



Filed: 2/23/2005

09400HB0553ham001

LRB094 06725 RXD 40992 a

1 AMENDMENT TO HOUSE BILL 553

2 AMENDMENT NO. _____. Amend House Bill 553 by replacing
3 everything after the enacting clause with the following:

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 to 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

1 competition.

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

6 (g) Retail marketers of motor fuel must earn a margin of
7 profit on the sale of motor fuel for reinvestment in the
8 business because many motor fuels are flammable and combustible
9 liquids, that must be distributed in a safe manner, utilizing
10 specially designed and costly explosion-proof equipment.

11 (h) Retail marketers of motor fuel must earn a margin of
12 profit on the sale of motor fuel for maintenance and
13 reinvestment in the business because motor fuels are
14 potentially hazardous to the underground environment, such
15 that specially designed and costly equipment must be used to
16 contain and monitor the containment of motor fuels, and to
17 comply with governmentally-imposed regulations.

18 (i) Over the years, the margin of profit earned on the sale
19 of motor fuel has lessened, largely due to the advent of
20 self-service as well as the sharing of costs of motor fuel
21 retailing with the retailing of other goods and services
22 offered at the motor fuel facility, including but not limited
23 to, the sale of convenience store goods and services, car
24 washes, and fast-foods, where the shared costs can include
25 cashiering, management, accounting, facility maintenance,
26 facility development, land acquisition, and land development.

27 (j) Given today's cost of doing business and the average
28 volume motor fuel station facility, the sharing of personnel to
29 accommodate transactions of both convenience store items and
30 motor fuel sales has allowed for a significant reduction in the
31 minimum needed profit margin on a motor fuel operation
32 benefiting from cost sharing as compared with a motor fuel
33 operation not benefiting from such cost sharing.

34 (k) A lower margin of profit on the sale of motor fuel has

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

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

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

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

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

31 (p) Subsidized pricing stems from one of the following 4
32 sources:

33 (1) A retailer covers its losses on the sale of motor
34 fuel from profits generated by the sale of products and

1 services unrelated to the retail sale of motor fuels and
2 unrelated to the sharing of personnel and other costs
3 involved in the sale of motor fuel products. Examples
4 include, but are not necessarily limited to, bulk
5 distributors of motor fuel, supermarket operators and mass
6 merchandiser retailers who have added motor fuel as an
7 additional separate product offering, and who provide
8 motor fuel discounts and subsidize motor fuel operations
9 with revenue generated on separate operations, as well as
10 those involved in money laundering and illegal trade. This
11 form of subsidization is referred to as "subsidization via
12 revenue sharing from diversification".

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

18 (3) Vertically integrated companies that subsidize the
19 retailing end of the business from either the wholesaling,
20 transportation, refining, and oil production portions of
21 their business. This form of subsidization is hereinafter
22 referred to as "subsidization via revenue sharing from
23 vertical integration".

24 (4) Foreign nationals who receive subsidies from
25 abroad in order to maintain business and citizenship
26 opportunities in the United States. This form of
27 subsidization is hereinafter referred to as "subsidization
28 via revenue sharing from foreign sources".

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

34 (r) Below-cost marketing of motor fuel is unfair

1 competition because it injures and threatens the viability of
2 independent motor fuel marketers, even those possessing the
3 highest degree of competence and that are engaging in
4 cost-sharing by way of diversified retail operations, by
5 depriving independent motor fuel marketers of their ability to
6 accumulate capital, which is essential in a capitalistic
7 economy, and which is essential for reinvestment in the motor
8 fuel operation.

9 (s) The inability of independent motor fuel marketers to
10 accumulate capital, due to unfair competition in the motor fuel
11 industry, also damages local and regional suppliers of
12 equipment, facilities, technology, and other goods and
13 services with whom independents regularly do business, all to
14 the detriment of local and regional economies.

15 (t) Unfair competition in the retail motor fuel industry
16 also injures the ability of independent motor fuel marketers to
17 generate money to cover the costs of regulation compliance
18 related to underground storage tank systems, potentially
19 endangering the environment.

20 (u) Unfair competition in the retail motor fuel industry
21 also injures the ability of local independent retailers to
22 provide new jobs, expand career opportunities for their current
23 employees, implement new technologies, raise living standards
24 for their employees, and enhance the overall economic welfare
25 of their local communities and region.

26 (v) Unfair competition in the retail motor fuel industry
27 also adversely affects the State because it adversely affects
28 business spending by independent marketers in the high-wage
29 sectors of construction, manufacturing, and technology, and it
30 adversely affects the revenue-generating abilities of the
31 State through lower sales and income tax collections.

32 (w) Below-cost marketing of motor fuel is inherently
33 predatory and stands to injure competition and reduce the
34 number of competitors in petroleum marketing, especially the

1 number of independently owned marketers, to the detriment of
2 the consuming public welfare by limiting the number of motor
3 fuel retail outlets available to State motorists, and by making
4 motorists susceptible to increased retail prices long-term.

5 (x) Unfair competition by way of the predatory practice of
6 below-cost pricing also tends to create barriers to entry or
7 re-entry into the motor fuel marketplace by independent motor
8 fuel marketers, resulting in a marketplace that is not truly
9 free.

10 (y) While the federal government has regulations dealing
11 with predatory pricing, the regulations fail to protect
12 businesses and consumers because the regulations are not held
13 to be violated until long after the damage caused by predatory
14 pricing has been done, with much of the damage (i.e. bankrupt
15 and closed family and other independent businesses) being
16 irreversible.

17 (z) Federal regulations also fail to take into account the
18 unique circumstances associated with the retail motor fuel
19 industry, including, but not necessarily limited to, the
20 following:

21 (1) There is a barrier to entry into the motor fuel
22 market on the basis of product differentiation because
23 motor fuel is perceived largely as a commodity product,
24 where product differentiation is small and price is the
25 number one basis of competition, providing little for the
26 independent motor fuel marketer to do on a strategy of
27 differentiation.

28 (2) The high investment cost required to enter the
29 motor fuel industry (with the average cost for fuel
30 improvements and fuel equipment running approximately
31 \$300,000 and the cost for land, land development, and
32 improvements and equipment for cost-sharing running as
33 much as \$900,000, for a total entry cost being as much as
34 \$1.2 million depending on the geographic area of the

1 State), requires those entering into the motor fuel
2 business to have a reasonable opportunity to earn a
3 positive return on investment.

4 (3) The threat of continued or repeated predatory
5 pricing practices creates a significant barrier to
6 re-entry into the business by those previously run out of
7 business, as well as a significant barrier to entry by
8 those wanting to enter the market for the first time.

9 (aa) On the other end of the spectrum, in the past,
10 following times of national crisis, an isolated number of motor
11 fuel retailers have engaged in price gouging, which has served
12 to exacerbate the crisis by stimulating public panic over the
13 purchase of motor fuel.

14 (bb) Competent independent motor fuel marketers (dealers,
15 distributors, jobbers, and wholesalers) are vital to a healthy,
16 competitive marketplace, and are important to the economic
17 viability of the State and its local communities.

18 (cc) While retailers of motor fuel should not be guaranteed
19 a financial net profit from the marketing of motor fuel,
20 retailers of motor fuel also should not be guaranteed a
21 financial net loss from the marketing of motor fuel.

22 (dd) Consumer protection and protection of honest
23 businesses are both important to the economic viability of the
24 State and local communities.

25 (ee) The General Assembly declares that there is a need for
26 public policy that is balanced between the needs of consumers
27 and businesses, and that demonstrates care and concern for both
28 consumers and those businesses that serve consumers.

29 (ff) The General Assembly declares that there is a need for
30 public policy based on protection through prevention:
31 protection of competently run, diversified, cost-sharing motor
32 fuel retailers through the prevention of pricing that is
33 predatory, protection of consumers through the prevention of
34 the lessening of competition (resulting from the elimination of

1 competent retailers of motor fuel because of predatory
2 pricing), and through the prevention of pricing that is gouging
3 following times of national crises and State emergencies.

4 (gg) The General Assembly declares that there is a need for
5 public policy to set a floor below which the retail price of
6 motor fuel shall not be set, unless the motor fuel marketer can
7 demonstrate that the price of motor fuel below the floor is not
8 below its retail selling cost of such motor fuel, or unless the
9 motor fuel marketer can demonstrate that it is meeting the
10 equally low price of a competitor, thereby allowing retail
11 motor fuel prices to be set by those who are able to establish
12 the lowest cost of selling motor fuel.

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

20 (ii) In order to provide the most simplicity in determining
21 when a motor fuel marketer is in compliance with this Act, and
22 to eliminate the need for rules and regulations governing
23 wholesale price discrimination, transfer pricing, commodities
24 trading, or related issues involved in the subsidization of
25 motor fuel at retail from a vertically integrated motor fuel
26 marketer, the General Assembly declares that there is a need
27 for a neutral guideline on which to base fuel prices for the
28 purpose of determining if below-cost pricing or price-gouging
29 is occurring.

30 (jj) The General Assembly recognizes the existence of
31 reporting services, including, but not necessarily limited to,
32 Oil Price Information Service (OPIS) or AXXIS Petroleum
33 (AXXIS), which neutrally reports wholesale prices of motor fuel
34 from a myriad of motor fuel suppliers from which average

1 wholesale rack/terminal pricing may be established. Prices
2 reported by OPIS and AXXIS are used as a benchmark by the world
3 to buy and sell U.S. gasoline and diesel fuel. Neither OPIS nor
4 AXXIS have a stake in fuel transactions, neither is funded by
5 oil industry initiatives, and each strictly adheres to
6 antitrust guidelines determined by independent legal counsel.
7 The General Assembly declares that such a pricing service shall
8 be utilized to provide a benchmark for determining if
9 below-cost pricing or price-gouging is occurring.

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

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

24 (mm) This Act provides that the advertising, offering for
25 sale, or sale of motor fuel below cost is necessarily done with
26 the intent of injuring competitors or destroying or
27 substantially lessening competition and is an unfair and
28 deceptive trade practice. The policy of the State is to promote
29 the general welfare through the prohibition of such sales. The
30 purpose of this Act is to carry out that policy in the public
31 interest, providing for exceptions under stated circumstances,
32 providing for enforcement and providing penalties.

33 (nn) Because motor fueling constitutes one of the most
34 competitive industries in the marketplace, it is important that

1 one motor fuel marketer not be advantaged over another motor
2 fuel marketer as a result of any type of governmental subsidy;
3 therefore, the development of a motor fuel facility, or the
4 development of a facility that has, as a part thereof, a
5 facility for the sale of motor fuel, should not be
6 government-subsidized when such facility would be in
7 competition with another non-subsidized facility in the same
8 market area.

9 (oo) It is believed that the costs of ensuring compliance
10 with and enforcing this Act will be more than offset by the
11 additional sales and income tax revenues stemming from
12 compliance and enforcement.

13 Section 10. Definitions. In this Act:

14 "Actual costs of selling motor fuel" means any costs and
15 expenses reasonably incurred by a retailer of motor fuel
16 associated with the selling of motor fuel at a retail motor
17 fuel facility, including the following costs and expenses
18 defined in this Act: the applicable laid-in cost of motor fuel,
19 plus expense costs of selling motor fuel, plus investment costs
20 of selling motor fuel, plus costs and expenses excluded from
21 expense costs of selling motor fuel, plus extraordinary costs
22 of selling motor fuel, plus other costs reasonably incurred.

23 "Actual costs of selling motor fuel from dedicated
24 supplier" means any costs and expenses reasonably incurred by a
25 retailer of motor fuel associated with the selling of motor
26 fuel at a retail motor fuel facility, including the applicable
27 laid-in cost of motor fuel originating from dedicated supplier,
28 plus expense costs of selling motor fuel, plus investment costs
29 of selling motor fuel, plus costs and expenses excluded from
30 expense costs of selling motor fuel, plus extraordinary costs
31 of selling motor fuel, plus other costs reasonably incurred.

32 "Actual costs of selling motor fuel per gallon" means the
33 actual costs of selling motor fuel, divided by the number of

1 gallons sold, during the period in which motor fuel was sold.

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

6 "Actual health insurance costs" means the health insurance
7 costs, if any, actually incurred.

8 "Advertising expenses" means the following forms of
9 advertising: newspaper, Internet, magazine, television, radio,
10 direct-mail, billboard, and other forms of off-premises
11 advertising related to motor fuel.

12 "Affiliate" means a person who is related to another person
13 through common ownership or common control. Franchisees and
14 licensees of branded motor fuel suppliers are not affiliates of
15 their branded fuel suppliers.

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

22 "AXXIS Petroleum (AXXIS)" is an independent reporting
23 service, located in the state of Minnesota, providing daily
24 reports of prices of refined motor fuel, including the gasoline
25 grades being sold, as well as No. 2 low sulfur clear diesel
26 fuel, that is widely accepted as an independent fuel price
27 benchmark for supply.

28 "Below cost sale", "below cost selling", "selling below
29 cost", "to sell below cost", and "sell below cost" means the
30 selling of gasoline or No. 2 low sulfur clear diesel fuel at
31 retail in the State at a price that is below the lower of: (1)
32 the regulated minimum retail cost price of motor fuel sold, or
33 (2) the mathematical sum of the applicable laid-in cost of
34 motor fuel plus the cost of selling the motor fuel at retail on

1 a per gallon basis.

2 "Benchmark pricing service" means the independent
3 reporting service providing daily reports of supplier
4 wholesale prices of refined motor fuel from wholesale rack
5 terminals, including the gasoline grades being sold as well as
6 No. 2 low sulfur clear diesel fuel, whichever service is
7 selected by the Department under this Act. OPIS and AXXIS are
8 the only 2 such pricing services known to be available at the
9 time of passage of this Act. If one or more other such pricing
10 services becomes available, the Department shall have
11 discretion to select any other such pricing service in
12 accordance with this Act.

13 "Competition" means the vying for motor fuel sales between
14 any 2 persons selling motor fuel in the same market area at the
15 same level of distribution.

16 "Competitor" means any person who vies for motor fuel sales
17 against another person in the same market area at the same
18 level of distribution.

19 "Cost of selling motor fuel at retail on a per gallon
20 basis" means a per gallon cost determined mathematically by the
21 sum of the following 2 cost items: (1) the mathematical result
22 derived from dividing the expense costs of selling motor fuel
23 at retail during the 24 months before the date in question by
24 the number of gallons of motor fuel sold during the 24 months
25 before the date in question, plus (2) the mathematical result
26 derived from dividing the investment costs of selling motor
27 fuel at retail by the average monthly gallons of motor fuel
28 sold.

29 "Credit card and bank card related expenses" means any
30 costs to the motor fuel retailer associated with accommodating
31 the payment of motor fuel by way of bank and credit card
32 transactions, including, but not limited to, fixed fees,
33 transaction fees, and network processing fees. In the event
34 that goods and services, other than motor fuel, are sold within

1 the same facility as motor fuel, in the event that the payment
2 of such goods and services are also by way of bank and credit
3 card transactions, and to the extent that any costs associated
4 with accommodating the payment of motor fuel by way of bank and
5 credit cards are not made separate and readily distinguishable
6 from the costs associated with accommodating the payment of
7 non-motor fuel items by bank and credit cards, then the portion
8 of costs not made separate and readily distinguishable that
9 should be allocated as motor fuel related costs shall be
10 determined mathematically as follows: total bank card and
11 credit card related costs incurred by the retailer for the
12 applicable retail facility, multiplied by the total dollars
13 associated with motor fuel purchases paid by bank or credit
14 cards at the retail facility, divided by the total dollars
15 associated with total purchases paid by bank or credit cards at
16 the facility.

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

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

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

9 "Department of Revenue" and "Department" means the
10 Department of Revenue of the State of Illinois.

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

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

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

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

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

1 "Expense costs of selling motor fuel at retail" means the
2 mathematical sum obtained by adding the following costs
3 associated with the retailing of motor fuel at a given retail
4 facility: direct labor, plus indirect labor costs, plus credit
5 card and bank card related expenses, plus credit carrying and
6 handling costs of the motor fuel retailer, plus utilities
7 expenses, plus property taxes, plus insurance expenses, plus
8 maintenance expenses, plus supplies expenses, plus
9 telecommunications expenses, plus inventory losses, plus
10 regulatory compliance costs. "Expense costs of selling motor
11 fuel at retail" does not include interest on borrowed capital,
12 dividends paid on equity capital, advertising expenses, actual
13 health insurance costs, life insurance costs, or leasing costs
14 since a substitute for leasing costs is provided by investment
15 costs of selling motor fuel as defined in this Section.

16 "Extraordinary costs of selling motor fuel" means costs
17 other than those customarily incurred in the sale of motor fuel
18 at retail, but does not include, expense costs of selling motor
19 fuel at retail, laid-in cost of motor fuel, investment costs of
20 selling motor fuel at retail, interest on borrowed capital,
21 dividends paid on equity capital, advertising expenses, actual
22 health insurance costs, or life insurance costs. While it is
23 difficult to anticipate what such costs may include, and while
24 what follows is not intended to limit the range of what may be
25 an extraordinary cost, one example would be the costs
26 associated with the placement and running, whether by lease,
27 purchase, or otherwise, of an electric generator to accommodate
28 motor fuel sales during power outages. Another example would be
29 costs associated with financial penalties owed, or reasonably
30 anticipated to be owed to a dedicated supplier as a result of a
31 purchase in excess of a supplier-imposed allocation, or below a
32 supplier-imposed minimum purchase quantity.

33 "Fuel equipment" includes, but is not limited to, fuel
34 pumps, fuel dispensers, fuel tanks, fuel piping, fuel tank

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

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

11 "Government subsidy" means any State or local governmental
12 money disbursed to develop a facility or to develop the
13 infrastructure contained on property of the facility, as well
14 as any State or local government money foregone by any
15 governmental entity as a result of the development of a
16 facility or the infrastructure of the land on which the
17 facility is located, including, but not limited to, reduced
18 taxes stemming from incremental tax districts and enterprise
19 zones.

20 "Gross margin on motor fuel" means the difference between
21 the retail price of the motor fuel and the applicable laid-in
22 cost of motor fuel or the applicable laid-in cost of motor fuel
23 from a dedicated supplier, whichever is applicable.

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

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

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

1 event that goods and services, other than motor fuel, are sold
2 within the same facility as motor fuel, and in the event that
3 the personnel indirectly involved in the sale, delivery, or
4 transfer of motor fuel at the facility are also indirectly
5 involved in the sale or operations of such other goods and
6 services, and to the extent that the personnel costs associated
7 with motor fuel are not separate and readily distinguishable
8 from the personnel costs associated with non-motor fuel sales
9 or operational activities, then the portion of costs not made
10 separate and readily distinguishable that should be allocated
11 as motor fuel related costs for that facility shall be
12 determined mathematically as follows: total
13 non-distinguishable indirect labor costs for that facility (as
14 determined above if such indirect labor costs are attributable
15 to more than one facility) multiplied by the total motor fuel
16 sales dollars at that facility, divided by the total sales
17 dollars of all products and services (motor fuel sales and
18 non-motor fuel sales) at the facility. "Indirect labor costs"
19 does not include credit carrying and handling costs of the
20 motor fuel retailer.

21 "Insurance expenses" means any insurance costs associated
22 with the retail sale of motor fuel at a given retail facility,
23 including liability insurance, property insurance, employer's
24 liability costs and expenses on direct and indirect labor,
25 except that insurance expenses does not include actual health
26 insurance costs, imputed health insurance costs, life
27 insurance costs or the labor related insurance expenses of
28 workers' compensation and unemployment compensation.

29 "Inventory losses" means losses due to breakage, damage,
30 shrinkage, or theft.

31 "Investment costs of selling motor fuel at retail" means a
32 monthly cost obtained by adding land holding costs, plus land
33 development costs, plus depreciation allowance on fuel
34 improvements, plus depreciation allowance on fuel equipment.

1 "Isolated incident" means that the occurrence was
2 exceptional and not generally repeated, unless the cause for
3 repeating was definitely accidental and such accident occurred
4 with the retailer having one or less prior inquiries from the
5 Department of Revenue within 18 months immediately preceding
6 the occurrence for the facility in question.

7 "Labor costs" means direct labor costs plus indirect labor
8 costs.

9 "Laid-in cost of motor fuel" means the regional
10 benchmarking pricing service average price per gallon on the
11 day preceding the sale in question for the gasoline grade being
12 sold or for No. 2 low sulfur clear diesel fuel, whichever is
13 applicable, plus all applicable taxes and governmentally
14 imposed fees applicable to the motor fuel purchase by and
15 delivery to the retailer, plus transportation charges to
16 transport the motor fuel from the wholesale or supply point to
17 the retail point, plus one quarter of a cent per gallon (for
18 ordering and other inventory management costs associated with
19 motor fuel), plus sales taxes and other governmental taxes and
20 fees imposed on the sale of the fuel at the pump.

21 "Laid-in cost of motor fuel originating from dedicated
22 supplier" means the actual price per gallon charged to the
23 retailer by the retailer's dedicated supplier on the day
24 preceding the sale in question for the gasoline grade being
25 sold or for No. 2 low sulfur clear diesel fuel, whichever is
26 applicable, plus all applicable taxes and governmentally
27 imposed fees applicable to the motor fuel purchase by or
28 delivery to the retailer, plus transportation charges to
29 transport the motor fuel from the wholesale or supply point to
30 the retail point, plus one quarter of a cent per gallon (for
31 ordering and other inventory management costs associated with
32 motor fuel), plus sales taxes and other governmental taxes and
33 fees imposed on the sale of the fuel at the pump.

34 "Land holding costs" means on a monthly basis, a 7% return

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

27 "Land development costs" means, on a monthly basis, a 7%
28 return on the costs of developing land occupied by motor fuel
29 facilities (motor fuel facilities consisting of motor fuel
30 improvements and equipment). Land development costs include,
31 but are not limited to, paving, storm sewer, and underground
32 utilities costs, excluding however, any costs of motor fuel
33 improvements and equipment. In the event that motor fuel
34 facilities do not occupy all of the land development at a site

1 where motor fuel sales take place in conjunction with sales of
2 other goods and services, the portion of the costs attributable
3 to developing the land occupied by motor fuel facilities shall
4 be determined mathematically as follows: total costs of
5 developing the land, multiplied by the area, in square feet,
6 occupied by the motor fuel facility (motor fuel facility
7 includes fuel improvements and fuel equipment, as well as the
8 area of driveway entrances and driveways utilized by motor
9 fueling motorists in their ingress to and egress from motor
10 fueling facilities), divided by the total area, in square feet,
11 of the entire developed area of land. That percentage (100% in
12 the case of a stand-alone motor fuel facility) shall be
13 multiplied by the total costs of developing the land occupied
14 by motor fuel facilities to determine the value of developed
15 land attributable to the motor fuel facility. That proportional
16 value shall then be multiplied by a factor of 7%, then divided
17 by a factor of 12, to determine the land development costs per
18 month for the motor fuel facility. In the event that the land
19 development is leased, not owned by the motor fuel retailer,
20 and in the further event that the monthly leasing costs for the
21 portion of the land development occupied by the motor fueling
22 facilities, is greater than the proportional value of such land
23 multiplied by a factor of 7%, divided by a factor of 12, then
24 the land development costs for the motor fuel facility shall be
25 equal to the monthly leasing costs attributable to the land
26 development portion of the motor fuel facility.

27 "Leasing costs" means lease expenses on land, land
28 improvements, fuel improvements, and fuel equipment. In the
29 event that motor fuel facilities do not comprise all of the
30 land development at a site where motor fuel sales take place in
31 conjunction with the sales of other goods and services, the
32 portion of the lease expenses attributable to the motor fuel
33 facility shall be determined mathematically as follows: total
34 lease costs of the land, land improvements, fuel improvements,

1 and fuel equipment multiplied by the area, in square feet,
2 occupied the motor fuel facility (including fuel improvements
3 and fuel equipment, as well as the area of driveway entrances
4 and driveways utilized by motor fueling motorists in their
5 ingress to and egress from motor fueling facilities), divided
6 by the total area, in square feet, of the entire leased area of
7 land.

8 "Life insurance costs" means those costs associated with
9 providing life insurance on personnel related to the applicable
10 retail motor fuel facility.

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

27 "Market area" means a distance of 4 miles by road in
28 non-urban areas, a distance of 2.5 miles by road in a standard
29 metropolitan statistical area, and a distance of 60 miles by
30 road for truck stop outlets with more than 60% of fuel sales to
31 vehicles with gross weight of over 50,000 lbs.

32 "Market value of land" means the appraised valuation of the
33 land occupied by a retail motor fueling facility, such
34 appraisal to have been given by a certified, MAI Appraiser

1 sometime within a 48-month period before the date or within the
2 18-month period following the date that such appraisal is used
3 to document land holding costs under this Act.

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

7 "Oil Price Information Service (OPIS)" means the
8 independent reporting service located in the state of Maryland,
9 which provides daily reports of prices of refined motor fuel,
10 including the gasoline grades being sold as well as No. 2 low
11 sulfur clear diesel fuel that is widely accepted as an
12 independent fuel price benchmark for supply.

13 "Person" means any individual, club, firm, association,
14 organization, partnership, business, trust, joint-stock
15 company, company, corporation, or other entity, legal or
16 otherwise.

17 "Price gouging of motor fuel", "price gouging", or "motor
18 fuel price gouging" means the self-service sale of gasoline or
19 No. 2 low sulfur clear diesel fuel at retail in the State at a
20 price greater than the greater of the following: (1) the
21 regulated maximum retail cost price of motor fuel sold at the
22 time the motor fuel was sold, (2) 19 cents per gallon above the
23 retailer's actual costs of selling motor fuel per gallon at the
24 time the motor fuel was sold, or (3) 19 cents per gallon above
25 the retailer's actual costs of selling motor fuel per gallon
26 from a dedicated supplier at the time the motor fuel was sold.

27 "Property taxes" means taxes on land, real estate,
28 improvements, and personal property.

29 "Regional benchmark pricing service average price" for an
30 applicable retail motor fuel station means the average price of
31 all wholesale rack or terminal suppliers actively supplying and
32 offering for sale motor fuel within a 70-mile radius of the
33 motor fuel station being supplied, excluding, the one highest
34 priced terminal supplier within that 70-mile radius.

1 Notwithstanding the foregoing, in the event that there are not
2 at least 3 wholesale rack suppliers actively supplying and
3 offering for sale motor fuel within a 70-mile radius of a motor
4 fuel station being supplied, the radius shall be extended until
5 there are at least 3 such wholesale rack suppliers.

6 "Regulated maximum retail cost price of motor fuel sold" or
7 "regulated maximum price" relates to motor fuel sales at
8 self-service, and means the greater of: (1) the regulated
9 minimum retail cost price of motor fuel sold plus 19 cents per
10 gallon at the time the motor fuel was sold, (2) the regulated
11 minimum retail cost price of motor fuel sold from a dedicated
12 supplier plus 19 cents per gallon at the time the motor fuel
13 was sold, (3) the regulated minimum retail cost price of motor
14 fuel sold plus 19 cents per gallon at the time the motor fuel
15 was sold plus any extraordinary costs (on a per gallon basis)
16 incurred by the motor fuel retailer at or for the time the
17 motor fuel was sold, or (4) the regulated minimum retail cost
18 price of motor fuel sold from a dedicated supplier plus 19
19 cents per gallon plus any extraordinary costs (on a per gallon
20 basis) incurred by the motor fuel retailer at or for the time
21 the motor fuel was sold.

22 "Regulated minimum retail cost price of motor fuel sold" or
23 "regulated minimum price" means the lowest pump price that
24 includes a positive gross margin to the retailer of 6% over the
25 retailer's laid-in cost of motor fuel for the time in question.
26 As such the regulated minimum retail cost price of motor fuel
27 sold is the quotient of the applicable laid-in cost of motor
28 fuel divided by 0.94 (i.e. the sum of 1.00 minus the minimum
29 margin of 6%, or $1.00 - 0.06 = 0.94$). As an example, if the
30 laid-in cost of motor fuel on a given day is \$1.738, the
31 regulated minimum retail cost price of motor fuel sold for that
32 day is \$1.849, calculated as follows: \$1.738, laid-in cost
33 divided by 0.94, (gross margin factor of 6%), equals \$1.849.
34 Since laid-in cost of motor fuel includes taxes and fees

1 imposed on the sale of motor fuel at the pump (these taxes and
2 fees are, at the time of passage of this Act, State sales tax
3 of 6.25%, State motor fuel tax of \$0.19 per gallon,
4 Environmental Impact Fee of \$0.008 per gallon, and the Illinois
5 Underground Storage Tank Fee of \$0.003 per gallon), and since
6 the taxes and fees imposed on the sale of motor fuel at the
7 pump are both percentage taxes and flat taxes or fees (State
8 sales tax being a percentage tax and the remainder, at the time
9 of passage of this Act, being flat taxes and fees) and since
10 the State, at the time of passage of this Act, imposes sales
11 tax on only 2 of the 3 flat taxes (at the time of passage of
12 this Act, Illinois imposes sales tax on the Environmental
13 Impact Fee and the Illinois Underground Storage Tank Fee, but
14 does not impose sales tax on the State motor fuel tax), the
15 following is provided as an additional aid in calculating
16 regulated minimum price: THE FOLLOWING IS PROVIDED AS AN AID
17 ONLY AND THE FOLLOWING DOES NOT SHOW MUNICIPAL TAXES IMPOSED ON
18 THE SALE OF MOTOR FUEL THAT WOULD NEED TO BE INCLUDED TO THE
19 EXTENT APPLICABLE. IN THE EVENT THAT, AFTER THE DATE OF PASSAGE
20 OF THIS ACT, THERE ARE CHANGES IN THE AMOUNT, STRUCTURE,
21 CALCULATION, TIME OF IMPOSITION OR TYPE OF TAXES OR FEES
22 IMPOSED ON THE DELIVERY OF MOTOR FUEL TO A RETAILER, ON THE
23 PURCHASE OF MOTOR FUEL BY A RETAILER, OR ON THE SALE OF MOTOR
24 FUEL AT THE PUMP, THE REGULATED MINIMUM PRICE UNDER THIS ACT
25 SHALL REMAIN THE LOWEST PUMP PRICE THAT INCLUDES A POSITIVE
26 GROSS MARGIN TO THE RETAILER OF 6% OVER THE APPLICABLE LAID-IN
27 COST OF MOTOR FUEL, AS DEFINED IN THIS ACT, FOR THE TIME IN
28 QUESTION. Assume \$1.446 is the retailer's applicable laid-in
29 cost of motor fuel as defined in this Act, EXCLUDING TAXES AND
30 FEES IMPOSED ON THE SALE OF MOTOR FUEL AT THE PUMP. Further
31 assume the taxes and fees imposed on the sale of motor fuel at
32 the pump are: State motor fuel tax of \$0.19 per gallon,
33 Environmental Impact Fee of \$0.008 per gallon, Underground
34 Storage Tank Fee of \$0.003 per gallon, and State sales tax of

1 6.25%. Further assume that sales tax is levied on the entire
2 sale price, EXCEPT the State motor fuel tax of \$0.19 per
3 gallon. The regulated minimum price must include ALL taxes,
4 plus a 6% gross margin to the retailer. The regulated minimum
5 price is calculated as follows: Step (1) laid-in cost of motor
6 fuel, EXCLUSIVE OF STATE SALES TAX, is \$1.647 ($\$1.446 + \$0.19 +$
7 $\$0.008 + \$0.003 = \$1.647$). Step (2) laid-in cost of motor fuel,
8 EXCLUSIVE OF STATE SALES TAX, plus a 6% gross margin, equals
9 \$1.7521 ($\1.647 divided by $0.94 = \$1.7521$ [rounded to the
10 fourth decimal]). Step (3) sales tax, on the appropriate
11 taxable amount, equals \$0.0911 (0.0625 times $\$1.457$ [the sum of
12 $\$1.446 + \$0.008 + \$0.003$ is $\$1.457$] = $\$0.0911$ [rounded to the
13 fourth decimal]). Step (4) sales tax, plus a 6% gross margin
14 equals, \$0.0969 ($\0.0911 divided by $0.94 = \$0.0969$ [rounded to
15 the fourth decimal]). Step (5) the regulated minimum price is
16 \$1.849 ($\$1.7521 + \$0.0969 = \1.849).

17 "Regulated minimum retail cost price of motor fuel sold
18 from a dedicated supplier" or "regulated minimum price from a
19 dedicated supplier" is calculated the same as the regulated
20 minimum retail cost price of motor fuel sold, except that
21 laid-in cost of motor fuel is replaced by laid-in cost of motor
22 fuel originating from dedicated supplier.

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

28 "Regulatory compliance costs" means those costs incurred
29 by the motor fuel retailer to comply with regulations governing
30 the storage and sale of motor fuel at a retail facility,
31 including, but not limited to, costs associated with meter
32 accuracy, leak detection of tanks or piping, and corrosion
33 protection of tanks or piping, but only to the extent that such
34 costs are not already included in depreciation allowance on

1 fuel equipment.

2 "Relevant geographic market" means the geographic area of
3 effective competition.

4 "Retailer" means a person engaged in the business of
5 selling motor fuel to a member of the motoring public for
6 consumption.

7 "Sale" or "sell" means a transfer of money or other value
8 or combination, exchange, barter, gift, sale, offer for sale,
9 advertisement for sale, soliciting an order, and distribution
10 in any manner or by any means whatsoever, of motor fuel,
11 including a transfer of motor fuel by a person to another
12 person, or by a person to that person, to a member of that
13 person, or to an affiliate of that person.

14 "Sales tax" means the retailer's occupation tax, use tax,
15 or other applicable tax that may be imposed in connection with
16 the sale or use of motor fuel, whether it be imposed by or to
17 the benefit of the State of Illinois or a municipality thereof.

18 "Supply point" or "terminal facility" means any inland,
19 waterfront, or offshore appurtenance on land used for the
20 purpose of storing, handling, or transferring motor fuel, but
21 does not include, wholesale bulk storage facilities owned or
22 operated by a retailer, unless other retailers are also
23 supplied from such wholesale bulk storage facilities.

24 "Supplies expenses" means the costs of those items consumed
25 as part of a motor fuel facility operation that are not sold to
26 consumers or are not capitalized as an asset. Supplies include,
27 but are not limited to, windshield wash paper towels,
28 windshield wash solvent, squeegees, driveway oil absorbent,
29 funnels to assist customers in adding fluids to vehicles,
30 cleaning agents and materials (for floors, counters,
31 restrooms, food service equipment, etc.), mops, brooms,
32 printed forms, office copy paper, tape, paper clips, pens,
33 pencils, fuel and HVAC filters.

34 "Telecommunications expenses" means all communications

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

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

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

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

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

13 (c) During and in conjunction with the introduction period
14 of a new or improved motor fuel product, where coupon discounts
15 shall be permitted of up to \$2 off on the customer purchase of
16 10 or more gallons of such new or improved motor fuel, provided
17 that the redemptive acceptance of the permitted coupons is
18 limited in time to one calendar month within any given calendar
19 year;

20 (d) During a bona fide clearance sale or final business
21 liquidation sale, not exceeding one week in length, for the
22 purpose of discontinuing trade in such motor fuel. This
23 exception shall not be considered as the price of a competitor
24 and shall not be used as a basis for establishing a below cost
25 sale by another retailer;

26 (e) During a sale of motor fuel by a fiduciary or other
27 officer under the order or direction of any court from a good
28 faith effort to dispose of a grade, brand, or blend of motor
29 fuel. This exception shall not be considered as the price of a
30 competitor and shall not be used as a basis for establishing a
31 below cost sale by another retailer;

32 (f) Where motor fuel is advertised, offered for sale, or
33 sold as imperfect or damaged, and the advertising, offer for
34 sale, or sale shall state the reason and the quantity of such

1 motor fuel advertised, offered for sale, or to be sold; or

2 (g) Where such sale is both an isolated and inadvertent
3 incident.

4 Section 25. Rebates, discounts, gifts, premiums,
5 promotional items, and other concessions subtracted from
6 retail price.

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

22 (b) Concessions offered, given, issued, distributed,
23 provided or paid in connection with the sale of or payment for
24 motor fuel at retail, up to a total concession not to exceed 5%
25 of the total motor fuel sale, shall not be subtracted from the
26 retail fuel price in determining whether the retailer is
27 selling below cost if: (1) the concession is not given, issued,
28 distributed, provided, or paid by the motor fuel retailer or an
29 affiliate of the motor fuel retailer; (2) the cost of the
30 concession is borne by a person other than the motor fuel
31 retailer or an affiliate of the motor fuel retailer; and (3)
32 the concession does not reduce the pump price and does not
33 reduce the net amount paid for the motor fuel at the time and

1 place of sale, but, rather the concession is provided or
2 applied separate from the time and place of sale of motor fuel.
3 A motor fuel retailer shall not be deemed to bear the cost of a
4 concession by the motor fuel retailer's agreement to pay or
5 payment of a standard bank, credit or payment card processing
6 fee of less than or equal to 3% of the motor fuel sale plus
7 \$0.10 per card transaction (hereinafter referred to as
8 "allowable card transaction processing fee"), provided that
9 such allowable card transaction processing fee includes any and
10 all costs borne by the retailer in connection with the use of
11 the bank, credit or payment card to pay for the motor fuel
12 sale. In addition, a motor fuel retailer shall not be deemed to
13 bear the cost of a concession by the motor fuel retailer's
14 agreement to pay or payment of a bank, credit or payment card
15 having a processing fee in excess of the allowable card
16 transaction processing fee if the retailer can demonstrate, to
17 the satisfaction of the Motor Fuel Review Board, that the
18 processing fee paid by the retailer in excess of the allowable
19 card transaction processing fee is not due or related to the
20 concession, but rather is the standard processing fee of the
21 particular bank, credit or payment card provider to which the
22 fee is paid.

23 (c) If a concession meets all the requirements under
24 subsection (b) of this Section for not being subtracted from
25 the motor fuel retail price in determining whether the motor
26 fuel retailer is selling below cost, except that the
27 concession, or the sum of all concessions, exceeds 5% of the
28 motor fuel sale ("excessive concessions"), that portion of the
29 concession that exceeds 5% of the sale shall be subtracted from
30 the retail motor fuel price in determining whether the motor
31 fuel retailer is selling below cost, unless all of the
32 following additional conditions are met: (1) the excessive
33 concession was offered, given, issued, distributed, provided
34 or paid by a person other than the motor fuel retailer or an

1 affiliate of the motor fuel retailer and without the advance
2 knowledge or consent and beyond the reasonable control of the
3 motor fuel retailer; (2) within 30 days after the motor fuel
4 retailer first knows or reasonably should know about the
5 excessive concession, the motor fuel retailer delivers a
6 written request to the person offering, giving, issuing,
7 distributing, providing or paying the excessive concession
8 that such person discontinue any and all excessive concessions;
9 and (3) if, after 90 days following the motor fuel retailer's
10 written request that such person discontinue the excessive
11 concession, the motor fuel retailer knows or reasonably should
12 know that such person has not discontinued the excessive
13 concession, the motor fuel retailer shall take all reasonable
14 and necessary actions that the motor fuel retailer can, in good
15 faith, take to discontinue any involvement in, participation in
16 or facilitation of the excessive concession by the motor fuel
17 retailer. If the motor fuel retailer's only involvement in the
18 excessive concession is the retailer's acceptance of a
19 particular bank, credit, or other payment card as payment for
20 motor fuel sales, the retailer shall stop accepting such
21 particular bank, credit or other payment card as payment for
22 motor fuel sales, unless the retailer cannot stop accepting
23 such particular card without being required to stop accepting
24 cards of card providers that are not offering, giving, issuing,
25 distributing, providing or paying excessive concessions, in
26 which event the excessive concession of the particular card
27 provider shall not be subtracted from the retail motor fuel
28 price in determining whether the motor fuel retailer is selling
29 below cost if the motor fuel retailer, within 120 days after
30 the motor fuel retailer's request to the particular card
31 provider to discontinue the excessive concession, shall send
32 written notice to the Department of Revenue at an address
33 specified by the Department stating: (a) the identity of the
34 person offering, giving, issuing, distributing, providing or

1 paying excessive concessions, and (b) the motor fuel retailer's
2 inability to discriminately stop accepting the card of the
3 person offering, giving, issuing, distributing, providing or
4 paying the excessive concession.

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

6 (a) A Motor Fuel Cost Review Board shall be established to
7 consider matters brought before the Board relating to issues of
8 motor fuel price gouging and below-cost selling including the
9 selection of the entity to provide benchmark pricing services
10 as provided for in this Act.

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

1 representative, about complaints and matters relating to price
2 gouging below cost selling, reports of excessive concessions,
3 and the activities of the Department.

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

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

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

1 dates, the regulated minimum price of the complaining retailer
2 for each applicable date, with documentation supporting the
3 complaining retailer's computed regulated minimum price for
4 each such date. Within 30 days after receipt of the complaint,
5 the Department shall give written notice of the complaint to
6 the alleged violator. Such notice shall include a copy of the
7 complaint and all documentation filed. The alleged violator
8 shall have 60 days from the date of the notice to respond to
9 the Department with evidence that the alleged violator, for any
10 and all periods of time subject to the complaint, and for any
11 and all periods of time following the last date named in the
12 complaint to the date of the notice, was not selling below its
13 regulated minimum price, or that any sale below the regulated
14 minimum price meets one of the exceptions under subsections (a)
15 through (f) of Section 20. The Department shall have 90 days
16 from the date of the Department's receipt of the alleged
17 violator's response to provide to the complainant and to the
18 alleged violator written findings of: (i) whether the
19 complaining retailer has made a prima facie showing in its
20 complaint that the alleged violator sold below the complaining
21 retailer's regulated minimum price, and, if such prima facie
22 showing is made, then (ii), whether the alleged violator has
23 proven in its response, by a preponderance of the evidence,
24 that it did not sell below its regulated minimum price, or that
25 it meets one of exceptions provided under Section 20.

26 (b) If the Department finds: (i) that the complainant has
27 failed to make a prima facie showing under subsection (a), (ii)
28 that the alleged violator has proven either an exception under
29 Section 20, or (iii) that it did not sell below its regulated
30 minimum price, the complaint shall be closed. If the Department
31 finds that the complainant has made the required prima facie
32 showing and that the alleged violator has neither rebutted that
33 showing nor proven an exception under Section 20, the alleged
34 violator shall be given the opportunity to provide full

1 disclosure and cost-accounting documentation that it did not
2 sell below cost. Certified by either a certified managerial
3 accountant or certified public accountant hired by the alleged
4 violator, the alleged violator shall file such documentation
5 with the Department within 90 days after the date of the
6 Department's written findings under subsection (a), and shall,
7 on the same day, serve the complainant with a copy. The
8 Department shall then have a period of 180 days in which to
9 review the data provided by the alleged violator, during which
10 time the Department may, at its option, submit the matter to
11 the Motor Fuel Cost Review Board for advisory comment. At any
12 time during this 180-day period, the Department may request
13 further data and clarification from the alleged violator, and
14 the alleged violator shall have a period of 60 days after each
15 additional request in which to respond with service of a copy
16 of each additional response upon the complainant. After the
17 final response, the Department shall have an additional period
18 of 180 days in which to review the supplemental data. If the
19 Department finds that the documentation provided by the alleged
20 violator proves by a preponderance of the evidence that it did
21 not sell below cost, then the complaint shall be closed. If the
22 Department shall find otherwise, or if the alleged violator
23 shall fail to provide data and documentation to support that it
24 did not sell below cost, the Department shall conclude that the
25 alleged violator violated this Act. The Department shall
26 promptly provide written notice to the alleged violator and the
27 complainant of the Department's conclusion, and fine the
28 violator in accordance with this Act.

29 (c) If the alleged violator fails or refuses to respond in
30 a timely manner to the requests of the Department or fails to
31 pay fines to the Department within 30 days after notice of the
32 imposition of a fine, the Department shall refer the matter to
33 the Office of the Illinois Attorney General for prosecution.
34 Upon receipt of such referral, the Office of the Illinois

1 Attorney General, or at its discretion, the State's Attorney
2 for the county in which the alleged below-cost sale occurred,
3 shall commence a civil action to enforce the findings of and
4 fines imposed by the Department. While the civil action is
5 pending, the Attorney General or the State's Attorney shall
6 seek to enjoin the violator from below cost pricing, and upon a
7 proper showing, a temporary restraining order, preliminary
8 injunction, or permanent injunction shall be issued without the
9 necessity of a bond.

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

33 (e) Any person in competition with a person suspected of
34 below cost selling or threatening to sell below cost under this

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

1 below the plaintiff's regulated minimum price, or if the
2 defendant proves that the plaintiff's calculation of
3 plaintiff's regulated minimum price was inaccurate, the court
4 may award court costs and reasonable attorney's fees to the
5 defendant.

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

10 (g) If any action is brought for a violation of a
11 below-cost sale, the burden of proof, upon a prima facie
12 showing of a violation, shall shift to the defendant to show
13 justification. A prima facie showing of a violation shall be
14 made if the plaintiff shows that the retail price of motor fuel
15 of the defendant-retailer was below the regulated minimum
16 retail cost price of motor fuel sold of the plaintiff retailer.
17 Unless justification is shown by the defendant by a
18 preponderance of the evidence, the court shall award judgment
19 to the plaintiff.

20 Section 40. Remedies and penalties for price gouging.

21 (a) Complaints of price gouging shall be made to the
22 Department of Revenue, specifying the name and address of each
23 retail location subject to the complaint, and the pricing at
24 each location on applicable dates that the violations are
25 alleged to have occurred. Within 30 days of receipt of the
26 complaint, the Department shall make contact with the alleged
27 violator, and the alleged violator shall have 60 days after
28 receipt of notice in which to provide evidence that for any and
29 all periods of time subject to the complaint, and for any and
30 all periods of time from the date of the last violation alleged
31 in the complaint to the date of the notice, the alleged
32 violator was not pricing above the regulated maximum price.
33 Upon a prima facie showing that the alleged violator sold or

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

1 fine the violator in accordance with this Act.

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

15 (c) Any person who is found to have committed a violation
16 of price gouging, as defined by this Act, shall be subject to a
17 civil penalty not to exceed \$5,000 per violation for each
18 offense. Any such violator shall also be liable for the fees of
19 accountants, expert witness fees, and investigative expenses,
20 incurred by the State, if the State prevails in an action under
21 this Act. Each day that a violation of price gouging under this
22 Act occurs is considered a separate violation. If brought by a
23 State's Attorney, the entire amount of the fine shall be paid
24 to the treasury of the county in which the judgment was
25 entered. If brought by the Attorney General, one-half of the
26 penalty shall be paid to the treasury of the county where the
27 action was brought and one-half shall be paid to the State
28 Treasury, earmarked for the Attorney General's State Project
29 and Court Order Distribution Fund. Fines paid to the Department
30 without involvement of the Attorney General shall go to the
31 General Revenue Fund.

32 Section 45. Illegal contracts. Any contract, express or
33 implied, made by any person in violation of any of the

1 provisions of this Act is illegal and void, and recovery shall
2 not be awarded.

3 Section 50. Recordkeeping.

4 (a) Persons engaged in commerce within this State who sell
5 or offer to sell motor fuel shall maintain records accurately
6 indicating the date and the time of day of each change in the
7 sale price of motor fuel and the identity of the person who
8 recorded the price change. In the event the change in price is
9 to meet a lower price of a competitor, the record shall set
10 forth the competitor's name and address, specifying the price
11 which was met. These records shall be maintained for a period
12 of 3 years.

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

15 Section 55. Witnesses; production of books and records. Any
16 defendant, or any witness, in any civil action brought under
17 the provisions of this Act may be required to testify, and any
18 defendant, or any witness, may, upon proper process, be
19 compelled to produce his books, records, invoices, and all
20 other documents of any such defendant or witness into court and
21 the same may be introduced as evidence, but no testimony given
22 or produced shall be received against such defendant upon any
23 criminal proceeding or investigation against the defendant.

24 Section 60. Trade association may file suit. Any duly
25 organized and existing trade association, whether incorporated
26 or not, is authorized to institute and prosecute a suit or
27 suits for injunctive relief and costs provided for under the
28 terms of this Act, as the real party in interest for and on
29 behalf of one or more of the association's members, when a
30 violation of this Act directly or indirectly affects or
31 threatens to affect or injure such member or members, or where

1 violation of this Act threatens to impair fair competition or
2 otherwise affects the member.

3 Section 65. Limitations period. Any action brought by the
4 Attorney General or any State's Attorney shall be brought
5 within 2 years after the alleged violation occurred or should
6 reasonably have been discovered. Any action brought by any
7 other person or entity shall be brought within 3 years after
8 the alleged violation occurred or should reasonably have been
9 discovered.

10 Section 70. Powers and duties.

11 (a) The Department of Revenue has the following powers and
12 duties:

13 (1) to investigate complaints regarding violations of
14 this Act;

15 (2) to seek injunctive relief as appropriate;

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

17 (4) to determine what rates of compensation are usual
18 and customary for certified managerial or cost accountants
19 practicing in the State, and to set the hourly fee of the
20 managerial or cost-accountant serving on the Motor Fuel
21 Cost Review Board; and

22 (5) to select the entity to provide the benchmark
23 pricing services provided for in conjunction with this Act.

24 The following criteria shall be utilized to choose the
25 benchmark pricing service provider from the alternatives
26 available at the time of choosing: (i) which entity
27 provides for the most complete coverage of wholesale
28 terminal suppliers not only within the State, but also
29 within neighboring states having wholesale supply rack or
30 terminals within the area relevant to the calculation of
31 the regional benchmark pricing service average price, (ii)
32 which entity will make its information the easiest to

1 access for Illinois motor fuel retailers and the
2 Department, and (iii) which entity will make access to its
3 information the least costly for Illinois motor fuel
4 retailers and the Department. The Department shall
5 coordinate presentations to be made by the available
6 reporting services to the Department and to the Motor Fuel
7 Cost Review Board. The Motor Fuel Cost Review Board shall
8 provide an advisory recommendation to the Department as to
9 the benchmark service provider to be selected or what
10 performance standards should be required of the service
11 provider to be selected. The Department will then utilize
12 this advisory input to make the selection of the benchmark
13 pricing service and to develop performance
14 responsibilities for the benchmark pricing service. Any
15 benchmark service provider selected in this manner shall
16 remain the benchmark service provider under this Act for at
17 least 24 months without formal review of other providers,
18 unless such benchmark service provider defaults on its
19 obligations, or unless two-thirds of the Motor Fuel Cost
20 Review Board votes to reactivate the selection process to
21 reconvene.

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

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

26 (2) to seek injunctive relief as appropriate;

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

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

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

33 Section 75. Confidentiality.

1 (a) Information obtained by the Department, Attorney
2 General, or State's Attorney in the course of an investigation
3 under this Act, including information from a person who
4 responds to the investigation and designates the information as
5 confidential, must be maintained as confidential until the
6 investigation is completed and a course of action is
7 determined. Neither the Department, Attorney General, or
8 State's Attorney may make known in any manner information
9 obtained in the course of the investigation to persons other
10 than those specified in subsection (c) of this Section or the
11 members of the Motor Fuel Cost Review Board. Once the
12 investigation is completed, if there is a settlement or if a
13 civil action is filed, the information may be made public.

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

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

25 (d) A person who is served a subpoena with a request for
26 information, to give testimony orally or in writing, or to
27 produce books, papers, correspondence, memoranda, agreements,
28 or other documents or records under this Act may apply to the
29 appropriate circuit court for protection against abuse or undue
30 hardship.

31 Section 80. Banning of government subsidies for motor fuel
32 marketers.

33 (a) It is the policy of this State that no development

1 containing a facility for selling motor fuel shall receive any
2 government subsidy, State or local, to aid in the cost of
3 development, when the motor fuel facility being developed would
4 be in competition with another Illinois-based facility within
5 the same market area.

6 (b) For any facility that has been built with any
7 government subsidy, before a motor fuel facility shall be added
8 to, about, or in affiliation with such facility, all government
9 subsidies received before, shall be paid back to each
10 governmental body providing any such subsidy.

11 (c) Any competitor of a person suspected of receiving a
12 government subsidy in violation of this Act shall have standing
13 to prosecute a civil action to enjoin a violation of this
14 Section and to compel restitution of any such subsidy received
15 or government monies foregone in violation of this Section.

16 Section 85. Severability. If any provision of this Act or
17 its application to any person or circumstance is held invalid,
18 the invalidity of that provision or application does not affect
19 other provisions or applications of this Act that can be given
20 effect without the invalid provision or application.

21 Section 90. Rulemaking authority and duty to inform. The
22 Department of Revenue may issue rules to administer and enforce
23 this Act. The Department shall also have the duty to inform
24 motor fuel marketers of this Act, including the requirements
25 not to sell below cost and not to engage in price gouging,
26 though failure to receive such notice shall not be a defense
27 under this Act. This duty shall be performed by the following:
28 (1) between the time that the Act is signed into law and its
29 effective date, the Department of Revenue shall issue written
30 notification to all persons who are currently filing motor fuel
31 tax returns, as well as all persons listed on prepaid sales tax
32 forms as being retailers from whom prepaid sales taxes have

1 been collected on motor fuels, informing them of this Act, and
2 the requirements not to sell below cost and not to engage in
3 price gouging as defined in this Act, (2) within one year of
4 the effective date of this Act, the Department shall have
5 revised and issued forms requiring filers of motor fuel tax
6 returns to certify their awareness of the Motor Fuel Fair
7 Marketing Practices Act, including the requirements not to sell
8 below cost and not to engage in price gouging, and (3) at the
9 time that new motor fuel licenses are issued, the Department
10 shall include a notice of the existence of this Act, such
11 notice including the requirements not to sell below cost and
12 not to engage in price gouging.

13 Section 95. Appropriations. The Department of Revenue and
14 Office of the Illinois Attorney General shall request, by way
15 of appropriations, the costs and expenses necessary to comply
16 with this Act."