



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

HB4123

Introduced 10/13/05, by Rep. Robert Rita

#### SYNOPSIS AS INTRODUCED:

New Act

815 ILCS 505/2Z

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

815 ILCS 505/10a

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

Creates the Motor Fuel Price Fairness Act. Provides that, if the Governor determines that there is a critical shortage of motor fuel in the State, then the Governor may, by executive order, declare a motor fuel emergency for that portion of the State that is affected by the shortage. Provides that, upon a declaration of a motor fuel emergency by the Governor, it is unlawful for any person to sell or offer to sell motor fuel at retail at an unconscionable price within the area for which the state of motor fuel emergency is declared. Provides that it is prima facie evidence that a price is unconscionable if: (1) the amount charged represents a gross disparity between the price at which the motor fuel was readily obtainable within the retailer's trade area during the 30 days immediately before the declaration of the motor fuel emergency; and (2) the increase in the amount charged is not attributable to cost factors to the retailer, including replacement costs, taxes, and transportation costs incurred by the retailer. Provides that a violation of this Act constitutes a violation of the Consumer Fraud and Deceptive Business Practices Act, but nothing in this Act creates a private cause of action in favor of any person damaged by a violation of this Act. Preempts home rule. Amends the Consumer Fraud and Deceptive Business Practices Act to make corresponding changes. Effective immediately.

LRB094 14071 BDD 48955 b

FISCAL NOTE ACT  
MAY APPLY

HOME RULE NOTE  
ACT MAY APPLY

1 AN ACT concerning motor fuel.

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

4 Section 1. Short title. This Act may be cited as the Motor  
5 Fuel Price Fairness Act.

6 Section 5. Motor fuel emergency declarations;  
7 unconscionable prices prohibited.

8 (a) If the Governor determines that there is a critical  
9 shortage of motor fuel in the State, then the Governor may, by  
10 executive order, declare a motor fuel emergency for that  
11 portion of the State that is affected by the shortage.

12 (b) Upon a declaration of a motor fuel emergency by the  
13 Governor under subsection (a), it is unlawful for any person to  
14 sell or offer to sell motor fuel at retail at an unconscionable  
15 price within the area for which the state of motor fuel  
16 emergency is declared.

17 (c) It is prima facie evidence that a price is  
18 unconscionable if:

19 (1) the amount charged represents a gross disparity  
20 between the price at which the motor fuel was readily  
21 obtainable within the retailer's trade area during the 30  
22 days immediately before the declaration of the motor fuel  
23 emergency; and

24 (2) the increase in the amount charged is not  
25 attributable to cost factors to the retailer, including  
26 replacement costs, taxes, and transportation costs  
27 incurred by the retailer.

28 A price increase approved by an appropriate government  
29 agency is not a violation of this Section.

30 Section 15. Construction with the Consumer Fraud and  
31 Deceptive Business Practices Act. A violation of this Act

1 constitutes a violation of the Consumer Fraud and Deceptive  
2 Business Practices Act, and the Attorney General may take any  
3 action consistent with the provisions of that Act.  
4 Notwithstanding Section 10a of the Consumer Fraud and Deceptive  
5 Business Practices Act, however, nothing in this Act creates a  
6 private cause of action in favor of any person damaged by a  
7 violation of this Act.

8 Section 35. Home rule. The regulation of motor fuel prices  
9 during a motor fuel emergency is an exclusive power and  
10 function of the State. A unit of local government, including a  
11 home rule unit, may not regulate the price of motor fuel during  
12 a motor fuel emergency, as declared by the Governor. This  
13 Section is a denial and limitation of home rule powers and  
14 functions under subsection (h) of Section 6 of Article VII of  
15 the Illinois Constitution.

16 Section 900. The Consumer Fraud and Deceptive Business  
17 Practices Act is amended by changing Sections 2Z and 10a as  
18 follows:

19 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

20 Sec. 2Z. Violations of other Acts. Any person who knowingly  
21 violates the Automotive Repair Act, the Automotive Collision  
22 Repair Act, the Home Repair and Remodeling Act, the Dance  
23 Studio Act, the Physical Fitness Services Act, the Hearing  
24 Instrument Consumer Protection Act, the Illinois Union Label  
25 Act, the Job Referral and Job Listing Services Consumer  
26 Protection Act, the Travel Promotion Consumer Protection Act,  
27 the Credit Services Organizations Act, the Automatic Telephone  
28 Dialers Act, the Pay-Per-Call Services Consumer Protection  
29 Act, the Telephone Solicitations Act, the Illinois Funeral or  
30 Burial Funds Act, the Cemetery Care Act, the Safe and Hygienic  
31 Bed Act, the Pre-Need Cemetery Sales Act, the High Risk Home  
32 Loan Act, the Payday Loan Reform Act, subsection (a) or (b) of  
33 Section 3-10 of the Cigarette Tax Act, the Payday Loan Reform

1 Act, subsection (a) or (b) of Section 3-10 of the Cigarette Use  
2 Tax Act, the Electronic Mail Act, paragraph (6) of subsection  
3 (k) of Section 6-305 of the Illinois Vehicle Code, Article 3 of  
4 the Residential Real Property Disclosure Act, the Automatic  
5 Contract Renewal Act, the Motor Fuel Price Fairness Act, or the  
6 Personal Information Protection Act commits an unlawful  
7 practice within the meaning of this Act.

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

11 (815 ILCS 505/10a) (from Ch. 121 1/2, par. 270a)

12 Sec. 10a. Action for actual damages.

13 (a) Any person who suffers actual damage as a result of a  
14 violation of this Act committed by any other person may bring  
15 an action against such person. The court, in its discretion may  
16 award actual economic damages or any other relief which the  
17 court deems proper; provided, however, that no award of  
18 punitive damages may be assessed under this Section against a  
19 party defendant who is a new vehicle dealer or used vehicle  
20 dealer within the meaning of Chapter 5 of the Illinois Vehicle  
21 Code or who is the holder of a retail installment contract  
22 within the meaning of Section 2.12 of the Motor Vehicle Retail  
23 Installment Sales Act, unless the conduct engaged in was  
24 willful or intentional and done with evil motive or reckless  
25 indifference to the rights of others. Proof of a public injury,  
26 a pattern, or an effect on consumers and the public interest  
27 generally shall be required in order to state a cause of action  
28 under this Section against a party defendant who is a new  
29 vehicle dealer or used vehicle dealer within the meaning of  
30 Chapter 5 of the Illinois Vehicle Code or who is the holder of  
31 a retail installment contract within the meaning of Section  
32 2.12 of the Motor Vehicle Retail Installment Sales Act. Proof  
33 of such public injury may be shown by any one of the following  
34 factors:

35 (1) Violation of a statute that has a public interest

1 impact.

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

4 (3) Potential for repetition.

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

9 (c) Except as provided in subsections (f), (g), and (h) of  
10 this Section, in any action brought by a person under this  
11 Section, the Court may grant injunctive relief where  
12 appropriate and may award, in addition to the relief provided  
13 in this Section, reasonable attorney's fees and costs to the  
14 prevailing party.

15 (d) Upon commencement of any action brought under this  
16 Section the plaintiff shall mail a copy of the complaint or  
17 other initial pleading to the Attorney General and, upon entry  
18 of any judgment or order in the action, shall mail a copy of  
19 such judgment or order to the Attorney General.

20 (e) Any action for damages under this Section shall be  
21 forever barred unless commenced within 3 years after the cause  
22 of action accrued; provided that, whenever any action is  
23 brought by the Attorney General or a State's Attorney for a  
24 violation of this Act, the running of the foregoing statute of  
25 limitations, with respect to every private right of action for  
26 damages which is based in whole or in part on any matter  
27 complained of in said action by the Attorney General or State's  
28 Attorney, shall be suspended during the pendency thereof, and  
29 for one year thereafter.

30 (f) At any time more than 30 days before the commencement  
31 of trial, a party, who is a new vehicle dealer or used vehicle  
32 dealer within the meaning of Chapter 5 of the Illinois Vehicle  
33 Code or who is the holder of a retail installment contract  
34 within the meaning of Section 2.12 of the Motor Vehicle Retail  
35 Installment Sales Act and who is defending a claim under this  
36 Act, may serve upon the party seeking relief under this Act an

1 offer to allow judgment to be taken against the defending party  
2 to the effect specified in the offer with costs then accrued.  
3 If within 10 days after service of the offer, the offeree  
4 serves written notice that the offer is accepted, either party  
5 may then file the offer and notice of acceptance together with  
6 proof of service of the notice; the court shall then enter  
7 judgment. An offer not accepted shall be deemed withdrawn and  
8 evidence of the offer is not admissible except in a proceeding  
9 to determine costs. When a party seeking relief under this Act  
10 does not accept an offer filed with the clerk and served upon  
11 the attorney for that party more than 30 days before the  
12 commencement of trial and when that party fails to obtain a  
13 judgment in an amount more than the total offer of settlement,  
14 that party shall forfeit and the court may not award any  
15 compensation for attorney's fees and costs incurred after the  
16 date of the offer.

17 (g) At any time more than 30 days before the commencement  
18 of trial, a party who is seeking relief under this Act from a  
19 new vehicle dealer or used vehicle dealer within the meaning of  
20 Chapter 5 of the Illinois Vehicle Code or from the holder of a  
21 retail installment contract within the meaning of Section 2.12  
22 of the Motor Vehicle Retail Installment Sales Act may serve the  
23 dealer or holder an offer to allow judgment to be taken against  
24 the dealer or holder to the effect specified in the offer with  
25 costs then accrued. If within 10 days after service of the  
26 offer, the offeree serves written notice that the offer is  
27 accepted, either party may then file the offer and notice of  
28 acceptance together with proof of service of the notice; the  
29 court shall then enter judgment. An offer not accepted shall be  
30 deemed withdrawn and evidence of the offer is not admissible  
31 except in a proceeding to determine costs. When a dealer or  
32 holder does not accept an offer filed with the clerk and served  
33 upon the attorney for the dealer or holder more than 30 days  
34 before the commencement of trial and if the party seeking  
35 relief against a dealer or holder obtains a judgment in an  
36 amount equal to or in excess of the offer amount, the party

1 seeking relief shall be paid interest on the offer amount at  
2 the rate as provided in Section 2-1303 of the Code of Civil  
3 Procedure from the date of the offer until the judgment is  
4 paid.

5 (h) At least 30 days prior to the filing of an action under  
6 this Section, a party who is seeking relief shall serve a  
7 written notice of the nature of the alleged violation and  
8 demand for relief upon the prospective party, who is a new  
9 vehicle dealer or used vehicle dealer within the meaning of  
10 Chapter 5 of the Illinois Vehicle Code or who is the holder of  
11 a retail installment contract within the meaning of Section  
12 2.12 of the Motor Vehicle Retail Installment Sales Act, against  
13 whom such action will be commenced. Any person receiving such a  
14 demand for relief may, within 30 days of service of the demand  
15 for relief, submit a written offer of settlement, which offer  
16 is to be exclusive of attorney's fees, to the party serving the  
17 notice and demand. The party who is seeking relief must certify  
18 in any cause of action that the notice and demand was served  
19 upon the named defendants and the substance of their response,  
20 if any. If the offer of settlement is rejected in writing by  
21 the party who is seeking relief, then, in any subsequent  
22 action, the court shall deny any award of attorney's fees and  
23 costs requested by the party seeking relief under this Act  
24 incurred after the rejection of the written offer of  
25 settlement, if the judgment is less than the amount contained  
26 within the offer of settlement. All written offers of  
27 settlement under this subsection shall be presumed to be  
28 offered without prejudice in compromise of a disputed matter.

29 (i) This Section does not apply to any violation of the  
30 Motor Fuel Price Fairness Act.

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

32 Section 999. Effective date. This Act takes effect upon  
33 becoming law.