

Substitute for HOUSE BILL No. 2928

By Committee on Commerce and Labor

3-19

9 AN ACT concerning sale of motor fuel; relating to certain prohibited
10 acts; civil penalties; duties of division of weights and measures and
11 attorney general; private remedy; amending K.S.A. 2003 Supp. 55-427
12 and repealing the existing section.
13

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

15 New Section 1. (a) Except as otherwise provided, no marketer or
16 retailer of motor fuel shall sell or offer for sale, by posted price or indi-
17 cating meter, motor fuel at a price below cost.

18 (b) The provisions of this section shall not apply to: (1) Any sales or
19 offers to sell made during a grand opening, sales or offers to sell made
20 to introduce a new or remodeled business or sales or offers to sell made
21 during special promotions, final liquidation of a business, bona fide clear-
22 ance sales and court ordered sales, not to exceed three days per calendar
23 quarter; or

24 (2) any sales or offers to sell made in good faith to meet an equally
25 low retail price of a competitor in the ordinary course of trade or the
26 usual conduct of business selling motor fuel of like grade as required by
27 federal or state law.

28 (c) As used in this section, "cost" means product cost and actual
29 freight or transportation costs plus applicable taxes and fees pursuant to
30 federal, state and local law and any credit card processing fees or if such
31 costs are unavailable then "cost" means the average of the three lowest
32 prices posted by suppliers on the day at the terminal from which the most
33 recent supply of motor fuel delivered to the retail location was acquired
34 as published by a nationally recognized petroleum price reporting service
35 and actual freight offered from a common carrier for hire designated for
36 the terminal from which the most recent supply of motor fuel delivered
37 to the retail location, plus applicable taxes and fees pursuant to federal,
38 state and local law and any credit card processing fees.

39 (d) If the division of weights and measures of the department of ag-
40 riculture receives a complaint and has reason to believe that a marketer
41 or retailer has violated the provisions of this act, the division shall
42 promptly contact the marketer or retailer and demand that such marketer
43 or retailer raise their price of motor fuel to comply with the provisions of

1 this act. Within 10 business days, the division shall investigate and deter-
2 mine whether the allegations contained in the complaint are still true. If
3 valid, the marketer or retailer who is the subject of the complaint shall
4 provide the division with all records and documentation requested in
5 order for the division to determine if a violation of the act has occurred.
6 The division shall take out of service any pumps of any marketer or retailer
7 who fails to comply with the division's request for records and documen-
8 tation as provided in this act. If the division determines that the marketer
9 or retailer is violating the provisions of this act, the division shall notify
10 the attorney general of such violation and provide the attorney general
11 with all records, documentation and findings of the division related to
12 such violation.

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

15 (2) to obtain temporary or permanent injunctive relief against a mar-
16 keter or retailer who has violated, is violating or is otherwise likely to
17 violate the provisions of this act;

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

20 (4) to recover reasonable expenses, including, but not limited to,
21 costs, accounting fees and investigation fees of the division of weights and
22 measures and the attorney general.

23 (f) On the first violation of the provisions of this section, the attorney
24 general shall send to the violator by certified mail, return receipt re-
25 quested, an order that the violator cease and desist from the violation
26 within 24 hours of receipt of such order, a second violation of the pro-
27 visions of this section shall render the violator liable for the payment of
28 a civil penalty in a sum of \$1,000 for each day the violation occurs and a
29 third or subsequent violation of the provisions of this section shall render
30 the violator liable for the payment of a civil penalty in a sum of \$10,000
31 for each day such violation occurs.

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

35 (2) obtain temporary or permanent injunctive relief against a mar-
36 keter or retailer who has violated, is violating or is otherwise likely to
37 violate the provisions of this act; and

38 (3) recover reasonable expenses, including, but not limited to, costs,
39 accounting fees and attorney fees.

40 (h) Any action brought under subsections (e) to (g), inclusive, shall
41 be brought within six months of the act giving rise to such action.

42 (i) The secretary of agriculture shall adopt rules and regulations to
43 implement the provisions of this act.

1 Sec. 2. K.S.A. 2003 Supp. 55-427 is hereby amended to read as fol-
2 lows: 55-427. (a) Every manufacturer, importer or distributor of any of
3 the above-named petroleum products subject to inspection and liable for
4 the payment of fees as provided in the petroleum products inspection
5 law, shall report in full and detail before the 25th day of every month at
6 the office of the director of taxation, on blanks prepared, furnished and
7 approved by the director of taxation, the quantity of each of the above-
8 named petroleum products sold in the state of Kansas during the pre-
9 ceding calendar month, and shall, at the time of forwarding such report,
10 compute and pay to the director of taxation at the director's office, the
11 amount of fees due the state on all petroleum products subject to in-
12 spection during the preceding month.

13 (b) All fees imposed under the provisions of the petroleum products
14 inspection law and not paid on or before the 25th day of the month
15 succeeding the calendar month in which such petroleum products were
16 sold or offered for sale shall be deemed delinquent and shall bear interest
17 at the rate of 1% a month, or fraction thereof, from such due date until
18 paid. In addition, there is hereby imposed upon all amounts of such fees
19 remaining due and unpaid after such due date a penalty in the amount
20 of 5%. Such penalty shall be added to and collected as part of the fees
21 by the director of taxation. The fees, including penalty and interest shall
22 be remitted by the director of taxation to the state treasurer in accordance
23 with the provisions of K.S.A. 75-4215, and amendments thereto. Upon
24 receipt of each such remittance, the state treasurer shall deposit the entire
25 amount in the state treasury and credit the same in accordance with sub-
26 sections (c) and (d).

27 (c) There is hereby created in the state treasury the petroleum in-
28 spection fee fund which shall be administered by the secretary of agri-
29 culture. All moneys credited to the petroleum inspection fee fund shall
30 be used for the expenses incurred for the performance of the duties and
31 functions of the secretary of agriculture and the Kansas department of
32 agriculture prescribed by K.S.A. 55-422 through 55-446, and amend-
33 ments thereto, and K.S.A. 83-501, and amendments thereto, or any rules
34 and regulations adopted thereunder, relating to the regulation of the qual-
35 ity of petroleum products, and for the expenses incurred for the perform-
36 ance of the duties and functions of the secretary of agriculture and the
37 Kansas department of agriculture prescribed by K.S.A. 83-401 through
38 83-410, and amendments thereto, or any rules and regulations adopted
39 thereunder, and K.S.A. 83-501, and amendments thereto, or any rules
40 and regulations adopted thereunder, relating to the regulation of motor
41 fuel dispensing devices, as defined by K.S.A. 83-401, and amendments
42 thereto, *and for expenses incurred for the performance of duties and func-*
43 *tions of the secretary of agriculture and the Kansas department of agri-*

1 *culture prescribed by section 1, and amendments thereto, or any rules*
2 *and regulations adopted thereunder, relating to the enforcement of section*
3 *1, and amendments thereto.* All expenditures from the petroleum inspec-
4 tion fee fund shall be made in accordance with the provisions of appro-
5 priation acts upon warrants of the director of accounts and reports issued
6 pursuant to vouchers approved by the secretary of agriculture or by a
7 person or persons designated by the secretary.

8 (d) All moneys received for the fee imposed by K.S.A. 55-426, and
9 amendments thereto, or for interest or penalties imposed by K.S.A. 55-
10 427, and amendments thereto, shall be remitted to the state treasurer in
11 accordance with the provisions of K.S.A. 75-4215, and amendments
12 thereto. Upon receipt of each such remittance, the state treasurer shall
13 deposit the entire amount in the state treasury and such moneys shall be
14 credited in accordance with the following:

15 (1) On and after July 1 of each fiscal year, $\frac{2}{3}$ of each such deposit
16 shall be credited to the state general fund and the balance of each such
17 deposit shall be credited to the petroleum inspection fee fund until the
18 aggregate of all amounts credited to the state general fund under this
19 subsection (d)(1) equals \$250,000; and

20 (2) after \$250,000 has been credited to the state general fund under
21 subsection (d)(1) for any fiscal year, the entire amount of each amount
22 deposited thereafter for such fiscal year shall be credited to the petroleum
23 inspection fee fund.

24 Sec. 3. K.S.A. 2003 Supp. 55-427 is hereby repealed.

25 Sec. 4. This act shall take effect and be in force from and after its
26 publication in the statute book.