

HOUSE BILL No. 2304

By Representative Patterson

2-12

AN ACT concerning sale of motor fuel; relating to certain prohibited acts; civil penalties; duties of division of weights and measures and attorney general; private remedy.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) Except as otherwise provided, no marketer or retailer of motor fuel shall sell or offer for sale, by posted price or indicating meter, motor fuel at a price below cost.

(b) The provisions of this section shall not apply to: (1) Any sales or offers to sell made during a grand opening, sales or offers to sell made to introduce a new or remodeled business or sales or offers to sell made during special promotions, not to exceed three days per calendar quarter; or

(2) any sales or offers to sell made in good faith to meet an equally low retail price, net of any discounts received at the time of sale, of a competitor selling motor fuel of like grade as required by federal or state law, within the same or adjacent municipality.

(c) As used in this section, "cost" means product cost and actual freight or transportation costs plus applicable taxes and fees pursuant to federal, state and local law or if such costs are unavailable then "cost" means the invoice price or the lowest terminal price on the day at the terminal from which the most recent supply of motor fuel delivered to the retail location was acquired as published by a nationally recognized petroleum price reporting service and actual freight or transportation costs plus applicable taxes and fees pursuant to federal, state and local law.

(d) If the division of weights and measures of the department of agriculture receives a complaint and has reason to believe that a marketer or retailer has violated the provisions of this act, the division shall promptly contact the marketer or retailer and demand that such marketer or retailer raise their price of motor fuel to comply with the provisions of this act. Within 10 business days, the division shall investigate and determine whether the allegations contained in the complaint are still true. If so the marketer or retailer who is the subject of the complaint shall provide the division with all records and documentation requested in order

1 for the division to determine if a violation of the act has occurred. The
2 division shall take out of service any pumps of any marketer or retailer
3 who fails to comply with the division's request for records and documen-
4 tation as provided in this act. If the division determines that the marketer
5 or retailer is violating the provisions of this act, the division shall notify
6 the attorney general of such violation and provide the attorney general
7 with all records, documentation and findings of the division related to
8 such violation.

9 (e) The attorney general may bring an action: (1) To obtain a declar-
10 atory judgment that a violation of the provisions of this act has occurred;

11 (2) to enjoin, or to obtain a restraining order against a marketer or
12 retailer who has violated, is violating or is otherwise likely to violate the
13 provisions of this act;

14 (3) to recover any penalty as provided by the provisions of this act;
15 and

16 (4) to recover reasonable expenses and investigation fees of the di-
17 vision of weights and measures and the attorney general.

18 (f) Any violation of the provisions of this section shall render the
19 violator liable for the payment of a civil penalty in a sum of \$5,000 for
20 each violation. Any such violation of this act not identified to be in con-
21 nection with a specific identifiable consumer transaction but which is
22 continuing in nature shall be deemed a separate violation each day such
23 violation occurs.

24 (g) A marketer or retailer of motor fuel aggrieved by a violation of
25 the provisions of this act may bring an action to: (1) Obtain a declaratory
26 judgment that a violation of the provisions of this act has occurred;

27 (2) enjoin or obtain a restraining order against a marketer or retailer
28 who has violated, is violating or is otherwise likely to violate the provisions
29 of this act; or

30 (3) recover court costs and, if applicable, reasonable attorney fees.

31 Sec. 2. This act shall take effect and be in force from and after its
32 publication in the statute book.

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