



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB4119

Introduced 10/03/05, by Rep. Bill Mitchell

SYNOPSIS AS INTRODUCED:

New Act

815 ILCS 505/2Z

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

815 ILCS 505/10a

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

Creates the Consumer Protection Fuel Price Gouging Act. Provides that it is unlawful for any motor-fuel vendor to sell or offer to sell motor fuel within the State at a price that is increased because of the vendor's knowledge of a perceived disruption in the motor-fuel market. An increase in the price of motor fuel is rebuttably presumed to be based upon the vendor's knowledge of a perceived disruption in the motor-fuel market if: (1) the increased amount charged over any 7-day period represents a gross disparity between the average price at which the motor fuel was readily obtainable within the vendor's trade area during the previous 45 days; and (2) the increase in the amount charged is not attributable to cost factors to the vendor, including replacement costs, taxes, and transportation costs incurred by the vendor. Provides that a violation of this Act constitutes a violation of the Consumer Fraud and Deceptive Business Practices Act, but nothing in this Act creates a private cause of action in favor of any person damaged by a violation of this Act. Requires the Attorney General to investigate a motor-fuel vendor if the Attorney General receives 5 or more complaints against that motor-fuel vendor alleging violations of this Act. Preempts home rule. Amends the Consumer Fraud and Deceptive Business Practices Act to make corresponding changes. Effective immediately.

LRB094 14140 BDD 49230 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning motor fuel.

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

4 Section 1. Short title. This Act may be cited as the
5 Consumer Protection Fuel Price Gouging Act.

6 Section 5. Definitions. As used in this Act:

7 "Distributor" has the definition set forth in Section 1.2
8 of the Motor Fuel Tax Law.

9 "Motor fuel" has the definition set forth in Section 1.1 of
10 the Motor Fuel Tax Law.

11 "Motor-fuel vendor" or "vendor" means a distributor,
12 supplier, receiver, reseller, or retailer.

13 "Receiver" has the definition set forth in Section 1.20 of
14 the Motor Fuel Tax Law.

15 "Reseller" has the definition set forth in Section 1.21 of
16 the Motor Fuel Tax Law.

17 "Retailer" means a person who holds himself or herself out
18 as being engaged (or who habitually engages) in selling motor
19 fuel at retail.

20 "Supplier" has the definition set forth in Section 1.14 of
21 the Motor Fuel Tax Law.

22 Section 10. Unconscionable motor-fuel prices prohibited.

23 (a) It is unlawful for any motor-fuel vendor to sell or
24 offer to sell motor fuel within the State at a price that is
25 increased because of the vendor's knowledge of a perceived
26 disruption in the motor-fuel market.

27 (b) An increase in the price of motor fuel is rebuttably
28 presumed to be based upon the vendor's knowledge of a perceived
29 disruption in the motor-fuel market if:

30 (1) the increased amount charged over any 7-day period
31 represents a gross disparity between the average price at

1 which the motor fuel was readily obtainable within the
2 vendor's trade area during the previous 45 days; and

3 (2) the increase in the amount charged is not
4 attributable to cost factors to the vendor, including
5 replacement costs, taxes, and transportation costs
6 incurred by the vendor.

7 (c) A price increase approved by an appropriate government
8 agency is not a violation of this Section.

9 Section 15. Construction with the Consumer Fraud and
10 Deceptive Business Practices Act; mandatory investigations.

11 (a) A violation of this Act constitutes a violation of the
12 Consumer Fraud and Deceptive Business Practices Act, and the
13 Attorney General may take any action consistent with the
14 provisions of that Act. Notwithstanding Section 10a of the
15 Consumer Fraud and Deceptive Business Practices Act, however,
16 nothing in this Act creates a private cause of action in favor
17 of any person damaged by a violation of this Act, but
18 individuals may make a complaint to the Attorney General
19 alleging a violation of this Act.

20 (b) If the Attorney General receives 5 or more complaints
21 against any motor-fuel vendor, then the Attorney General must
22 investigate that vendor to determine whether the vendor has
23 violated the provisions of this Act.

24 Section 20. Home rule. A unit of local government,
25 including a home rule unit, may not regulate the price of motor
26 fuel in a manner that is inconsistent with the provisions of
27 this Act. This Section is a limitation under subsection (i) of
28 Section 6 of Article VII of the Illinois Constitution on the
29 concurrent exercise by home rule units of powers and functions
30 exercised by the State.

31 Section 900. The Consumer Fraud and Deceptive Business
32 Practices Act is amended by changing Sections 2Z and 10a as
33 follows:

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

2 Sec. 2Z. Violations of other Acts. Any person who knowingly
3 violates the Automotive Repair Act, the Automotive Collision
4 Repair Act, the Home Repair and Remodeling Act, the Dance
5 Studio Act, the Physical Fitness Services Act, the Hearing
6 Instrument Consumer Protection Act, the Illinois Union Label
7 Act, the Job Referral and Job Listing Services Consumer
8 Protection Act, the Travel Promotion Consumer Protection Act,
9 the Credit Services Organizations Act, the Automatic Telephone
10 Dialers Act, the Pay-Per-Call Services Consumer Protection
11 Act, the Telephone Solicitations Act, the Illinois Funeral or
12 Burial Funds Act, the Cemetery Care Act, the Safe and Hygienic
13 Bed Act, the Pre-Need Cemetery Sales Act, the High Risk Home
14 Loan Act, the Payday Loan Reform Act, subsection (a) or (b) of
15 Section 3-10 of the Cigarette Tax Act, the Payday Loan Reform
16 Act, subsection (a) or (b) of Section 3-10 of the Cigarette Use
17 Tax Act, the Electronic Mail Act, paragraph (6) of subsection
18 (k) of Section 6-305 of the Illinois Vehicle Code, Article 3 of
19 the Residential Real Property Disclosure Act, the Automatic
20 Contract Renewal Act, the Consumer Protection Fuel Price
21 Gouging Act, or the Personal Information Protection Act commits
22 an unlawful practice within the meaning of this Act.

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

26 (815 ILCS 505/10a) (from Ch. 121 1/2, par. 270a)

27 Sec. 10a. Action for actual damages.

28 (a) Any person who suffers actual damage as a result of a
29 violation of this Act committed by any other person may bring
30 an action against such person. The court, in its discretion may
31 award actual economic damages or any other relief which the
32 court deems proper; provided, however, that no award of
33 punitive damages may be assessed under this Section against a
34 party defendant who is a new vehicle dealer or used vehicle

1 dealer within the meaning of Chapter 5 of the Illinois Vehicle
2 Code or who is the holder of a retail installment contract
3 within the meaning of Section 2.12 of the Motor Vehicle Retail
4 Installment Sales Act, unless the conduct engaged in was
5 willful or intentional and done with evil motive or reckless
6 indifference to the rights of others. Proof of a public injury,
7 a pattern, or an effect on consumers and the public interest
8 generally shall be required in order to state a cause of action
9 under this Section against a party defendant who is a new
10 vehicle dealer or used vehicle dealer within the meaning of
11 Chapter 5 of the Illinois Vehicle Code or who is the holder of
12 a retail installment contract within the meaning of Section
13 2.12 of the Motor Vehicle Retail Installment Sales Act. Proof
14 of such public injury may be shown by any one of the following
15 factors:

16 (1) Violation of a statute that has a public interest
17 impact.

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

20 (3) Potential for repetition.

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

25 (c) Except as provided in subsections (f), (g), and (h) of
26 this Section, in any action brought by a person under this
27 Section, the Court may grant injunctive relief where
28 appropriate and may award, in addition to the relief provided
29 in this Section, reasonable attorney's fees and costs to the
30 prevailing party.

31 (d) Upon commencement of any action brought under this
32 Section the plaintiff shall mail a copy of the complaint or
33 other initial pleading to the Attorney General and, upon entry
34 of any judgment or order in the action, shall mail a copy of
35 such judgment or order to the Attorney General.

36 (e) Any action for damages under this Section shall be

1 forever barred unless commenced within 3 years after the cause
2 of action accrued; provided that, whenever any action is
3 brought by the Attorney General or a State's Attorney for a
4 violation of this Act, the running of the foregoing statute of
5 limitations, with respect to every private right of action for
6 damages which is based in whole or in part on any matter
7 complained of in said action by the Attorney General or State's
8 Attorney, shall be suspended during the pendency thereof, and
9 for one year thereafter.

10 (f) At any time more than 30 days before the commencement
11 of trial, a party, who is a new vehicle dealer or used vehicle
12 dealer within the meaning of Chapter 5 of the Illinois Vehicle
13 Code or who is the holder of a retail installment contract
14 within the meaning of Section 2.12 of the Motor Vehicle Retail
15 Installment Sales Act and who is defending a claim under this
16 Act, may serve upon the party seeking relief under this Act an
17 offer to allow judgment to be taken against the defending party
18 to the effect specified in the offer with costs then accrued.
19 If within 10 days after service of the offer, the offeree
20 serves written notice that the offer is accepted, either party
21 may then file the offer and notice of acceptance together with
22 proof of service of the notice; the court shall then enter
23 judgment. An offer not accepted shall be deemed withdrawn and
24 evidence of the offer is not admissible except in a proceeding
25 to determine costs. When a party seeking relief under this Act
26 does not accept an offer filed with the clerk and served upon
27 the attorney for that party more than 30 days before the
28 commencement of trial and when that party fails to obtain a
29 judgment in an amount more than the total offer of settlement,
30 that party shall forfeit and the court may not award any
31 compensation for attorney's fees and costs incurred after the
32 date of the offer.

33 (g) At any time more than 30 days before the commencement
34 of trial, a party who is seeking relief under this Act from a
35 new vehicle dealer or used vehicle dealer within the meaning of
36 Chapter 5 of the Illinois Vehicle Code or from the holder of a

1 retail installment contract within the meaning of Section 2.12
2 of the Motor Vehicle Retail Installment Sales Act may serve the
3 dealer or holder an offer to allow judgment to be taken against
4 the dealer or holder to the effect specified in the offer with
5 costs then accrued. If within 10 days after service of the
6 offer, the offeree serves written notice that the offer is
7 accepted, either party may then file the offer and notice of
8 acceptance together with proof of service of the notice; the
9 court shall then enter judgment. An offer not accepted shall be
10 deemed withdrawn and evidence of the offer is not admissible
11 except in a proceeding to determine costs. When a dealer or
12 holder does not accept an offer filed with the clerk and served
13 upon the attorney for the dealer or holder more than 30 days
14 before the commencement of trial and if the party seeking
15 relief against a dealer or holder obtains a judgment in an
16 amount equal to or in excess of the offer amount, the party
17 seeking relief shall be paid interest on the offer amount at
18 the rate as provided in Section 2-1303 of the Code of Civil
19 Procedure from the date of the offer until the judgment is
20 paid.

21 (h) At least 30 days prior to the filing of an action under
22 this Section, a party who is seeking relief shall serve a
23 written notice of the nature of the alleged violation and
24 demand for relief upon the prospective party, who is a new
25 vehicle dealer or used vehicle dealer within the meaning of
26 Chapter 5 of the Illinois Vehicle Code or who is the holder of
27 a retail installment contract within the meaning of Section
28 2.12 of the Motor Vehicle Retail Installment Sales Act, against
29 whom such action will be commenced. Any person receiving such a
30 demand for relief may, within 30 days of service of the demand
31 for relief, submit a written offer of settlement, which offer
32 is to be exclusive of attorney's fees, to the party serving the
33 notice and demand. The party who is seeking relief must certify
34 in any cause of action that the notice and demand was served
35 upon the named defendants and the substance of their response,
36 if any. If the offer of settlement is rejected in writing by

1 the party who is seeking relief, then, in any subsequent
2 action, the court shall deny any award of attorney's fees and
3 costs requested by the party seeking relief under this Act
4 incurred after the rejection of the written offer of
5 settlement, if the judgment is less than the amount contained
6 within the offer of settlement. All written offers of
7 settlement under this subsection shall be presumed to be
8 offered without prejudice in compromise of a disputed matter.

9 (i) This Section does not apply to any violation of the
10 Consumer Protection Fuel Price Gouging Act.

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

12 Section 999. Effective date. This Act takes effect upon
13 becoming law.