

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 1203*
Committee Substitute Favorable 4/29/03
Senate Judiciary II Committee Substitute Adopted 7/13/04

Short Title: Amend/Study Motor Fuel Marketing Act.

(Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE MOTOR FUEL MARKETING ACT AND TO STUDY
2 THE PREDATORY PRICING OF MOTOR FUELS.
3

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 75-88 reads as rewritten:

6 "**§ 75-88. Public ~~disclosure~~disclosure; quantity of motor fuel available for sale.**

7 (a) Any refiner or terminal supplier computing prevailing price under the
8 provisions of ~~G.S. 75-81(4)(a)(i) or (ii)~~ G.S. 75-81(4) shall be required to publicly
9 disclose ~~said~~ this price.

10 (b) No entity that is selling motor fuel below cost shall limit the quantity of
11 motor fuel sold or offered for sale from a motor fuel pump to any one customer to a
12 quantity less than the entire supply that is owned or possessed by the seller and that the
13 seller is authorized to sell at the place of sale or offering for sale unless preempted by a
14 State or federal state of emergency.

15 (c) Motor fuel purchased under this section shall be dispensed into a container
16 approved by the fire prevention code, the State Building Code as authorized under
17 G.S. 143-139, or a containment vehicle approved by the Department of Transportation.

18 (d) Each act violating this section shall constitute a separate offense, and is
19 subject to a civil penalty. The civil penalty for each offense shall be not more than five
20 thousand dollars (\$5,000). Upon a proper showing by the Attorney General or the
21 Commissioner of Agriculture, further violations may be temporarily or permanently
22 enjoined. The clear proceeds of civil penalties provided for in this section shall be
23 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

24 **SECTION 2.** There is created the Legislative Study Committee on the
25 Motor Fuels Marketing Act. The purpose of the Committee is to review Article 3 of
26 Chapter 75 of the General Statutes regarding predatory pricing of motor fuels.

27 **SECTION 3.** The Committee shall consist of 10 members, five members
28 appointed by the President Pro Tempore of the Senate and five members appointed by

1 the Speaker of the House of Representatives. The President Pro Tempore shall designate
2 one Senator as cochair, and the Speaker shall designate one Representative as cochair.
3 Vacancies on the Committee shall be filled by the same appointing authority as made
4 the initial appointment.

5 **SECTION 4.** In conducting the study, the Committee shall consider the
6 following:

- 7 (1) Whether the current definition of "cost" under Article 3 does not
8 provide an adequate standard for cases prosecuted under the Motor
9 Fuels Marketing Act, whether the General Assembly should adopt an
10 external benchmark for determining cost, and whether it would be
11 constitutional for the General Assembly to adopt an external
12 benchmark for determining cost.
- 13 (2) Whether the current statutory standard that requires a showing of
14 intent to injure competition is consistent with other state and federal
15 statutes and case law regarding predatory pricing, whether the current
16 standard is so difficult to prove as to chill the effective use of the
17 current law, and whether it would be constitutional to remove the
18 intent to injure competition requirement from the current law.
- 19 (3) The economic effect that statutes such as the Motor Fuel Marketing
20 Act and the changes proposed in the 2nd Edition of House Bill 1203
21 have, if any, on the price of motor fuel to the consumer as well as
22 whether they provide protections against predatory pricing between
23 competitors.
- 24 (4) The fire, public safety, and environmental issues raised by prohibiting
25 a person who is selling motor fuel from limiting the amount of fuel
26 that any one customer could purchase at one time.
- 27 (5) Laws and measures regarding motor fuel pricing adopted by other
28 states to protect small businesses and consumers from predatory
29 pricing, including, but not limited to, price gouging, zone pricing,
30 divorcement, and marketing agreements.

31 **SECTION 5.** The Committee, while in the discharge of its official duties,
32 may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through
33 G.S. 120-19.4. The Committee may meet at any time upon the joint call of the cochairs.
34 The Committee may meet in the Legislative Building or the Legislative Office Building.
35 The Committee may contract for professional, clerical, or consultant services as
36 provided by G.S. 120-32.02.

37 The Legislative Services Commission, through the Legislative Services
38 Officer, shall assign professional staff to assist the Committee in its work. The House of
39 Representatives' and the Senate's Supervisors of Legislative Assistants shall assign
40 clerical staff to the Committee, and the expenses relating to the clerical employees shall
41 be borne by the Committee. Members of the Committee shall receive subsistence and
42 travel expenses at the rates set forth in G.S. 120-3.1.

1 **SECTION 6.** The Committee shall report its findings and recommendations
2 to the 2005 General Assembly upon its convening. The Committee shall terminate the
3 earlier of the filing a report or upon the convening of the 2005 General Assembly.

4 **SECTION 7.** From funds appropriated to the General Assembly, the
5 Legislative Services Commission shall allocate funds for the expenses of the
6 Committee.

7 **SECTION 8.** Section 1 of this act becomes effective October 1, 2004, and
8 applies to sales of motor fuel and offers of sale of motor fuel on or after that date. The
9 remainder of this act is effective when it becomes law.