



## 93RD GENERAL ASSEMBLY

### State of Illinois

#### 2003 and 2004

Introduced 2/6/2004, by Roger L. Eddy

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Motor Fuel Fair Marketing Practices Act. Provides protection against predatory pricing and fuel price gouging in the retail motor fuel industry. Prohibits the sale of motor fuel below the point that the retailer earns a 6% gross margin on the pump price, unless the retailer can demonstrate that the motor fuel was not sold below cost. Prohibits the sale of motor fuel, following times of national disaster or State emergency, that is above the point that the retailer earns a gross margin on the price of 6% plus 19 cents per gallon above the retailer's actual costs of selling motor fuel. Prohibits government subsidies for the development of motor fuel facilities and facilities with motor fuel when the facilities are in the same market area as existing motor fuel facilities. Establishes the Motor Fuel Cost Review Board. Provides for a complaint handling process, permitting the Department of Revenue or the Attorney General to investigate and take action against retailers of motor fuel engaged in violations of fuel price gouging and for repeated offenses of below cost selling. Provides for a private right of action between retailers. Provides that persons engaged in commerce with the State who sell or offer to sell motor fuel shall maintain records accurately indicating the date and the time of day of each change in the sale price of motor fuel and the identity of the person who recorded the price change. Provides that the Illinois Department of Revenue shall have certain powers and duties to investigate and enforce the provisions of the Act. Provides that information obtained by the Department of Revenue, the Attorney General, or the State's Attorney in the course of an investigation under the Act, including information from a person who responds to the investigation and designates the information as confidential, must be maintained as confidential until the investigation is completed and a course of action is determined.

LRB093 19819 RXD 45562 b

1 AN ACT concerning business practices.

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 Fair Marketing Practices Act.

6 Section 5. Legislative findings; purpose.

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

9 (b) Consumers benefit from ample numbers of conveniently  
10 located motor fuel facilities and ample storage of motor fuels  
11 to readily accommodate consumer demand.

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

18 (d) Communities also benefit from financial, equipment,  
19 and manpower support from independent retailers and  
20 wholesalers for not-for-profit organizations operating within  
21 such communities.

22 (e) Despite actual differences in motor fuel production and  
23 quality, motor fuel is considered largely to be a "commodity  
24 product", with price having evolved as the primary basis of  
25 competition.

26 (f) With price as the primary basis of competition, profit  
27 margins and returns on investment for retail marketers of motor  
28 fuel are generally low and most retailers of motor fuel must be  
29 competent in order to survive.

30 (g) Retail marketers of motor fuel must earn a margin of  
31 profit on the sale of motor fuel for reinvestment in the  
32 business because many motor fuels are flammable and combustible

1 liquids, that must be distributed in a safe manner, utilizing  
2 specially designed and costly explosion-proof equipment.

3 (h) Retail marketers of motor fuel must earn a margin of  
4 profit on the sale of motor fuel for maintenance and  
5 reinvestment in the business because motor fuels are  
6 potentially hazardous to the underground environment, such  
7 that specially designed and costly equipment must be used to  
8 contain and monitor the containment of motor fuels, and to  
9 comply with governmentally-imposed regulations.

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

19 (j) Given today's cost of doing business and the average  
20 volume motor fuel station facility, the sharing of personnel to  
21 accommodate transactions of both convenience store items and  
22 motor fuel sales has allowed for a significant reduction in the  
23 minimum needed profit margin on a motor fuel operation  
24 benefiting from cost sharing as compared with a motor fuel  
25 operation not benefiting from such cost sharing.

26 (k) A lower margin of profit on the sale of motor fuel has  
27 been a gain to consumers through lower retail prices on motor  
28 fuel, which for many years has allowed the majority of  
29 competently-run independent businesses to remain financially  
30 viable because of cost sharing.

31 (l) In recent years, however, the profit earned on the sale  
32 of motor fuel within a growing number of markets has gone below  
33 what is reasonable and necessary for an independent marketer to  
34 cover its costs of doing business, even when the motor fuel  
35 marketer is benefiting from cost sharing.

36 (m) The primary reason that the profit earned on the sale

1 of motor fuel has gone below what is reasonable and necessary  
2 for a cost-sharing retailer to cover its costs of doing  
3 business is the growing practice of below-cost marketing of  
4 motor fuels.

5 (n) With price as the number one basis of competition in  
6 the retailing of motor fuel, below-cost retailing by the  
7 competition leaves the independent retailer of motor fuel with  
8 only two choices: (1) join in the below-cost retailing of motor  
9 fuel to keep its customer base, which will eventually cause the  
10 independent retailer to become financially unsound and not  
11 competitive because it cannot generate capital to reinvest in  
12 its business; or (2) do not join in the below-cost retailing of  
13 motor fuel, and lose customers and sales volumes as a result,  
14 eventually becoming financially unsound and not competitive  
15 through the inability to generate reinvestment capital. Either  
16 way, many independent retailers will be selling out or closing  
17 up.

18 (o) Those who initiate below-cost marketing of motor fuel  
19 are able to do so either from subsidized pricing unrelated to  
20 cost-sharing or from wholesale price discrimination.

21 (p) Subsidized pricing stems from one of the following 4  
22 sources:

23 (1) A retailer covers its losses on the sale of motor  
24 fuel from profits generated by the sales of products and  
25 services unrelated to the retail sale of motor fuels and  
26 unrelated to the sharing of personnel and other costs  
27 involved in the sales of motor fuel products. Examples  
28 include, but are not necessarily limited to, bulk  
29 distributors of motor fuel, supermarket operators and mass  
30 merchandiser retailers who have added motor fuel as an  
31 additional, separate product offering, and who provide  
32 motor fuel discounts and subsidize motor fuel operations  
33 with revenue generated on separate operations, as well as  
34 those involved in money laundering and illegal trade. This  
35 form of subsidization is referred to as "subsidization via  
36 revenue sharing from diversification".

1           (2) Large chain retailers who cover a large geographic  
2 market and subsidize their below-cost sales in one market  
3 with profits generated in other markets. This form of  
4 subsidization is referred to as "subsidization via revenue  
5 sharing from geographic dispersion".

6           (3) Vertically integrated companies that subsidize the  
7 retailing end of the business from either the wholesaling,  
8 transportation, refining, and oil production portions of  
9 their business. This form of subsidization is referred to  
10 as "subsidization via revenue sharing from vertical  
11 integration".

12           (4) Foreign nationals who receive subsidies from  
13 abroad in order to maintain business and citizenship  
14 opportunities in the United States. This form of  
15 subsidization is referred to as "subsidization via revenue  
16 sharing from foreign sources".

17           (q) Wholesale price discrimination occurs when refiners or  
18 other originators of motor fuel sell to one wholesaler or  
19 retailer in a market area at an advantaged price over another  
20 wholesaler or retailer in the same market area, when the  
21 pricing differential is not cost-justified.

22           (r) Below-cost marketing of motor fuel is unfair  
23 competition because it injures and threatens the viability of  
24 independent motor fuel marketers, even those possessing the  
25 highest degree of competence and who are engaging in  
26 cost-sharing by way of diversified retail operations, by  
27 depriving independent motor fuel marketers of their ability to  
28 accumulate capital, which is essential in a capitalistic  
29 economy, and which is essential for reinvestment in the motor  
30 fuel operation.

31           (s) The inability of independent motor fuel marketers to  
32 accumulate capital, due to unfair competition in the motor fuel  
33 industry, also damages local and regional suppliers of  
34 equipment, facilities, technology, and other goods and  
35 services with whom independents regularly do business, all to  
36 the detriment of local and regional economies.

1           (t) Unfair competition in the retail motor fuel industry  
2 also injures the ability of independent motor fuel marketers to  
3 generate money to cover the costs of regulation compliance  
4 related to underground storage tank systems, potentially  
5 endangering the environment.

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

12           (v) Unfair competition in the retail motor fuel industry  
13 also adversely affects the State because it adversely affects  
14 business spending by independent marketers in the high-wage  
15 sectors of construction, manufacturing, and technology, and it  
16 adversely affects the revenue-generating abilities of the  
17 state through lower sales and income tax collections.

18           (w) Below-cost marketing of motor fuel is inherently  
19 predatory and stands to injure competition and reduce the  
20 number of competitors in petroleum marketing, especially the  
21 number of independently owned marketers, to the detriment of  
22 the consuming public welfare by limiting the number of motor  
23 fuel retail outlets available to State motorists, and by making  
24 motorists susceptible to increased retail prices long-term.

25           (x) Unfair competition by way of the predatory practice of  
26 below-cost pricing also tends to create barriers to entry or  
27 re-entry into the motor fuel marketplace by independent motor  
28 fuel marketers, resulting in a marketplace that is not truly  
29 free.

30           (y) While the federal government has regulations dealing  
31 with predatory pricing, the regulations fail to protect  
32 businesses and consumers because the regulations are not held  
33 to be violated until long after the damage caused by predatory  
34 pricing has been done, with much of the damage (i.e. bankrupt  
35 and closed family and other independent businesses) being  
36 irreversible.

1 (z) Federal regulations also fail to take into account the  
2 unique circumstances associated with the retail motor fuel  
3 industry, including but not necessarily limited to the  
4 following:

5 (1) There is a barrier to entry into the motor fuel  
6 market on the basis of product differentiation because  
7 motor fuel is perceived largely as a commodity product,  
8 where product differentiation is small and price is the  
9 number one basis of competition, providing little for the  
10 independent motor fuel marketer to do on a strategy of  
11 differentiation.

12 (2) The high investment cost required to enter the  
13 motor fuel industry (with the average cost for fuel  
14 improvements and fuel equipment running approximately  
15 \$300,000 and the cost for land, land development, and  
16 improvements and equipment for cost-sharing running as  
17 much as \$900,000, for a total entry cost being as much as  
18 \$1.2 million depending on the geographic area of the  
19 State), requires those entering into the motor fuel  
20 business to have a reasonable opportunity to earn a  
21 positive return on investment.

22 (3) The threat of continued or repeated predatory  
23 pricing practices, creates a significant barrier to  
24 re-entry into the business by those previously run out of  
25 business, as well as a significant barrier to entry by  
26 those wanting to enter the market for the first time.

27 (aa) On the other end of the spectrum, in the past,  
28 following times of national crisis, an isolated number of motor  
29 fuel retailers have engaged in price gouging, which has served  
30 to exacerbate the crisis by stimulating public panic over the  
31 purchase of motor fuel.

32 (bb) Competent independent motor fuel marketers (dealers,  
33 distributors, jobbers, and wholesalers) are vital to a healthy,  
34 competitive marketplace, and are important to the economic  
35 viability of the State and its local communities.

36 (cc) While retailers of motor fuel should not be guaranteed

1 a financial net profit from the marketing of motor fuel,  
2 retailers of motor fuel also should not be guaranteed a  
3 financial net loss from the marketing of motor fuel.

4 (dd) Consumer protection and protection of honest  
5 businesses are both important to the economic viability of the  
6 State and local communities.

7 (ee) The General Assembly declares that there is a need for  
8 public policy that is balanced between the needs of consumers  
9 and of businesses, and that demonstrates care and concern for  
10 both consumers and those businesses that serve consumers.

11 (ff) The General Assembly declares that there is a need for  
12 public policy based on protection through prevention;  
13 protection of competently run, diversified, cost-sharing motor  
14 fuel retailers through the prevention of pricing that is  
15 predatory; and protection of consumers through the prevention  
16 of the lessening of competition (resulting from the elimination  
17 of competent retailers of motor fuel), and through the  
18 prevention of pricing that is gouging following times of  
19 national crises and State emergencies.

20 (gg) The General Assembly declares that there is a need for  
21 public policy to set a floor below which the retail price of  
22 motor fuel shall not be set, unless the motor fuel marketer can  
23 demonstrate that the price of motor fuel, below the floor, is  
24 not below its retail selling cost of such motor fuel, or unless  
25 the motor fuel marketer can demonstrate that it is meeting the  
26 equally low price of a competitor, thereby allowing retail  
27 motor fuel prices to be set by those who are able to establish  
28 the lowest cost of selling motor fuel.

29 (hh) The General Assembly further declares that there is  
30 also a need, during times of national disaster or State  
31 emergency, for public policy to set a ceiling above which the  
32 retail price of motor fuel shall not be set, unless the motor  
33 fuel marketer can demonstrate that the price of motor fuel,  
34 above the ceiling, is necessary to cover its costs of doing  
35 business.

36 (ii) In order to provide the most simplicity in determining



1 when a motor fuel marketer is or is not in compliance with this  
2 Act, and to also eliminate the need for rules and regulations  
3 governing wholesale price discrimination, transfer pricing,  
4 and related issues involved in the subsidization of motor fuel  
5 at retail from a vertically integrated motor fuel marketer, the  
6 General Assembly declares that there is a need for a neutral  
7 guideline on which to base fuel prices for the purpose of  
8 determining if below-cost pricing or price-gouging is  
9 occurring.

10 (jj) The General Assembly declares Oil Price Information  
11 Service (OPIS) as the neutral guideline on which to base fuel  
12 prices for the purpose of determining if below-cost pricing or  
13 price-gouging is occurring. OPIS is a publication that is used  
14 as a benchmark by the world to buy and sell U.S. gasoline and  
15 diesel fuel. OPIS has no stake in fuel transactions, is not  
16 funded by oil industry initiatives, and strictly adheres to  
17 antitrust guidelines determined by independent legal counsel.

18 (kk) Because a motor fuel marketer shall be allowed to meet  
19 the equally low price of another motor fuel marketer, there  
20 must be a mechanism that provides for the periodic restoration  
21 of pricing of motor fuel to a level that is not below cost.

22 (ll) Below-cost selling laws have been effective in other  
23 states in protecting competent independent and small-business  
24 retailers and wholesalers from subsidized, below-cost pricing.  
25 The purpose of this Act is to substantially lessen subsidized  
26 pricing of petroleum and related products, while still allowing  
27 the reduction of motor fuel pricing through cost-sharing over  
28 the sales of other products and services, where cost-savings  
29 are the result of sharing personnel and other relevant cost  
30 factors in motor fuel retailing, including sales, management,  
31 maintenance, accounting, and property costs.

32 (mm) This Act provides that the advertising, offering for  
33 sale, or sale of motor fuel below cost or at a cost lower than  
34 charged other persons in the same marketing area is necessarily  
35 done with the intent of injuring competitors or destroying or  
36 substantially lessening competition, and is an unfair and

1 deceptive trade practice. The policy of the State is to promote  
2 the general welfare through the prohibition of such sales. The  
3 purpose of this Act is to carry out that policy in the public  
4 interest, providing for exceptions under stated circumstances,  
5 providing for enforcement and providing penalties.

6 (nn) Because motor fueling constitutes one of the most  
7 competitive industries in the marketplace, it is important that  
8 one motor fuel marketer not be advantaged over another motor  
9 fuel marketer as a result of any type of governmental subsidy;  
10 therefore, the development of a motor fuel facility, or the  
11 development of a facility that has, as a part thereof, a  
12 facility for the sale of motor fuel, should not be  
13 government-subsidized when such facility would be in  
14 competition with another such facility in the same market area.

15 (oo) 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 said  
18 compliance and enforcement.

19 Section 10. Definitions. In this Act:

20 "Actual costs of selling motor fuel" means any costs and  
21 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 costs and expenses defined in this  
24 Act (the applicable laid-in cost of motor fuel, plus expense  
25 costs of selling motor fuel, plus investment costs of selling  
26 motor fuel, plus costs and expenses excluded from expense costs  
27 of selling motor fuel, plus extraordinary costs of selling  
28 motor fuel, plus other costs reasonably incurred).

29 "Actual costs of selling motor fuel from dedicated  
30 supplier" means any costs and expenses reasonably incurred by a  
31 retailer of motor fuel associated with the selling of motor  
32 fuel at a retail motor fuel facility, including the applicable  
33 laid-in cost of motor fuel originating from dedicated supplier,  
34 plus expense costs of selling motor fuel, plus investment costs  
35 of selling motor fuel, plus costs and expenses excluded from

1 expense costs of selling motor fuel, plus extraordinary costs  
2 of selling motor fuel, plus other costs reasonably incurred).

3 "Actual costs of selling motor fuel per gallon" means the  
4 actual costs of selling motor fuel, divided by the number of  
5 gallons sold, during the period in which motor fuel was sold.

6 "Actual costs of selling motor fuel per gallon from  
7 dedicated supplier" means the actual costs of selling motor  
8 fuel from dedicated supplier, divided by the number of gallons  
9 sold, during the period in which motor fuel was sold.

10 "Actual health insurance costs" means the health insurance  
11 costs, if any, actually incurred.

12 "Advertising expenses" means the following forms of  
13 advertising: newspaper, Internet, magazine, television, radio,  
14 direct-mail, billboard, and other forms of off-premises  
15 advertising related to motor fuel.

16 "Affiliate" means an entity that owns or controls, or is  
17 owned or controlled by, another person, whether through stock  
18 ownership or otherwise.

19 "Average monthly gallons of motor fuel sold" means the  
20 mathematical result obtained by dividing the total number of  
21 gallons of motor fuel sold at a given retail motor fuel  
22 facility over the 12 months preceding the date in question, by  
23 the number of months that motor fuel was sold over the 12-month  
24 period.

25 "Below cost sale", "below cost selling", "selling below  
26 cost", "to sell below cost", and "sell below cost" means the  
27 selling of gasoline or No. 2 low sulfur clear diesel fuel at  
28 retail in the State at a price, excluding sales taxes and other  
29 taxes or fees imposed by the government on the sale of the fuel  
30 at the pump, that is below the sum of the following: the  
31 applicable laid-in cost of motor fuel, plus any and all  
32 governmentally imposed taxes or fees on the sale of the motor  
33 fuel at the pump, plus the lower of: (1) a positive gross  
34 margin on the motor fuel sale (before non-product costs and  
35 expenses) to the retailer of 6% of the retail pump price of the  
36 motor fuel (also referred to as the regulated minimum retail

1 cost price of motor fuel sold), or (2) the mathematical sum of  
2 the applicable laid-in cost of motor fuel plus the cost of  
3 selling the motor fuel at retail on a per gallon basis.

4 "Competition" means the vying for motor fuel sales between  
5 any 2 persons selling motor fuel in the same market area at the  
6 same level of distribution.

7 "Competitor" means any person who vies for motor fuel sales  
8 against another person in the same market area at the same  
9 level of distribution.

10 "Cost of selling motor fuel at retail on a per gallon cost  
11 basis" means a per gallon cost determined mathematically by the  
12 sum of the following 2 cost items: (1) the mathematical result  
13 derived from dividing the expense costs of selling motor fuel  
14 at retail during the 24 months before the date in question by  
15 the number of gallons of motor fuel sold during the 24 months  
16 before the date in question, plus (2) the mathematical result  
17 derived from dividing the investment costs of selling motor  
18 fuel at retail by the average monthly gallons of motor fuel  
19 sold.

20 "Credit card and bank card related expenses" means any  
21 costs to the motor fuel retailer associated with accommodating  
22 the payment of motor fuel by way of bank and credit card  
23 transactions, including but not limited to fixed fees,  
24 transaction fees, and network processing fees. In the event  
25 that goods and services, other than motor fuel, are sold within  
26 the same facility as motor fuel, in the event that the payment  
27 of such goods and services are also by way of bank and credit  
28 card transactions, and to the extent that any costs associated  
29 with accommodating the payment of motor fuel by way of bank and  
30 credit cards are not made separate and readily distinguishable  
31 from the costs associated with accommodating the payment of  
32 non-motor fuel items by bank and credit cards, then the portion  
33 of costs not made separate and readily distinguishable that  
34 should be allocated as motor fuel related costs shall be  
35 determined mathematically as follows: total bank card and  
36 credit card related costs incurred by the retailer for the

1 applicable retail facility, multiplied by the total dollars  
2 associated with motor fuel purchases paid by bank or credit  
3 cards at the retail facility, divided by the total dollars  
4 associated with total purchases paid by bank or credit cards at  
5 the facility.

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

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

20 "Depreciation allowance on fuel improvements" means, on a  
21 monthly basis, the original cost of all fuel improvements  
22 (including but not limited to fuel canopy, fuel canopy  
23 fixtures, fuel canopy and fuel canopy breezeway fixtures,  
24 pavement above the underground storage tanks and piping,  
25 pavement below the fuel canopy and canopy breezeway, fuel  
26 islands, and fuel related electrical conduit and wiring, fuel  
27 kiosk, and that portion of any other building where motor fuel  
28 transactions are accommodated), divided by a factor of 240  
29 months.

30 "Direct labor costs" means the wages and payroll taxes  
31 associated with those personnel directly involved in the sale,  
32 delivery, or transfer of motor fuel, including maintenance on  
33 motor fuel facilities. Direct labor costs also include  
34 workman's compensation, unemployment insurance, imputed health  
35 insurance costs, and other human resources costs directly  
36 related to such personnel (excluding, actual health insurance

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

16 "Disaster" has the meaning given in Section 4 of the  
17 Illinois Emergency Management Agency Act.

18 "Expense costs of selling motor fuel at retail" means the  
19 mathematical sum obtained by adding the following costs  
20 associated with the retailing of motor fuel at a given retail  
21 facility: labor costs related to motor fuel sales and  
22 management (including applicable direct labor and indirect  
23 labor costs), plus credit card and bank card related expenses,  
24 plus utilities expenses, plus property taxes, plus insurance  
25 expenses, plus maintenance expenses, plus supplies expenses,  
26 plus telecommunications expenses, plus inventory losses, plus  
27 regulatory compliance costs. Expense costs of selling motor  
28 fuel at retail does not include interest on borrowed capital,  
29 dividends paid on equity capital, advertising expenses, actual  
30 health insurance costs, life insurance costs, or leasing costs  
31 (since a substitute for leasing costs is provided by investment  
32 costs of selling motor fuel as defined in this Section).

33 "Extraordinary costs of selling motor fuel" means costs  
34 other than the costs comprising expense costs of selling motor  
35 fuel at retail, other than laid-in cost of motor fuel, and  
36 other than the investment costs of selling motor fuel at

1 retail, when such costs are not customarily incurred to  
2 accommodate the sale of motor fuel at retail. While it is  
3 difficult to anticipate what such costs may include, and while  
4 what follows is not intended to limit the range of what may be  
5 an extraordinary cost, one example would be the costs  
6 associated with the placement and running of an electric  
7 generator to sell motor fuel during power outages.

8 "Government subsidy" means any State or local governmental  
9 money disbursed to develop a facility or to develop the  
10 infrastructure contained on property of the facility, as well  
11 as any State or local government money foregone by any  
12 governmental entity as a result of the development of a  
13 facility; such foregone money shall include, but is not limited  
14 to, reduced taxes stemming from incremental tax districts and  
15 enterprise zones.

16 "Gross margin on motor fuel" means the difference between  
17 the retail price of the motor fuel (less taxes and  
18 governmentally imposed fees levied on the sale of the motor  
19 fuel at the pump) and the product cost of the motor fuel, such  
20 product cost defined as the regional Oil Price Information  
21 Service (OPIS) average on the previous day for the gasoline  
22 grade being sold or for No. 2 low sulfur clear diesel fuel,  
23 plus all applicable taxes and governmentally fees levied on the  
24 motor fuel purchase by and delivery to the retailer, plus  
25 transportation charges to transport the motor fuel from the  
26 wholesale point to the retail point.

27 "Imputed health insurance costs" means 75% of the most  
28 recent reported average premiums cost for employer-sponsored  
29 health insurance coverage, as published by the Henry J. Kaiser  
30 Family Foundation (or other authoritative source as selected by  
31 the Department), applicable to all specified employees of the  
32 motor fuel retailer (except those that have health insurance  
33 coverage through an employer group health plan other than his  
34 or her retail motor fuel employer) who are working for the  
35 motor fuel retailer for 30 or more hours per work week, and who  
36 have been employed by the motor fuel retailer for at least 90

1 consecutive days working 30 or more hours per work week.

2 "Inadvertent incident" means that the incident can be shown  
3 to be not deliberate, but, rather, accidental. Examples of  
4 accidental include, but are not limited to, errors or omissions  
5 on the part of the retail personnel who change the prices, the  
6 failure on the part of clerical personnel to properly enter  
7 pricing data into a data processing system, and the failure to  
8 include, in computing laid-in cost of motor fuel, the wholesale  
9 pricing of a new supplier due to a lack of awareness of such  
10 new supplier. Accidental shall not be construed to mean that a  
11 person failed to do the computations necessary to ensure  
12 compliance with this Act.

13 "Indirect labor costs" means labor costs other than direct  
14 labor costs, including but not limited, to supervisory,  
15 bookkeeping, and administrative personnel who are indirectly  
16 related to the sale, delivery, transfer, or accounting of motor  
17 fuel, whether or not such personnel are situated at the motor  
18 fuel facility. Indirect labor costs also include workman's  
19 compensation, unemployment insurance, imputed health  
20 insurance, and other human resources costs directly related to  
21 such personnel (excluding actual health insurance costs). In  
22 the event that goods and services, other than motor fuel, are  
23 sold within the same facility as motor fuel, in the event that  
24 the personnel indirectly involved in the sale, delivery, or  
25 transfer of motor fuel are also involved in the sale or  
26 operations of such other goods and services, and to the extent  
27 that the personnel costs associated with motor fuel are not  
28 separate and readily distinguishable from the personnel costs  
29 associated with non-motor fuel sales or operational  
30 activities, then the portion of costs not made separate and  
31 readily distinguishable that should be allocated as motor fuel  
32 related costs shall be determined mathematically as follows:  
33 non-distinguishable indirect labor costs multiplied by the  
34 total motor fuel sales dollars at the retail facility, divided  
35 by the total sales dollars of all products and services (motor  
36 fuels sales and non-motor fuel sales) at the facility.



1 "Insurance expenses" means any insurance costs associated  
2 with the retail sale of motor fuel, including liability  
3 insurance, property insurance, as well as workers  
4 compensation, unemployment compensation, and employer's  
5 liability costs and expenses on direct and indirect labor,  
6 except that insurance expenses does not include actual health  
7 insurance costs, imputed health insurance costs, or life  
8 insurance costs of direct and indirect labor.

9 "Inventory losses" means losses due to breakage, damage,  
10 shrink, or theft.

11 "Investment costs of selling motor fuel at retail" means  
12 the mathematical sum obtained by adding land holding costs,  
13 plus land development costs, plus depreciation allowance on  
14 fuel improvements, plus depreciation allowance on fuel  
15 equipment.

16 "Isolated incident" means that the occurrence was  
17 exceptional and not generally repeated, unless the cause for  
18 repeating was definitely accidental and such accident occurred  
19 with the retailer having one or less prior inquiries from the  
20 Department of Revenue within 19 months prior to the occurrence,  
21 for the facility in question.

22 "Labor costs" means direct labor costs plus indirect labor  
23 costs.

24 "Labor costs related to motor fuel sales and management"  
25 means the portion of labor costs that are applicable to the  
26 sales, management, accounting, and operations of the retailing  
27 of motor fuels, including maintaining the cleanliness of and  
28 stocking supplies at motor fuel facilities. Since cashiers,  
29 managers, accounting, and operations personnel are often  
30 involved in the sales of products and services other than motor  
31 fuels, a good faith effort must be made to determine the  
32 portion of labor costs that should be allocated to the motor  
33 fuels operation versus the non-motor fuels operations. Absent a  
34 more logical basis, the portion allocated to motor fuel sales  
35 shall be mathematically determined by multiplying the total  
36 labor costs by the total motor fuel sales dollars, then

1 dividing this result by the total dollars of all sales in which  
2 such personnel are involved (motor fuel and non-motor fuel  
3 sales and operations).

4 "Laid-in cost of motor fuel" means the regional OPIS  
5 average price per gallon on the previous day for the gasoline  
6 grade being sold or for No. 2 low sulfur clear diesel fuel,  
7 plus all applicable taxes and governmentally imposed fees  
8 applicable to the motor fuel purchase by and delivery to the  
9 retailer, plus transportation charges to transport the motor  
10 fuel from the wholesale or supply point to the retail point,  
11 plus one quarter of a cent per gallon (for ordering and other  
12 inventory management costs associated with motor fuel).

13 "Laid-in cost of motor fuel originating from dedicated  
14 supplier" means the actual price per gallon charged to the  
15 retailer by the retailer's dedicated supplier on the previous  
16 day for the gasoline grade being sold or for No. 2 low sulfur  
17 clear diesel fuel, plus all applicable taxes and governmentally  
18 imposed fees applicable to the motor fuel purchase by or  
19 delivery to the retailer, plus transportation charges to  
20 transport the motor fuel from the wholesale or supply point to  
21 the retail point, plus one quarter of a cent per gallon (for  
22 ordering and other inventory management costs associated with  
23 motor fuel).

24 "Land holding costs" means the market value of the land  
25 occupied by motor fuel facilities (motor fuel facilities  
26 consisting of motor fuel improvements and equipment). Since  
27 motor fuel facilities will not always occupy all of the land at  
28 a site where motor fuel sales take place in conjunction with  
29 the sales of other goods and services, the portion of the land  
30 that the motor fueling facilities occupy shall be computed to  
31 determine the value of the land occupied by motor fuel  
32 facilities. The proportional value of such land shall then be  
33 multiplied by a factor of 7%, then divided by a factor of 12 to  
34 determine the land holding costs per month. In the event that  
35 the land is leased, not owned, by the motor fuel marketer, and  
36 if the monthly lease dollar amount, for the portion of the land

1 occupied by the motor fueling facilities, is greater than the  
2 proportional value of the land and multiplied by a factor of  
3 7%, divided by a factor of 12, then the land holding costs  
4 shall be equal to the monthly lease cost on such portion of the  
5 land.

6 "Land development costs" means the costs of developing land  
7 occupied by motor fuel facilities (motor fuel facilities  
8 consisting of motor fuel improvements and equipment). In the  
9 event that motor fuel facilities do not occupy all of the land  
10 development at a site where motor fuel sales take place in  
11 conjunction with sales of other goods and services, the portion  
12 of the land development occupied by motor fuel facilities shall  
13 be determined mathematically as follows: total costs of  
14 developing the land, multiplied by the area, in square feet,  
15 occupied by fuel improvements and fuel equipment, as well as  
16 the area of driveway entrances and driveways utilized by motor  
17 fueling motorists in their ingress to and egress from motor  
18 fueling facilities, divided by the total area, in square feet,  
19 of the entire developed area of land.

20 "Leasing costs" means lease expenses on land, land  
21 improvements, fuel improvements, and fuel equipment. In the  
22 event that motor fuel facilities do not comprise all of the  
23 land development at a site where motor fuel sales take place in  
24 conjunction with the sales of other goods and services, the  
25 portion of the land and land improvements occupied by motor  
26 fuel retailing shall be determined mathematically as follows:  
27 total lease costs of the land, land improvements, fuel  
28 improvements, and fuel equipment multiplied by the area, in  
29 square feet, occupied by fuel improvements and fuel equipment,  
30 as well as the area of driveway entrances and driveways  
31 utilized by motor fueling motorists in their ingress to and  
32 egress from motor fueling facilities, divided by the total  
33 area, in square feet, of the entire developed area of land.

34 "Maintenance expenses" means the maintenance costs  
35 associated with fuel improvements, fuel equipment, and land  
36 improvements. In the event that motor fuel facilities do not

1 comprise all of the land at a site where motor fuel sales take  
2 place in conjunction with the sales of other goods and  
3 services, the proportional cost of maintenance on the land  
4 improvements allocable to motor fuel retailing shall be  
5 determined mathematically as follows: total maintenance costs  
6 on the land and on the land improvements, multiplied by the  
7 area, in square feet, occupied by fuel improvements and fuel  
8 equipment, as well as the area of driveway entrances and  
9 driveways utilized by motor fueling motorists in their ingress  
10 to and egress from motor fueling facilities, divided by the  
11 total area, in square feet, of the entire area of Land.

12 "Market area" means a distance of 4 miles by road in  
13 non-urban areas; a distance of 2.5 miles by road in a standard  
14 metropolitan statistical area; and a distance of 60 miles by  
15 road for truck stop outlets with more than 60% of fuel sales to  
16 vehicles with gross weight of over 50,000 lbs.

17 "Market value of land" means the appraised valuation of the  
18 land occupied by a retail motor fueling facility, such  
19 appraisal to have been given by a certified, MAI Appraiser  
20 sometime within a 48-month period before the date or within the  
21 18-month period following the date that such appraisal is used  
22 to document land holding costs under this Act.

23 "Motor fuel" means those products upon which the State  
24 excise tax levied, or defined, in the Motor Fuel Tax Law, as  
25 amended, is imposed.

26 "Oil Price Information Service" (OPIS) means the daily  
27 publication containing oil price information that is a widely  
28 accepted independent fuel price benchmark for supply.

29 "Person" means any individual, club, firm, association,  
30 organization, partnership, business, trust, joint-stock  
31 company, company, corporation, or other entity, legal or  
32 otherwise.

33 "Price gouging of motor fuel", "price gouging", or "motor  
34 fuel price gouging" means the self-service sale of gasoline or  
35 No. 2 low sulfur clear diesel fuel at retail in the State at a  
36 price greater than the sum of the following: the applicable

1 laid-in cost of motor fuel, plus applicable taxes and  
2 governmentally imposed fees levied on the sale of the motor  
3 fuel at the pump, plus a gross profit margin to the retailer,  
4 on the sale of motor fuel at self-service, of the greater of:  
5 (1) the regulated minimum retail cost price of motor fuel sold  
6 plus 19 cents per gallon, or (2) 19 cents per gallon above the  
7 retailer's actual costs of selling motor fuel per gallon at the  
8 time the motor fuel was sold. The greater is defined as the  
9 "regulated maximum retail cost price of motor fuel sold".

10 "Property taxes" means taxes on land, real estate,  
11 improvements, and personal property.

12 "Regional OPIS average price" for an applicable motor fuel  
13 station means the average price of all wholesale rack suppliers  
14 actively supplying and offering for sale motor fuel within a  
15 100-mile radius of the motor fuel station being supplied,  
16 excluding, the one highest priced terminal supplier within that  
17 100-mile radius. Notwithstanding the foregoing, in the event  
18 that there are not at least 3 wholesale rack suppliers actively  
19 supplying and offering for sale motor fuel within a 100-mile  
20 radius of a motor fuel station being supplied, the radius shall  
21 be extended until there are at least 3 such wholesale rack  
22 suppliers.

23 "Regulated maximum retail cost price of motor fuel sold" or  
24 "regulated maximum price" relates to motor fuel sales at  
25 self-service, and means the mathematical sum of the following:  
26 the applicable laid-in cost of motor fuel, plus applicable  
27 taxes and governmentally imposed fees levied on the sale of the  
28 motor fuel at the pump, plus a gross profit margin to the  
29 retailer, on the sale of motor fuel at self-service, of the  
30 greater of: (1) the regulated minimum retail cost price of  
31 motor fuel sold plus 19 cents per gallon; (2) 19 cents per  
32 gallon above the retailer's actual costs of selling motor fuel  
33 per gallon at the time the motor fuel was sold; or (3) 19 cents  
34 per gallon above the retailer's actual costs of selling motor  
35 fuel per gallon from dedicated supplier at the time the motor  
36 fuel was sold.

1 "Regulated minimum retail cost price of motor fuel sold" or  
2 "regulated minimum price" means the mathematical sum of the  
3 following: the applicable laid-in cost of motor fuel, plus all  
4 applicable taxes and governmentally imposed fees levied on the  
5 sale of motor fuel at the pump, plus a positive gross margin on  
6 the sale of the motor fuel (before non-product costs and  
7 expenses) to the retailer of 6%.

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

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

21 "Relevant geographic market" means the geographic area of  
22 effective competition.

23 "Retailer" means a person engaged in the business of  
24 selling motor fuel to a member of the motoring public for  
25 consumption.

26 "Sale" or "sell" means a transfer of money or other value  
27 or combination, exchange, barter, gift, sale, offer for sale,  
28 advertisement for sale, soliciting an order, and distribution  
29 in any manner or by any means whatsoever, of motor fuel,  
30 including a transfer of motor fuel by a person to that person,  
31 to a member of that person, or to an affiliate.

32 "Supply point" or "terminal facility" means any inland,  
33 waterfront, or offshore appurtenance on land used for the  
34 purpose of storing, handling, or transferring motor fuel, but  
35 does not include, wholesale bulk storage facilities owned or  
36 operated by a retailer, unless other retailers are also

1 supplied from such wholesale bulk storage facilities.

2 "Telecommunications expenses" means all communications  
3 expenses incurred to accommodate the sale of motor fuel at  
4 retail, including but not limited to, telephone line and use  
5 expenses, Internet access fees, satellite service expenses,  
6 cable fees, and other wire and wireless communications  
7 expenses. In the event that goods and services, other than  
8 motor fuel, are sold within the same facility as motor fuel, in  
9 the event that the telecommunications expenses are shared to  
10 accommodate sales and operations associated with the other  
11 goods and services, and to the extent that the  
12 telecommunications costs associated with motor fuel are not  
13 separate and readily distinguishable from the  
14 telecommunications costs associated with non-motor fuel sales  
15 or operational activities, then the portion of costs not made  
16 separate and readily distinguishable that should be allocated  
17 as telecommunications expenses for the facility shall be  
18 determined mathematically as follows: total telecommunications  
19 costs for the facility multiplied by the total motor fuel sales  
20 dollars at the facility, divided by the total sales dollars of  
21 all products and services (motor fuels sales and non-motor fuel  
22 sales at the facility).

23 "Transportation charges" shall be defined as the rate per  
24 gallon not to exceed 1.10 times the average computed  
25 independent commercial posted tariff (common carrier) rates  
26 for delivery of motor fuel, from the relevant supply point to  
27 the relevant destination point, as a single account, in effect  
28 at time of delivery, based on the rates of at least 2 eligible  
29 carriers.

30 "Utilities expenses" means all electrical, water, sewer,  
31 natural gas, fuel oil, propane, and other energy and utilities  
32 expenses incurred in the sale of motor fuel at retail. In the  
33 event that goods and services, other than motor fuel, are sold  
34 within the same facility as motor fuel, in the event that the  
35 utilities expenses are shared to accommodate sales and  
36 operations associated with the other goods and services, and to

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

12 "Wholesaler" means a person engaged in the business of  
13 making sales of motor fuel at wholesale to a reseller of motor  
14 fuel.

15 Section 15. Illegal motor fuel price gouging.

16 (a) It is a violation of this Act to engage in motor fuel  
17 price gouging in response to the occurrence of a national  
18 disaster or State emergency, except where the sale is both an  
19 isolated and inadvertent incident.

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

24 Section 20. Illegal sale below cost. It is a violation of  
25 this Act to sell or advertise for sale motor fuel at a retail  
26 price that would constitute a below cost sale, except:

27 (a) In response to the equally low price of a competitor  
28 within the market area (except during regulated periods for  
29 price restoration), provided that detailed records are kept  
30 indicating the date and time of day of each change in the sale  
31 price of motor fuel and the identity of the person who recorded  
32 the price change, and if the change in price is to meet a lower  
33 price of one or more competitors, the records shall set forth  
34 the name and address of each such competitor, specifying the



1 price which was met, and further documenting the price of each  
2 such competitor each day that the price remains below cost, to  
3 show that the retailer was responding to the equally low prices  
4 of one or more competitors as a "follower", not a leader in the  
5 below cost selling, and that the retailer made efforts to  
6 support restoration of pricing to a level at or above cost when  
7 one or more other competing retailers made such effort;

8 (b) During a publicized grand opening to introduce a new or  
9 remodeled business not to exceed 72 consecutive hours in length  
10 once every 3 years;

11 (c) During a bona fide clearance sale or final business  
12 liquidation sale, not exceeding one week in length, for the  
13 purpose of discontinuing trade in such motor fuel. (This  
14 exception shall not be considered as the price of a competitor  
15 and shall not be used as a basis for establishing a below cost  
16 sale by another retailer);

17 (d) During a sale of motor fuel by a fiduciary or other  
18 officer under the order or direction of any court from a good  
19 faith effort to dispose of a grade, brand, or blend of motor  
20 fuel. (This exception shall not be considered as the price of a  
21 competitor and shall not be used as a basis for establishing a  
22 below cost sale by another retailer);

23 (e) Where motor fuel is advertised, offered for sale, or  
24 sold as imperfect or damaged, and the advertising, offer for  
25 sale, or sale shall state the reason and the quantity of such  
26 motor fuel advertised, offered for sale, or to be sold; or

27 (f) Where such sale is both an isolated and inadvertent  
28 incident.

29 Section 25. Rebates, discounts, gifts, premiums,  
30 promotional items, and concessions subtracted from price. The  
31 payment or allowance of rebates, refunds, commissions,  
32 discounts or concessions of any kind, in connection with the  
33 sale of motor fuel, whether in the form of money, coupons,  
34 discounts, or the value of items, articles, premiums, or  
35 commodities gifted or price-subsidized in connection with the

1 sale of motor fuel, shall, be mathematically subtracted from  
2 the retail fuel price, whether or not such are actually  
3 subtracted from the retail fuel price at the time of the sale,  
4 and whether or not such are offered or given by the retailer or  
5 any other person, to determine whether a retailer is selling  
6 below costs.

7 Section 30. Establishment of Motor Fuel Cost Review Board.

8 (a) A Motor Fuel Cost Review Board shall be established to  
9 consider matters brought before the Board relating to issues of  
10 motor fuel price gouging and below-cost selling.

11 (b) The Board shall be comprised of 5 members, including:

12 (1) the Director of Revenue or his or her designated  
13 representative;

14 (2) a resident of Illinois who is an active retailer of  
15 motor fuel and a member in good standing with the Illinois  
16 Petroleum Marketers Association;

17 (3) an Illinois resident who is a member in good  
18 standing with the Illinois Retail Merchants Association;

19 (4) a certified managerial accountant licensed to  
20 practice public accounting in the State; and

21 (5) a resident of the State, retired from the petroleum  
22 retailing industry, having had a minimum of 10 years  
23 experience working in the retail motor fuel industry before  
24 retiring.

25 (c) Appointments to the Board shall be by the Governor,  
26 with the advice and consent of at least a majority of the  
27 Illinois Senate. Appointments shall be for a term of 3 years.

28 (d) The Board shall meet and be under the direction of the  
29 Director of Revenue, or his or her designated representative,  
30 who shall serve as chairperson of the Board. The Board shall  
31 meet, at minimum one time a year and at maximum 5 times a year,  
32 at which time the members of the Board shall receive an annual  
33 report from the Director of Revenue or his or her designated  
34 representative, about complaints and matters relating to price  
35 gouging and below cost selling and the activities of the

1 Department.

2 (e) The certified managerial accountant shall be  
3 compensated at a rate that is usual and customary for  
4 professional services provided by a certified managerial  
5 accountant in the State, while other non-government employee  
6 members of the Board shall be compensated at the rate \$40 per  
7 hour (such hourly rate to be increased every 3 years by a  
8 factor based on one-half the rate of increase in the consumer  
9 price index over the prior 3-year period) for time spent in  
10 meetings of the Board, whether meetings be conducted in person  
11 or by telephone conference call, with a minimum compensation  
12 payment of \$100 per person per meeting, such minimum to help  
13 offset some of the outside preparation time and considerations  
14 involved prior to meetings of short duration. While members of  
15 the Board shall not be compensated for the time traveling to  
16 and from meetings, members of the Board shall be reimbursed for  
17 reasonable travel and lodging expenses upon request, the rates  
18 of reimbursement for such expenses to not exceed those allowed  
19 of State employees. Payments relating to this Section shall be  
20 made by the Department.

21 Section 35. Remedies and penalties for below-cost sales.

22 (a) If a retailer is selling motor fuel in a given market  
23 area below the regulated minimum retail cost price of motor  
24 fuel sold for another retailer in the same market, the  
25 complaining retailer may file a complaint with the Department  
26 of Revenue. The complaint shall include, at minimum, the name,  
27 contact person, address and telephone number of the complaining  
28 retailer, and the name, address and telephone number of the  
29 competing retailer (also referred to as "alleged violator"),  
30 the name and address of each retail location subject to the  
31 complaint, the pricing at each such location on the applicable  
32 dates, the regulated minimum price of the complaining retailer  
33 for each applicable date, with documentation supporting the  
34 complaining retailer's computed regulated minimum price for  
35 each such date. Within 30 days after receipt of the complaint,

1 the Department shall give written notice of the complaint to  
2 the alleged violator. Such notice shall include a copy of the  
3 complaint and all documentation filed. The alleged violator  
4 shall have 60 days from the date of the notice to respond to  
5 the Department with evidence that the alleged violator, for any  
6 and all periods of time subject to the complaint, and for any  
7 and all periods of time following the last date named in the  
8 complaint to the date of the notice, was not selling below its  
9 regulated minimum price, or that any sale below the regulated  
10 minimum price meets one of the exceptions of Section 20(a)  
11 through (f). The Department shall have 90 days from the date of  
12 the Department's receipt of the alleged violator's response to  
13 provide to the complainant and to the alleged violator written  
14 findings of: (i) whether the complaining retailer has made a  
15 prima facie showing in its complaint that the alleged violator  
16 sold below the complaining retailer's regulated minimum price,  
17 and, if such prima facie showing is made, then (ii), whether  
18 the alleged violator has proven in its response, by a  
19 preponderance of the evidence, that it did not sell below its  
20 regulated minimum price, or that it meets one of the Section 20  
21 exceptions.

22 (b) If the Department finds: (i) that the complainant has  
23 failed to make a prima facie showing under subsection (a), (ii)  
24 that the alleged violator has proven either a Section 20  
25 exception, or (iii) that it did not sell below its regulated  
26 minimum price, the complaint shall be closed. If the Department  
27 finds that the complainant has made the required prima facie  
28 showing and that the alleged violator has neither rebutted that  
29 showing nor proven a Section 20 exception, the alleged violator  
30 shall be given the opportunity to provide full disclosure and  
31 cost-accounting documentation that it did not sell below cost.  
32 Certified by either a certified managerial accountant or  
33 certified public accountant hired by the alleged violator, the  
34 alleged violator shall file such documentation with the  
35 Department within ninety 90 days after the date of the  
36 Department's written findings under subsection (a), and shall,

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

23 (c) If the alleged violator fails or refuses to respond in  
24 a timely manner to the requests of the Department or fails to  
25 pay fines to the Department within 30 days after notice of the  
26 imposition of a fine, the Department shall refer the matter to  
27 the Office of the Illinois Attorney General for prosecution.  
28 Upon receipt of such referral, the Office of the Illinois  
29 Attorney General, or at its discretion, the State's Attorney  
30 for the county in which the alleged below-cost sale occurred,  
31 shall commence a civil action to enforce the findings of and  
32 fines imposed by the Department. While the civil action is  
33 pending, the Attorney General or the State's Attorney shall  
34 seek to enjoin the violator from below cost pricing, and upon a  
35 proper showing, a temporary restraining order, preliminary  
36 injunction, or permanent injunction shall be issued without the

1 necessity of a bond.

2 (d) Any person who has been found by the Department to have  
3 committed a violation of below-cost selling under this Act  
4 shall be listed as a "below cost seller" by the Department. If  
5 such person is found to have committed another act of below  
6 cost selling within 18 months after the date of the first act  
7 of below-cost selling, the Department shall fine the violator a  
8 sum not to exceed \$5,000 per violation, unless a violation was  
9 determined accidental, in which case the civil penalty shall  
10 not exceed \$2,500. The violator shall also be liable for  
11 accountant's fees, expert witness fees, and investigative  
12 expenses incurred by the Department, and shall be subject to  
13 injunctive relief. Each day that a violation of below-cost  
14 selling under this Act occurs is considered a separate  
15 violation. If an action is brought by a State's Attorney, the  
16 entire amount of the fine shall be paid to the treasury of the  
17 county in which the judgment was entered. If such action is  
18 brought by the Attorney General, one-half of the penalty shall  
19 be paid to the treasury of the county where the action was  
20 brought and one-half shall be paid to the State Treasury,  
21 earmarked for the Attorney General's State Project and Court  
22 Order Distribution Fund. Fines paid to the Department without  
23 involvement of the Attorney General shall go to the General  
24 Revenue Fund.

25 (e) Any person in competition with a person suspected of  
26 below cost selling or threatening to sell below cost under this  
27 Act may file and maintain an action in any court of competent  
28 jurisdiction to prevent, restrain, or enjoin such violation or  
29 threatened violation and recover damages for the violation or  
30 threatened violation, whether or not such person has filed a  
31 complaint under subsection (a) of Section 35 of this Act and  
32 whether or not an action is pending under subsection (c) of  
33 Section 35 of this Act. Upon proper application by the  
34 plaintiff in any action under subsection (e) of Section 35, the  
35 court shall grant preliminary injunctive relief if the  
36 plaintiff shows that he or she is a proper person to seek the

1 relief requested and that the defendant is selling motor fuel  
2 below the plaintiff's regulated minimum price for the time in  
3 question. In such action, there shall be a rebuttable  
4 presumption that the defendant has violated this Act if the  
5 plaintiff can show that, on a given day, the defendant sold or  
6 offered for sale, motor fuel at a price below the plaintiff's  
7 regulated minimum price. The defendant may rebut such  
8 presumption by proving by a preponderance of the evidence that:  
9 (i) the plaintiff's calculation of the regulated minimum price  
10 was inaccurate and the defendant did not in fact sell below the  
11 actual regulated minimum price; (ii) that the defendant  
12 qualifies for one of the exceptions under Section 20; or (iii)  
13 that the defendant did not in fact sell or offer for sale motor  
14 fuel below cost. If the plaintiff proves a prima facie  
15 violation of this Act, and the defendant does not rebut such  
16 proof, the court shall enjoin and restrain, or otherwise  
17 prohibit, such violation or threatened violation and, in  
18 addition, the court shall assess in favor of the plaintiff and  
19 against the defendant the costs of the lawsuit, including  
20 reasonable attorney's fees. It shall not be necessary that  
21 actual damages to the plaintiff be alleged or proved, but if  
22 damages are alleged and proved, the plaintiff shall also be  
23 entitled to actual damages, exemplary or punitive damages, and  
24 restitution. If the plaintiff fails to make a prima facie  
25 showing that the defendant sold motor fuel below the  
26 plaintiff's regulated minimum price, or if the defendant proves  
27 that the plaintiff's calculation of plaintiff's regulated  
28 minimum price was inaccurate, the court may award court costs  
29 and reasonable attorney's fees to the defendant.

30 (f) The circuit courts of this State are empowered with  
31 jurisdiction to hear and determine all cases brought under this  
32 Section. Venue lies in the county in which the alleged  
33 violation occurred.

34 (g) If any action is brought for a violation of a  
35 below-cost sale, the burden of proof, upon a prima facie  
36 showing of a violation, shall shift to the defendant to show

1 justification. A prima facie showing of a violation shall be  
2 made if the plaintiff shows that the retail price of motor fuel  
3 of the defendant-retailer was below the regulated minimum  
4 retail cost price of motor fuel sold of the plaintiff retailer.  
5 Unless justification is shown by the defendant by a  
6 preponderance of the evidence, the court shall award judgment  
7 to the plaintiff.

8 Section 40. Remedies and penalties for price gouging.

9 (a) Complaints of price gouging shall be made to the  
10 Department of Revenue, specifying the name and address of each  
11 retail location subject to the complaint, and the pricing at  
12 each location on applicable dates that the violations are  
13 alleged to have occurred. Within 30 days of receipt of the  
14 complaint, the Department shall make contact with the alleged  
15 violator, and the alleged violator shall have 60 days after  
16 receipt of notice in which to provide evidence that for any and  
17 all periods of time subject to the complaint, and for any and  
18 all periods of time from the date of the last violation alleged  
19 in the complaint to the date of the notice, the alleged  
20 violator was not price gouging. Upon a prima facie showing that  
21 the alleged violator sold or offered for sale motor fuel at a  
22 price above the regulated maximum price on the date in  
23 question, the alleged violator shall have the burden to prove,  
24 by a preponderance of the evidence that he or she did not  
25 engage in price gouging. If the alleged violator can show, by a  
26 preponderance of the evidence, that he or she did not engage in  
27 price gouging, the complaint shall be closed. If the Department  
28 shall find that the alleged violator did not prove that he or  
29 she did not engage in price gouging for each day subject to the  
30 complaint, the alleged violator shall be given the opportunity  
31 to provide full disclosure and cost-accounting documentation,  
32 certified by either a certified managerial accountant or  
33 certified public accountant hired by the alleged violator, that  
34 it did not engage in price gouging. The Department shall then  
35 have a period of 180 days in which to review the data provided



1 by the alleged violator, during which time, the Department may,  
2 at its option, submit the matter to the Motor Fuel Cost Review  
3 Board, for advisory comment. At any time during this 180-day  
4 period, the Department may request further data and  
5 clarification from the alleged violator, and the alleged  
6 violator shall have a period of 60 days, after each such  
7 request, in which to respond. After receipt of the final  
8 response, the Department shall have an additional period of 180  
9 days in which to review the supplemental data. If the  
10 Department finds that the documentation provided by the alleged  
11 violator proves by a preponderance of the evidence that he or  
12 she did not engage in price gouging, then the complaint shall  
13 be closed. If the Department shall find otherwise, or if the  
14 alleged violator shall fail to provide data and documentation  
15 to support that he or she did not engage in price gouging, the  
16 Department shall conclude that the alleged violator violated  
17 this Act. The Department shall then notify the alleged violator  
18 of the Department's conclusion, and fine the violator in  
19 accordance with this Act.

20 (b) If the alleged violator fails or refuses to respond in  
21 a timely manner to the requests of the Department or fails to  
22 pay fines to the Department within 30 days after notice of the  
23 imposition of the fine, the Department shall refer the matter  
24 to the Attorney General for prosecution. Upon receipt of such  
25 referral, the Attorney General, or at its discretion, the  
26 State's Attorney of the county in which the violation occurred,  
27 shall commence a civil action to enforce the findings of and  
28 fines imposed by the Department. While the civil action is  
29 pending, the Attorney General shall seek to enjoin the violator  
30 from price gouging, and upon a proper showing, a temporary  
31 restraining order, preliminary injunction, or permanent  
32 injunction shall be issued without the necessity of a bond.

33 (c) Any person who is found to have committed a violation  
34 of price gouging, as defined by this Act, shall be subject to a  
35 civil penalty not to exceed \$5,000 per violation for each  
36 offense. Any such violator shall also be liable for the fees of

1 accountants, expert witness fees, and investigative expenses,  
2 incurred by the State, if the State prevails in an action under  
3 this Act. Each day that a violation of price gouging under this  
4 Act occurs is considered a separate violation. If brought by a  
5 State's Attorney, the entire amount of the fine shall be paid  
6 to the treasury of the county in which the judgment was  
7 entered. If brought by the Attorney General, one-half of the  
8 penalty shall be paid to the treasury of the county where the  
9 action was brought and one-half shall be paid to the State  
10 Treasury, earmarked for the Attorney General's State Project  
11 and Court Order Distribution Fund. Fines paid to the Department  
12 without involvement of the Attorney General shall go to the  
13 General Revenue Fund.

14 Section 45. Illegal contracts. Any contract, express or  
15 implied, made by any person in violation of any of the  
16 provisions of this Act is illegal and void, and recovery shall  
17 not be awarded.

18 Section 50. Recordkeeping.

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

28 (b) The records shall be made available to the Department  
29 of Revenue and Attorney General on request.

30 Section 55. Witnesses; production of books and records. Any  
31 defendant, or any witness, in any civil action brought under  
32 the provisions of this Act may be required to testify, and any  
33 defendant, or any witness, may, upon proper process, be

1 compelled to produce his books, records, invoices, and all  
2 other documents of any such defendant or witness into court and  
3 the same may be introduced as evidence, but no testimony given  
4 or produced shall be received against such defendant upon any  
5 criminal proceeding or investigation against the defendant.

6 Section 60. Trade association may file suit. Any duly  
7 organized and existing trade association, whether incorporated  
8 or not, is authorized to institute and prosecute a suit or  
9 suits for injunctive relief and costs provided for under the  
10 terms of this Act, as the real party in interest for and on  
11 behalf of one or more of the association's members, when a  
12 violation of this Act directly or indirectly affects or  
13 threatens to affect or injure such member or members, or where  
14 violation of this Act threatens to impair fair competition or  
15 otherwise affects the member.

16 Section 65. Limitations period. Any action brought by the  
17 Attorney General or any State's Attorney shall be brought  
18 within 2 years after the alleged violation occurred or should  
19 reasonably have been discovered. Any action brought by any  
20 other person or entity shall be brought within 3 years after  
21 the alleged violation occurred or should reasonably have been  
22 discovered.

23 Section 70. Powers and duties.

24 (a) The Department of Revenue has the following powers and  
25 duties:

26 (1) to investigate complaints regarding violations of  
27 this Act;

28 (2) to seek injunctive relief as appropriate;

29 (3) to levy fines for a violation of this Act;

30 (4) to determine what rates of compensation are usual  
31 and customary for certified managerial or cost accountants  
32 practicing in the State, and to set the hourly fee of the  
33 managerial or cost-accountant serving on the Motor Fuel

1 Cost Review Board.

2 (b) The Attorney General has the following powers and  
3 duties:

4 (1) to investigate complaints regarding violations of  
5 this Act;

6 (2) to seek injunctive relief as appropriate;

7 (3) to seek restitution for victims of motor fuel price  
8 gouging and other violations of this Act;

9 (4) to institute an action to collect a civil penalty  
10 for a violation of this Act; and

11 (5) to delegate to any appropriate State's Attorney its  
12 powers and duties.

13 Section 75. Confidentiality.

14 (a) Information obtained by the Department, Attorney  
15 General, or State's Attorney in the course of an investigation  
16 under this Act, including information from a person who  
17 responds to the investigation and designates the information as  
18 confidential, must be maintained as confidential until the  
19 investigation is completed and a course of action is  
20 determined. Neither the Department, Attorney General, or  
21 State's Attorney may make known in any manner information  
22 obtained in the course of the investigation to persons other  
23 than those specified in subsection (c) of this Section or the  
24 members of the Motor Fuel Cost Review Board. Once the  
25 investigation is completed, if there is a settlement or if a  
26 civil action is filed, the information may be made public.

27 (b) This Section does not prohibit the use of confidential  
28 information to prepare statistics of other general data for  
29 publication, if the information is presented in a manner that  
30 prevents identification of particular persons or locations  
31 under investigation.

32 (c) For purposes of this Section, references to the  
33 Department, Attorney General, or State's Attorney include  
34 other individuals designated to write and act on their behalf  
35 during an investigation. A person designated shall preserve the

1 confidentiality of information as provided for in subsection  
2 (a).

3 (d) A person who is served with a request for information,  
4 a subpoena to give testimony orally or in writing, or to  
5 produce books, papers, correspondence, memoranda, agreements,  
6 or other documents or records under this Act may apply to the  
7 appropriate circuit court for protection against abuse or undue  
8 hardship.

9 Section 80. Banning of government subsidies for motor fuel  
10 marketers.

11 (a) It is the policy of this State that no development  
12 containing a facility for selling motor fuel shall receive any  
13 government subsidy, State or local, to aid in the cost of  
14 development, when the motor fuel facility being developed would  
15 be in competition with another Illinois-based facility within  
16 the same market area.

17 (b) For any facility that has been built with any  
18 government subsidy, before a motor fuel facility shall be added  
19 to, about, or in affiliation with such facility, all government  
20 subsidies received before, shall be paid back to each  
21 governmental body providing such subsidy.

22 (c) Any competitor of a person suspected of receiving a  
23 government subsidy in violation of this Act shall have standing  
24 to prosecute a civil action to enjoin a violation of this  
25 Section and to compel restitution of any such subsidy received  
26 or government monies foregone in violation of this Section.

27 Section 85. Severability. If any provision of this Act or  
28 its application to any person or circumstance is held invalid,  
29 the invalidity of that provision or application does not affect  
30 other provisions or applications of this Act that can be given  
31 effect without the invalid provision or application.

32 Section 90. Rulemaking authority and duty to inform. The  
33 Department of Revenue may issue rules to administer and enforce

1 this Act. The Department shall also have the duty to inform  
2 motor fuel marketers of this Act, including the requirements to  
3 not sell below cost and to not engage in price gouging, though  
4 failure to receive such notice shall not be a defense under  
5 this Act. This duty shall be performed by the following: (1)  
6 between the time that the Act is signed into law and its  
7 effective date, the Department of Revenue shall issue written  
8 notification to all persons who are currently filing motor fuel  
9 tax returns, as well as all persons listed on prepaid sales tax  
10 forms as being retailers from whom prepaid sales taxes have  
11 been collected on motor fuels, informing them of this Act, and  
12 the requirements to not sell below cost and to not engage in  
13 price gouging as defined in this Act, (2) within one year of  
14 the effective date of this Act, the Department shall have  
15 revised and issued forms requiring filers of motor fuel tax  
16 returns to certify their awareness of the Motor Fuel Fair  
17 Marketing Practices Act, including the requirements to not sell  
18 below cost and to not engage in price gouging, and (3) at the  
19 time that new motor fuel licenses are issued, the Department  
20 shall include a notice of the existence of this Act, such  
21 notice including the requirements to not sell below cost and to  
22 not engage in price gouging.

23 Section 95. Appropriations. The Department of Revenue and  
24 Office of the Illinois Attorney General shall request, and the  
25 General Assembly shall reasonably fund from the General Revenue  
26 Fund, by way of appropriations, the costs and expenses  
27 necessary to comply with this Act.