

HB3583



104TH GENERAL ASSEMBLY

State of Illinois

2025 and 2026

HB3583

Introduced 2/18/2025, by Rep. Kevin John Olickal

SYNOPSIS AS INTRODUCED:

New Act
815 ILCS 505/HHHH new

Creates the Motor Fuel Minimum Markup Act. Provides that it is unlawful for a retailer, wholesaler, or refiner to sell or offer to sell motor fuel at less than a specified cost with the intent or effect of inducing the purchase of other merchandise or diverting trade from a competitor. Sets forth notice requirements. Provides that a violation of the Act constitutes a violation of the Consumer Fraud and Deceptive Business Practices Act. Amends the Consumer Fraud and Deceptive Business Practices Act to make a conforming change.

LRB104 12144 SPS 22243 b

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 Motor
5 Fuel Minimum Markup Act.

6 Section 5. Definitions.

7 As used in this Act:

8 "Average posted terminal price" means the average posted
9 rack price, as published by a petroleum price reporting
10 service, at which motor fuel is offered for sale at the close
11 of business on the determination date by all refiners and
12 wholesalers of motor fuel at a terminal plus any excise, sales
13 or use taxes imposed on the motor fuel or on its sale, any cost
14 incurred for transportation and any other charges that are not
15 otherwise included in the average posted rack price. In this
16 paragraph, "average" means the arithmetic mean.

17 "Cost to retailer" means:

18 (1) In the case of the retail sale of motor fuel by a
19 refiner at a retail station owned or operated either
20 directly or indirectly by the refiner, the refiner's
21 lowest selling price to other retailers or to wholesalers
22 of motor fuel on the date of the refiner's retail sale,
23 less all trade discounts except customary discounts for

1 cash, plus any excise, sales or use taxes imposed on the
2 motor fuel or on its sale and any cost incurred for
3 transportation and any other charges not otherwise
4 included in the invoice cost of the motor fuel, plus a
5 markup of OPIS plus one cent to cover a proportionate part
6 of the cost of doing business; or the average posted
7 terminal price at the terminal located closest to the
8 retail station plus a markup of OPIS plus one cent to cover
9 a proportionate part of the cost of doing business,
10 whichever is greater.

11 (2) In the case of the retail sale of motor fuel by a
12 wholesaler, who is not a refiner, at a retail station
13 owned or operated either directly or indirectly by the
14 wholesaler, the invoice cost of the motor fuel to the
15 wholesaler at least 10 days before the date of sale, or the
16 replacement cost of the motor fuel, whichever is lower,
17 less all trade discounts except customary discounts for
18 cash, plus any excise, sales or use taxes imposed on the
19 motor fuel or on its sale, and any cost incurred for
20 transportation and any other charges not otherwise
21 included in the invoice cost or replacement cost of the
22 motor fuel, plus a markup of OPIS plus one cent to cover a
23 proportionate part of the cost of doing business; or the
24 average posted terminal price at the terminal located
25 closest to the retail station plus a markup of OPIS plus
26 one cent to cover a proportionate part of the cost of doing

1 business, whichever is greater.

2 (3) In the case of the retail sale of motor fuel by a
3 person other than a refiner or a wholesaler at a retail
4 station, the invoice cost of the motor fuel to the
5 retailer at least 10 days before the date of sale, or the
6 replacement cost of the motor fuel, whichever is lower,
7 less all trade discounts except customary discounts for
8 cash, plus any excise, sales or use taxes imposed on the
9 motor fuel or on its sale and any cost incurred for
10 transportation and any other charges not otherwise
11 included in the invoice cost or the replacement cost of
12 the motor fuel, plus a markup of OPIS plus one cent to
13 cover a proportionate part of the cost of doing business;
14 or the average posted terminal price at the terminal
15 located closest to the retailer plus a markup of OPIS plus
16 one cent price to cover a proportionate part of the cost of
17 doing business, whichever is greater.

18 (4) In the case of a retail sale of motor fuel by a
19 refiner at a place other than a retail station, the
20 refiner's lowest selling price to other retailers or to
21 wholesalers of motor fuel on the date of the refiner's
22 retail sale, less all trade discounts except customary
23 discounts for cash, plus any excise, sales or use taxes
24 imposed on the motor fuel or on its sale and any cost
25 incurred for transportation and any other charges not
26 otherwise included in the invoice cost of the motor fuel

1 to which shall be added a markup to cover a proportionate
2 part of the cost of doing business, which markup, in the
3 absence of proof of a lesser cost, shall be OPIS plus one
4 cent of the cost to the retailer.

5 (5) In the case of a retail sale of motor fuel by a
6 person other than a refiner at a place other than a retail
7 station, the invoice cost of the motor fuel to the
8 retailer at least 10 days before the date of the sale, or
9 the replacement cost of the motor fuel, whichever is
10 lower, less all trade discounts except customary discounts
11 for cash, plus any excise, sales or use taxes imposed on
12 the motor fuel or on its sale and any cost incurred for
13 transportation and any other charges not otherwise
14 included in the invoice cost or the replacement cost of
15 the motor fuel to which shall be added a markup to cover a
16 proportionate part of the cost of doing business, which
17 markup, in the absence of proof of a lesser cost, shall be
18 OPIS plus one cent of the cost to the retailer.

19 "Cost to retailer" and "cost to wholesaler" mean bona fide
20 costs; and purchases made by retailers, wholesalers, and
21 refiners at prices which cannot be justified by prevailing
22 market conditions in this State shall not be used in
23 determining cost to the retailer and cost to the wholesaler.
24 Prices at which purchases of merchandise other than motor fuel
25 are made by retailers or wholesalers cannot be justified by
26 prevailing market conditions in this State when they are below

1 the lowest prices at which the manufacturer or producer of the
2 merchandise sells to other retailers or wholesalers in this
3 State. Prices at which sales of motor fuel are made by
4 retailers, wholesalers, and refiners cannot be justified by
5 prevailing market conditions in this state when they are below
6 the applicable cost to retailers and cost to wholesalers.

7 (1) With respect to the wholesale sale of motor fuel
8 by a refiner, "cost to wholesaler" means the refiner's
9 lowest selling price to other retailers or to wholesalers
10 of motor fuel on the date of the refiner's wholesale sale,
11 less all trade discounts except customary discounts for
12 cash, plus any excise, sales or use taxes imposed on the
13 motor fuel or on its sale and any cost incurred for
14 transportation and any other charges not otherwise
15 included in the invoice cost of the motor fuel, to which
16 shall be added a markup to cover a proportionate part of
17 the cost of doing business, which markup, in the absence
18 of proof of a lesser cost, shall be 3% of the cost to the
19 wholesaler as set forth in this subdivision.

20 (2) With respect to the wholesale sale of motor fuel
21 by a person other than a refiner, "cost to wholesaler"
22 means the invoice cost of the motor fuel to the wholesaler
23 at least 10 days before the date of the sale or the
24 replacement cost of the motor fuel, whichever is lower,
25 less all trade discounts except customary discounts for
26 cash, plus any excise, sales or use taxes imposed on the

1 motor fuel or on its sale and any cost incurred for
2 transportation and any other charges not otherwise
3 included in the invoice cost or the replacement cost of
4 the motor fuel to which shall be added a markup to cover a
5 proportionate part of the cost of doing business, which
6 markup, in the absence of proof of a lesser cost, shall be
7 3% of the cost to the wholesaler as set forth in this
8 subdivision.

9 "Determination date" means the day preceding the day of
10 the sale at retail of motor fuel. If a retailer sells motor
11 fuel on a day other than the day on which the retailer last
12 purchased any motor fuel and the sale of the motor fuel by the
13 retailer occurs at least 10 days after its last purchase by the
14 retailer, "determination date" means the following dates
15 selected by the retailer:

16 (1) the day preceding the day of the sale of motor
17 vehicle fuel by the retailer; or

18 (2) the day on which motor vehicle fuel was last
19 purchased by the retailer.

20 "Existing price of a competitor" means a price being
21 simultaneously offered to a buyer for merchandise of like
22 quality and quantity by a person who is a direct competitor of
23 the retailer, wholesaler, or refiner and from whom the buyer
24 can practicably purchase the merchandise.

25 "Oil Price Information Service" or "OPIS" means the daily
26 publication containing oil price information that is a widely

1 accepted independent fuel price benchmark for supply.

2 "Petroleum price reporting service" means a wholesale
3 petroleum product price reporting service that is recognized
4 nationwide.

5 "Refiner" means a manufacturer, producer or refiner of
6 motor fuel.

7 "Replacement cost" means the cost computed at which the
8 merchandise sold could have been bought by the retailer or
9 wholesaler at any time if bought in the same quantity as the
10 retailer or wholesaler's last purchase of the merchandise.

11 "Retailer" includes every person engaged in the business
12 of making motor fuel sales at retail in this State, but, in the
13 case of a person engaged in the business of selling motor fuel
14 both at retail and at wholesale, the term shall be applied only
15 to the retail portion of the business.

16 "Sell" includes any advertising or offer to sell or any
17 transfer of motor fuel where title is retained by the
18 retailer, wholesaler, or refiner as security for the payment
19 of the purchase price. In determining the selling price of
20 merchandise by wholesalers, wholesalers of motor fuel,
21 retailers and refiners under this Section, all fractions of a
22 cent shall be carried to the next full cent.

23 "Sell at retail" means any transfer for a valuable
24 consideration, made in the ordinary course of trade or in the
25 usual prosecution of the retailer's business, of title to
26 tangible personal property to the purchaser for consumption or

1 use other than resale or further processing or manufacturing.

2 "Sell at wholesale" include any transfer for a valuable
3 consideration made in ordinary course of trade or the usual
4 conduct of the wholesaler's business, of title to tangible
5 personal property to the purchaser for purposes of resale or
6 further processing or manufacturing.

7 "Terminal" means a motor fuel storage and distribution
8 facility that is supplied by a pipeline or marine vessel, from
9 which facility motor fuel may be removed at a rack and from
10 which facility at least 3 refiners or wholesalers of motor
11 fuel sell motor fuel. For the purposes of this definition, if 2
12 or more terminals are included in the same geographic area by a
13 petroleum price reporting service, they shall be considered
14 one terminal.

15 "Wholesaler" includes:

16 (1) a person who stores motor fuel and sells it
17 through 5 or more retail outlets that the person owns or
18 operates;

19 (2) a person who acquires motor fuel from a refiner or
20 as a sale at wholesale and stores it in a bulk storage
21 facility other than a retail station for further sale and
22 distribution;

23 (3) a person engaged in the business of making sales
24 at wholesale of motor fuel in this State; and

25 (4) a person engaged in the business of selling diesel
26 fuel if that person's sales of diesel fuel accounted for

1 at least 60% of that person's total sales of motor fuel in
2 the previous year or, if that person did not engage in the
3 business of selling diesel fuel in the previous year, if
4 that person reasonably anticipates that sales of diesel
5 fuel will account for at least 60% of that person's total
6 sales of motor fuel in the current year.

7 Section 10. Prohibition of loss leaders.

8 (a) It is unlawful for a retailer, wholesaler, or refiner
9 to sell or offer to sell motor fuel at less than the cost
10 provided in subsection (c) with the intent or effect of
11 inducing the purchase of other merchandise or diverting trade
12 from a competitor.

13 (b) A sale of motor fuel by a retailer, wholesaler, or
14 refiner at less than the cost provided in subsection (c) shall
15 be prima facie evidence of intent or effect to induce the
16 purchase of other merchandise, or to unfairly divert trade
17 from a competitor, or to otherwise injure a competitor.

18 (c) For the purposes of this Section:

19 (1) a retailer shall not sell motor fuel at a price
20 greater than the cost to retailer, as specified in Section
21 5; and

22 (2) a wholesaler, or refiner shall not sell motor fuel
23 at a price greater than the cost to wholesaler, as
24 specified in Section 5.

1 Section 15. Notice requirements.

2 (a) If a retailer, wholesaler, or refiner, acting in good
3 faith, lowers the price of motor fuel below the applicable
4 price specified in subsection (b) of Section 10 to meet an
5 existing price of a competitor, the retailer, wholesaler, or
6 refiner shall submit to the Attorney General notification of
7 the lower price before the close of business on the day the
8 price was lowered in the form and the manner required by the
9 Attorney General.

10 (b) A retailer, wholesaler, or refiner that fails to
11 comply with subsection (a) creates a rebuttable presumption
12 that the retailer, wholesaler, or refiner did not lower the
13 price to meet the existing price of a competitor.

14 (c) If a retailer, wholesaler, or refiner complies with
15 subsection (a) they shall not be held liable for violating
16 this Act.

17 Section 20. Exceptions. This Act does not apply to sales
18 at retail or sales at wholesale if motor fuel is sold by a
19 person to a wholesaler, who may sell the motor fuel at either
20 retail or wholesale.

21 Section 25. Enforcement. A violation of this Act
22 constitutes a violation of the Consumer Fraud and Deceptive
23 Business Practices Act. All remedies, penalties, and authority
24 granted to the Attorney General by that Act shall be available

1 to the Attorney General for the enforcement of this Act.

2 Section 30. Rulemaking. The Attorney General may adopt
3 rules to implement and administer this Act.

4 Section 35. The Consumer Fraud and Deceptive Business
5 Practices Act is amended by adding Section HHHH as follows:

6 (815 ILCS 505/HHHH new)

7 Sec. HHHH. Violations of the Motor Fuel Minimum Markup
8 Act. Any person who violates the Motor Fuel Minimum Markup Act
9 commits an unlawful practice within the meaning of this Act.