location subject to the complaint and the pricing
10 at each such location on applicable date or dates that the
11 violations are alleged to have occurred. Subject to subsection
12 (e) of Section 40, within 30 days of receipt of the complaint,
13 the Department shall make contact with the alleged violator,
14 and the alleged violator shall have 60 days after receipt of
15 notice in which to provide evidence that for all periods of
16 time subject to the complaint and for all periods of time from
17 the date of the last violation alleged in the complaint to the
18 date of the notice the alleged violator was not pricing above
19 the regulated maximum price. Upon a prima facie showing that
20 the alleged violator sold or offered for sale motor fuel at a
21 price above the regulated maximum price on the date in
22 question, the alleged violator shall have the burden to prove,
23 by a preponderance of the evidence, that it did not price above
24 the regulated maximum price on the date in question. If the
25 alleged violator can show, by a preponderance of the evidence,

1 that it did not price in excess of the regulated maximum price,
2 the complaint shall be closed. If the Department shall find
3 that the alleged violator did not prove that it did not price
4 in excess of the regulated maximum price for each day subject
5 to the complaint, the alleged violator shall be given the
6 opportunity to provide full disclosure and cost-accounting
7 documentation, certified by either a certified managerial
8 accountant or certified public accountant hired by the alleged
9 violator, that it did not engage in motor fuel price gouging.
10 The Department shall then have a period of 180 days in which to
11 review the data provided by the alleged violator, during which
12 time the Department may, at its option, submit the matter to
13 the Motor Fuel Cost and Bio-Fuels Blend Ratio Review Board, for
14 advisory comment. At any time during this 180-day period, the
15 Department may request further data or clarification from the
16 alleged violator, and the alleged violator shall have a period
17 of 60 days, after each such request, in which to respond. After
18 receipt of the final response, the Department shall have an
19 additional period of 180 days in which to review the
20 supplemental data. If the Department finds that the
21 documentation provided by the alleged violator proves by a
22 preponderance of the evidence that it did not engage in motor
23 fuel price gouging, then the complaint shall be closed. If the
24 Department shall find otherwise, or if the alleged violator
25 shall fail to provide data and documentation to support that it
26 did not engage in price gouging, the Department shall conclude

1 that the alleged violator violated this Act. The Department
2 shall then notify the alleged violator of the Department's
3 conclusion, and assess an administrative fine against the
4 violator in accordance with this Act.

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

19 (c) Any person who is found to have committed a violation
20 of price gouging, as defined by this Act, shall be subject to
21 an administrative fine not to exceed \$5,000 per violation for
22 each offense. Any such violator shall also be liable for the
23 fees of accountants, expert witness fees, and investigative
24 expenses incurred by the State, if the State prevails in an
25 action under this Act. Each day that a violation of price
26 gouging under this Act occurs shall be considered as a separate

1 violation. If brought by a State's Attorney, the entire amount
2 of the administrative fine shall be paid to the treasury of the
3 county in which the judgment was entered. If brought by the
4 Attorney General, one-half of the penalty shall be paid to the
5 treasury of the county where the action was brought and
6 one-half shall be paid to the State Treasury, earmarked for the
7 Attorney General's State Project and Court Order Distribution
8 Fund. Administrative fines paid to the Department without
9 involvement of the Attorney General shall go to the General
10 Revenue Fund.

11 Section 50. Illegal contracts. Any contract, express or
12 implied, made by any person in violation of any of the
13 provisions of this Act is illegal and void, and recovery shall
14 not be awarded.

15 Section 55. Recordkeeping.

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

1 (b) After the seventh year following the effective date of
2 this Act, persons engaged in commerce within this State who
3 sell motor fuel at retail blended with either ethanol or
4 biodiesel, who want to qualify for protection against
5 below-cost selling under this Act, shall maintain records
6 accurately indicating the blend ratios of the blended fuels on
7 a daily basis.

8 (c) The records shall be made available to the Department
9 of Agriculture or Attorney General on request.

10 Section 60. Witnesses; production of books and records. Any
11 defendant, or any witness, in any civil action brought under
12 the provisions of this Act may be required to testify, and any
13 defendant, or any witness, may, upon proper process, be
14 compelled to produce his or her books, records, invoices, and
15 all other documents of any defendant or witness into court and
16 the same may be introduced as evidence, but no testimony thus
17 given or produced shall be received against the defendant upon
18 any criminal proceeding or investigation against the
19 defendant.

20 Section 65. Trade association may file suit. Any duly
21 organized and existing trade association, whether incorporated
22 or not, is hereby authorized to institute and prosecute a civil
23 action for injunctive relief and costs provided for under the
24 terms of this Act, as the real party in interest for and on

1 behalf of one or more of said association's members, when a
2 violation of this Act directly or indirectly affects or
3 threatens to affect or injure such member or members, or where
4 violation of this Act threatens to impair fair competition or
5 otherwise affects such member as herein provided.

6 Section 70. Limitations period. Any action brought by the
7 Attorney General or any State's Attorney shall be brought
8 within 2 years after the alleged violation occurred or should
9 reasonably have been discovered. Any action brought by any
10 other person or entity shall be brought within 3 years after
11 the alleged violation occurred or should reasonably have been
12 discovered.

13 Section 75. Powers; duties.

14 (a) The Department of Agriculture shall promulgate rules to
15 administer and enforce this Act, seeking and taking into
16 account the input of the Motor Fuel Cost and Bio-Fuels Blend
17 Ratio Review Board, as well as the public, prior to the
18 promulgation of the rules. In addition, the Department of
19 Agriculture has the following powers and duties:

20 (1) to promote awareness of this Act to motor fuel
21 retailers, including (i) making the written contents of the
22 act available on the Department's website for inspection by
23 the public, (ii) attendance at up to 4 regional regulatory
24 awareness meetings, annually, as periodically conducted by

1 the Illinois Petroleum Marketers Association for its
2 members, and (iii) incorporating references to the Act as
3 part of other written communications that are routinely
4 made between the Department and motor fuel retailers
5 (including, but not limited to, including reference to the
6 Act in material communicated to motor fuel retailers in the
7 Department's course of administering its responsibilities
8 in the area of weights and measures at motor fuel
9 stations), including, as part of said materials,
10 information about where the retailers may view an
11 electronic copy of the Act (including the Department's
12 website), along with a warning statement that a
13 false-reporting of a below-cost sale to the Department
14 shall constitute a violation of the Act, and can result in
15 a administrative fine of \$350.

16 (2) to investigate complaints regarding violations of
17 this Act;

18 (3) to seek injunctive relief as appropriate;

19 (4) to levy administrative fines for a violation of
20 this Act;

21 (5) to determine if a complaining retailer should be
22 invoiced as provided under subsection (b) of Section 40,
23 and, in the event that the complaining retailer appeals the
24 invoice, then, with the advisory input of the Motor Fuel
25 Cost and Bio-Fuels Blend Ratio Review Board, to render a
26 decision on the appeal;

1 (6) to determine what rates of compensation are usual
2 and customary for certified managerial accountants
3 practicing in Illinois, and to set the hourly fee of the
4 managerial or cost-accountant serving on the Motor Fuel
5 Cost and Bio-Fuels Blend Ratio Review Board;

6 (7) to select the entity to provide the benchmark
7 pricing services provided for in conjunction with this Act.
8 The following criteria shall be utilized to choose the
9 benchmark pricing service provider from the alternatives
10 available at the time of choosing: (i) which entity
11 provides for the most complete coverage of wholesale
12 terminal suppliers not only within the State, but also
13 within neighboring states having wholesale supply rack or
14 terminals within the area relevant to the calculation of
15 the regional benchmark pricing service average price, (ii)
16 which entity will make its information the easiest to
17 access for Illinois motor fuel retailers and the
18 Department, and (iii) which entity will make access to its
19 information the least costly for Illinois motor fuel
20 retailers and the Department. The Department shall
21 coordinate presentations to be made by the available
22 reporting services to the Department and to the Motor Fuel
23 Cost and Bio-Fuels Blend Ratio Review Board. The Motor Fuel
24 Cost and Bio-Fuels Blend Ratio Review Board shall provide
25 an advisory recommendation to the Department as to the
26 benchmark service provider to be selected or what

1 performance standards should be required of the service
2 provider to be selected. The Department shall then utilize
3 this advisory input to make the selection of the benchmark
4 pricing service and to develop performance
5 responsibilities for the benchmark pricing service. Any
6 benchmark service provider selected in this manner shall
7 remain the benchmark service provider under this Act for at
8 least 24 months without formal review of other providers,
9 unless the benchmark service provider defaults on its
10 obligations or unless two-thirds of the Motor Fuel Cost and
11 Bio-Fuels Blend Ratio Review Board votes to reactivate the
12 selection process to reconvene;

13 (8) to confirm whether or not a retailer who complains
14 about the retail price of gasoline has a facility that (i)
15 sells E-85 gasoline to the motoring public within the
16 retail market area subject to the complaint, or (ii) has
17 any retail facility, within the retail market area subject
18 to the complaint, with a motor fuel infrastructure
19 (including, but not limited to, applicable tank, pump,
20 piping, valve, leak detection and prevention equipment,
21 and other components) that can accommodate the storage and
22 sale of gasoline containing a blend of at least 85%
23 ethanol, and is offering for sale at such facility an E-85
24 gasoline at no less than the alternative minimum blend
25 ratio of ethanol that is prescribed at the time by the
26 Department of Agriculture for E-85 gasoline. The

1 confirmation may be made in the manner selected by the
2 Department including, but not limited to, reviewing the
3 records of the Department, the Office of the State Fire
4 Marshal, or the Department of Revenue;

5 (9) to investigate whether a retailer who complains
6 about the retail price of diesel has a facility, within the
7 retail market area subject to the complaint, that sells
8 blended biodiesel to the motoring public with a blend ratio
9 of bio-fuels, comprising blended biodiesel, prescribed by
10 the Department of Agriculture at the time;

11 (10) no later than the expiration of the second year
12 following the effective date of this Act, to begin
13 coordinating with industry standard setters including, but
14 not necessarily limited to, the American Society for
15 Testing and Materials (ASTM), to seek a standard for E-85
16 containing a lesser blend ratio of ethanol than what is
17 conventionally contained in E-85 fuel, to begin monitoring
18 and evaluating the factors affecting the supply and demand
19 balance of bio-fuels in the State, and to establish the
20 framework for determining the optimal minimum blend ratio
21 of E-85 gasoline in order to maintain a supply and demand
22 balance in the State. If the optimal minimum blend ratio in
23 order to maintain a supply and demand balance of ethanol is
24 less than the conventional minimum blend ratio E-85 of 70%,
25 then to publicly prescribe, effective no earlier than the
26 first day of the fourth year and no later than the first

1 day of the eighth year following the effective date of this
2 Act, what the alternative minimum blend ratio, as well as
3 applicable ASTM standards, of bio-fuels will be for E-85
4 gasoline as well as for high-blend ratio of blended
5 biodiesel to the extent that a blend ratio prescription is
6 needed to provide for a supply and demand balance of
7 biodiesel, and to make such determinations and
8 prescriptions relating to alternative minimum blend ratios
9 (and ASTM standards, if applicable), at the beginning of
10 each year thereafter, so that a given retail motor fuel
11 facility of a given motor fuel retailer that offers such
12 for sale, at the time, may know what minimum blend ratio or
13 ratios that it must maintain in order to continue to
14 qualify for protection under this Act; and

15 (11) to investigate, from time to time, the current
16 rules relating to warnings that must be contained on fuel
17 dispensers dispensing fuels containing bio-fuels, and to
18 determine if the rules are satisfactory; and if, at any
19 given time, the rules are not satisfactory, then to develop
20 and prescribe written warnings that the Department deems
21 satisfactory, including the text of the warnings, the
22 minimum size of the text, and the recommended location on
23 the affected fuel dispensers that the warnings should be
24 placed (the prescribed location provided some latitude
25 given the varying designs of fuel dispensing equipment).
26 When prescribing written warnings, the Department shall

1 take into account what other printed warning or warnings
2 and other informational message or messages may be required
3 by other governmental agencies to be placed on the fuel
4 dispensers by motor fuel retailers, so that there will be
5 no conflict between the requirements of the Department
6 related to warnings and other information and the
7 requirements of other governmental agencies regarding the
8 warnings and other information on motor fuel dispensers.
9 If, in the course of developing its rules relating to
10 written warnings, the Department deems there to be conflict
11 between where the Department believes that its prescribed
12 printed messages should be placed and with where other
13 governmental agencies may be requiring their printed
14 messages to be placed, then the Department shall make
15 contact with other governmental agencies, in an effort to
16 reach a mutually satisfactory agreement with other
17 agencies, so that motor fuel retailers may have an
18 opportunity to comply with all of the legal requirements
19 made of them as it relates to posting of required printed
20 messages on or around motor fuel dispensers.

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

23 (1) to investigate complaints regarding violations of
24 this Act;

25 (2) to seek injunctive relief as appropriate;

26 (3) to seek restitution for victims of motor fuel price

1 gouging and other violations of this Act;

2 (4) to institute an action to collect an administrative
3 fine for a violation of this Act; and

4 (5) to delegate to any appropriate State's Attorney its
5 powers and duties under this Act.

6 (c) The Department of Revenue shall have the following
7 duties:

8 (1) to inform motor fuel marketers doing business in
9 this State of the contents of this Act, particularly the
10 prohibitions against below-cost selling and against price
11 gouging, and to communicate to such marketers the
12 administrative fine for false reporting a sale below the
13 regulated minimum retail cost price of motor fuel sold,
14 though failure by a marketer to receive the notice shall
15 not be a defense under this Act. Between the time that the
16 Act is signed into law and its effective date, the
17 Department of Revenue shall issue written notice of the
18 passage of this Act to all persons who have filed a motor
19 fuel tax return during the year prior to enactment, as well
20 as all persons who, the year prior to enactment, have filed
21 prepaid sales tax returns including prepaid sales taxes on
22 motor fuel deliveries. The notice shall identify the
23 website where the Act can be reviewed, the prohibitions
24 against below-cost selling and price gouging, the
25 administrative fine for falsely reporting an act of pricing
26 below the regulated minimum retail cost price of motor fuel

1 sold, as defined in the Act, and the Act's requirement that
2 protection may be discontinued for any facility of a
3 retailer that fails to fulfill certain requirements of the
4 Act by the end of the seventh year after enactment of the
5 Act. In addition, at any time after the enactment of this
6 Act into law that the Department of Revenue issues a new
7 motor fuel license, it shall include with the license a
8 notice in the form required above for filers of motor fuel
9 tax returns; and

10 (2) to cooperate fully with the Department of
11 Agriculture in its efforts to comply with the requirements
12 of this Act where the Department of Revenue may have data,
13 or where the Department of Revenue could readily collect
14 data, that could aid in the compliance.

15 (d) The Office of the State Fire Marshal shall have the
16 following duties:

17 (1) to research the need for, and to the extent any
18 need exists, then to develop rules to safeguard against
19 water infiltration and phase-separation as provided for in
20 item (1) of Section 35 of this Act, and to make rules to
21 administer and enforce those rules;

22 (2) to develop rules to accommodate high ratio blends
23 of ethanol as provided for in item (2) of Section 35 of
24 this Act, and to make rules to administer and enforce those
25 rules;

26 (3) to research whether special rules should be

1 promulgated regarding the retail motor fuel infrastructure
2 for biodiesel or blended biodiesel as provided in item (3)
3 of Section 35 of this Act, and to the extent that it deems
4 that the rules are necessary for the safety of the motoring
5 public or the environment, then to promulgate the rules and
6 to further make rules to administer and enforce them;

7 (4) to seek the input of motor fuel retailers,
8 petroleum contractors, and the public when developing any
9 rules;

10 (5) to communicate to motor fuel retailers and
11 petroleum contractors about any rules by (i) making the
12 written contents of the developed standards and rules
13 available on the Department's website for inspection by the
14 public, and (ii) attending up to 4 regional regulatory
15 awareness meetings, annually, as periodically conducted by
16 the Illinois Petroleum Marketers Association for its
17 members; and

18 (6) to cooperate fully with the Department of
19 Agriculture in its efforts to comply with the requirements
20 of this Act where the Office of the State Fire Marshal may
21 have data, or where the Office of the State Fire Marshal
22 could readily collect data, that could aid in such
23 compliance.

24 Section 80. Confidentiality.

25 (a) Information obtained by the Department, Attorney

1 General, or State's Attorney in the course of an investigation
2 under this Act, including information from a person who
3 responds to the investigation and designates the information as
4 confidential, must be maintained as confidential until the
5 investigation is completed and a course of action is
6 determined. Neither the Department, Attorney General, nor
7 State's Attorney may make known in any manner information
8 obtained in the course of the investigation to persons other
9 than those specified in subsection (c) of this Section or the
10 members of the Motor Fuel Cost and Bio-Fuels Blend Ratio Review
11 Board. Once the investigation is completed, if there is a
12 settlement or if a civil action is filed, the information may
13 be made public.

14 (b) This Section does not prohibit the use of confidential
15 information to prepare statistics of other general data for
16 publication, if the information is presented in a manner that
17 prevents identification of particular persons or locations
18 under investigation.

19 (c) For purposes of this Section, references to Department,
20 Attorney General, or State's Attorney include other
21 individuals designated in writing and acting on behalf of those
22 persons during an investigation. A person so designated shall
23 preserve the confidentiality of information as provided for in
24 subsection (a) of this Section.

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

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

5 Section 85. Banning of government subsidies for motor fuel
6 retailers.

7 (a) It is the policy of this State that no development
8 containing a facility for selling motor fuel, that is developed
9 after the effective date of this Act, shall receive any
10 government subsidy, State or local, to aid, directly or
11 indirectly, in the cost of such development, or to aid,
12 directly or indirectly, in the cost of the development of the
13 motor fuel facility, when the motor fuel facility being
14 developed would be in competition with another such
15 Illinois-based facility within the same market area, except,
16 however, government subsidy shall be permitted if the subsidy
17 is generally available to all retail facilities within the same
18 market area and is limited to the development of retail
19 infrastructure (including tanks, pumps, piping, valves, spill
20 prevention, leak detection, leak prevention, prevention of
21 water infiltration, or fuel dispensing equipment as
22 applicable) to accommodate the retail storage, in-line flow,
23 blending, or dispensing of gasoline containing at least 85%
24 ethanol, or the storage, in-line flow, and blending of B-100
25 biodiesel, as well as the equipment required for the sale of

1 B-20 biodiesel to the extent that the equipment required for
2 the sale of B-20 biodiesel varies from standard equipment
3 required for the sale of diesel without a blend of biodiesel.

4 (b) Any subsidy, other than that permitted under this Act,
5 that is being received prior to the opening of the motor fuel
6 facility, or that is scheduled to be received following the
7 opening for business of the motor fuel facility, shall cease
8 being paid upon the opening for business of the newly developed
9 motor fuel facility, and if payment is not ceased, then the
10 party receiving the subsidy shall, within 30 days of its
11 receipt, return the subsidy to the party providing the subsidy.
12 Any subsidy other than a direct payment to the receiving party
13 shall also cease upon the opening of the newly developed motor
14 fuel facility.

15 (c) Any competitor of a person suspected of receiving or
16 benefiting from a government subsidy in violation of this Act
17 shall have standing to bring a civil action to enjoin the
18 violation of this Section and to compel restitution of any such
19 subsidy received or payment of government monies foregone in
20 violation of this Section.

21 Section 90. Immunity. Retailers, sellers, suppliers,
22 distributors, manufacturers, and refiners of gasoline greater
23 in ethanol content than 10% shall be immune from civil
24 liability for personal injury or property damage resulting from
25 a person fueling any vehicle, that is not a flexible fuel

1 vehicle, with gasoline blended with a greater proportion than
2 10% ethanol, but less than or equal to 85% ethanol, when the
3 injury or damage is related in any way from the blend ratio
4 content of ethanol and from the customer erring in the
5 customer's selection of the fuel nozzle or fuel dispenser that
6 contains a blend ratio of ethanol that exceeds the content of
7 ethanol recommended by the vehicle's auto manufacturer for the
8 customer's vehicle. This immunity shall not apply to a consumer
9 who dispenses the ethanol blended gasoline from a fuel
10 dispenser that does not contain a display of all of the
11 identification and warning signage as required, at the time, by
12 federal or State law. Retailers, sellers, suppliers,
13 distributors, manufacturers, and refiners of blended
14 bio-diesel greater in content of biodiesel than what is
15 recommended by a vehicle's manufacturer, shall be immune from
16 civil liability for personal injury or property damage
17 resulting from a person fueling the vehicle with a diesel
18 blended with a greater proportion of biodiesel than that
19 recommended by the vehicle's manufacturer, when the injury or
20 damage is related in any way from the blending ratio content of
21 the biodiesel and from the customer erring in the customer's
22 selection of the fuel nozzle or fuel dispenser that dispenses a
23 blend ratio of biodiesel that exceeds the content of biodiesel
24 recommended by the vehicle's auto manufacturer for the
25 customer's vehicle. This immunity shall not apply to a consumer
26 who dispenses the blended diesel fuel from a fuel dispenser

1 that does not contain a display of all of the identification
2 and warning signage as required, at the time, by federal or
3 State law.

4 Section 95. Severability. If any provision of this Act or
5 its application to any person or circumstance is held invalid,
6 the invalidity of that provision or application does not affect
7 other provisions or applications of this Act that can be given
8 effect without the invalid provision or application.

9 Section 100. Appropriations. The Department of
10 Agriculture, the Department of Revenue, the Office of the State
11 Fire Marshal, and the Office of the Attorney General shall
12 request, by way of appropriations, the costs and expenses
13 necessary to comply with this Act.

14 Section 999. Effective date. This Act takes effect 90 days
15 after becoming law.