

Lundby
Johnson
DeLukey

Succeeded By
SE HF 496

SSB 1239

Commerce

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
COMMERCE BILL BY
CHAIRPERSON JOHNSON)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to fair motor fuel marketing and providing
2 penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 473B.1 TITLE -- PURPOSE.

2 1. This chapter is entitled the "Iowa Fair Motor Fuel
3 Marketing Act".

4 2. The purpose of this chapter is to protect the public
5 interest, and to provide for enforcement and penalties with
6 respect to the requirements and prohibition of this chapter.

7 Sec. 2. NEW SECTION. 473B.2 LEGISLATIVE FINDINGS.

8 The general assembly makes the following findings with
9 respect to the marketing of motor fuel in Iowa:

10 1. In general, subsidies in the marketing of motor fuel
11 result whenever profits associated with the marketing of motor
12 fuel are transferred between operations, allowing the refined
13 fuel to be sold at less than the actual cost to produce such
14 fuel.

15 2. Subsidies in the marketing of motor fuel most commonly
16 occur in one of three ways:

17 a. When refiners use profits from the refining of crude
18 oil to cover below-normal or negative returns earned from
19 motor fuel marketing operations.

20 b. When a marketer with more than one location uses
21 profits from one location to cover losses resulting from
22 below-cost selling of motor fuel at another location.

23 c. When a business uses profits from nonmotor fuel sales
24 to cover losses resulting from below-cost selling of motor
25 fuel.

26 3. Independent motor fuel marketers are unable to survive
27 the results of subsidized pricing at the market level if all
28 of an independent motor fuel marketer's profit comes from
29 marketing operations.

30 4. Consequently, subsidized pricing is inherently
31 predatory because it aims to reduce overall competition in the
32 petroleum industry by eliminating independent motor fuel
33 marketers from the marketplace, which ultimately harms
34 consumers by decreasing competition.

35 Sec. 3. NEW SECTION. 473B.3 LEGISLATIVE FINDINGS.

1 1. Marketing of motor fuel in the state of Iowa affects
2 the public interest, and should be protected because the state
3 of Iowa and petroleum marketers have invested millions of
4 dollars in maintaining an environmentally safe delivery system
5 of motor fuel to all areas of the state.

6 2. The public should also be protected against creation of
7 monopolies or unfair methods of competition in transactions
8 involving the sale of, offers of sale, or inducements to sell
9 motor fuel in the wholesale and retail trades in this state.

10 3. Advertising, offering for sale, or selling motor fuel
11 below cost or at a cost lower than charged to other persons on
12 the same marketing level with the intent of injuring
13 competitors or destroying or substantially lessening
14 competition is an unfair and deceptive practice that should be
15 prohibited in this state.

16 Sec. 4. NEW SECTION. 473B.4 DEFINITIONS.

17 As used in this chapter, unless the context otherwise
18 requires:

19 1. "Affiliate" means any person who, other than by means
20 of franchise, controls, is controlled by, or is under common
21 control with any other person.

22 2. "Basic cost of motor fuel" means the lower of the
23 following two amounts:

24 a. The invoice cost of the motor fuel to the wholesaler or
25 retailer.

26 b. The lowest replacement cost of motor fuel to the
27 wholesaler or retailer. The replacement cost is calculated
28 within five days prior to the date of sale, in the quantity
29 last purchased, less all trade discounts, except customary
30 discounts for cash, plus the full value of freight costs and
31 taxes, if not already included in the invoice cost of the
32 motor fuel.

33 In computing its basic cost of motor fuel, its cost of
34 doing business, and in meeting competition, a refiner must
35 assess such fees in a like manner to its affiliates.

1 3. "Competition" includes any person who competes with
2 another person in the same market area at the same level of
3 distribution.

4 4. "Cost of doing business" or "overhead expenses"
5 includes all costs incurred in the conduct of business,
6 including, but not limited to the following items:

7 a. Labor, including salaries of executives and officers.

8 b. Rent, which must be no less than fair market value
9 based on current use of the property.

10 c. Interest on borrowed capital.

11 d. Depreciation.

12 e. The selling cost of the property.

13 f. Maintenance of equipment.

14 g. Transportation or freight cost.

15 h. Losses due to breakage or damage.

16 i. Credit card fees, or other charges.

17 j. Credit losses.

18 k. Costs attributable to licenses.

19 l. Taxes.

20 m. Insurance.

21 n. Advertising costs.

22 5. "Cost to refiner" means the refiner's posted terminal
23 price to the wholesale class of trade. If a refiner does not
24 regularly sell to the wholesale class of trade at that
25 terminal or does not post such a terminal price, the refiner
26 may use as its cost the posted price of any other refiner at
27 any terminal within the general trade area that has products
28 readily available for sale to the wholesale class of trade.

29 6. "Cost to retailer" means, as applied to retail sales,
30 the lesser of the invoice or replacement cost of the motor
31 fuel within five days prior to the date of sale, in the
32 quantity last purchased, less all trade discounts except
33 customary discounts for cash, plus state, federal, and local
34 taxes, inspection fees, and freight cost if paid by the
35 retailer, plus the cost of doing business.

1 7. "Cost to wholesaler" means, as applied to wholesale
 2 distribution, the lesser of the invoice or replacement cost of
 3 the motor fuel within five days prior to the date of sale, in
 4 the quantity last purchased, less all trade discounts except
 5 customary discounts for cash, plus state, federal, and local
 6 taxes, inspection fees, freight charges not otherwise included
 7 in the cost of motor fuel, cartage to the retail outlet if
 8 paid by the wholesaler, plus the cost of doing business.

9 8. "Customary discount for cash" includes any allowance,
 10 whether a part of a larger discount or not, made to a
 11 wholesaler or retailer when such person pays in full for motor
 12 fuel within a specified time.

13 9. "Motor fuel" includes all motor fuel upon which a motor
 14 fuel excise tax is imposed under chapter 452A.

15 10. "Refiner" means any person engaged in the production
 16 or refining of motor fuel, whether such production or refining
 17 occurs in this state or elsewhere, and includes any affiliate
 18 of such person.

19 11. "Retailer" includes any person who is engaged in this
 20 state in the business of selling motor fuel at retail to the
 21 general public for ultimate consumption, and includes any
 22 group of persons, cooperative associations, buying pools, and
 23 any other person or group purchasing from licensed
 24 distributors or wholesalers.

25 12. "Sale" or "sell" means any transfer in return for an
 26 exchange, barter, gift, offer for sale, advertising for sale,
 27 soliciting of an order, or distribution in any manner or by
 28 any means whatsoever.

29 13. "Sale at retail", "sell at retail", and "retail
 30 sales" include any sale for consumption or use in the ordinary
 31 course of trade or usual conduct of the seller's business.

32 14. "Sale at wholesale", "sell at wholesale", and
 33 "wholesales" include any sale made in the ordinary course of
 34 trade or usual conduct of the wholesaler's business to a
 35 retailer for the purpose of resale.

1 15. "Supplier" means a person who furnishes motor fuel to
2 marketing operations, or a different level of distribution.

3 16. "Transfer price" includes the price used by a person
4 in transferring motor fuel to itself or an affiliate for
5 resale at another marketing level. Such price shall be
6 determined using standard, functional accounting procedures.

7 17. "Wholesale distributor" means any person, including
8 any affiliate of such person, in commerce within the state,
9 who purchases motor fuel for sale, consignment, or
10 distribution to another, or receives motor fuel on consignment
11 for consignment or distribution to the person's own motor fuel
12 accounts or to accounts of the person's suppliers, but shall
13 not include a person who is an employee of, or merely serves
14 as, a common carrier providing transportation services for
15 such person.

16 18. "Wholesaler" means any person qualified as a
17 wholesaler of motor fuel with the department of revenue and
18 finance, and includes any person who brings or causes to be
19 brought into this state motor fuel purchased directly from the
20 manufacturer.

21 **Sec. 5. NEW SECTION. 473B.5 CERTAIN BELOW-COST FUEL**
22 **SALES PROHIBITED.**

23 It shall be unlawful for any person engaged in commerce in
24 this state to sell or offer to sell motor fuel below cost or
25 to sell or offer to sell motor fuel at a price lower than the
26 seller charges other persons on the same day and on the same
27 level of distribution, within the same market area.

28 **Sec. 6. NEW SECTION. 473B.6 CERTAIN BELOW-COST FUEL**
29 **TRANSFERS PROHIBITED.**

30 It shall be unlawful for any person engaged in commerce in
31 this state to sell or transfer motor fuel to itself or an
32 affiliate for resale at another marketing level or
33 distribution at a transfer price that is below cost or lower
34 than the price the person charges a person who purchases for
35 resale on the same day and at the same distribution level,

1 within the same market area, where the effect is to injure
2 competition.

3 Sec. 7. NEW SECTION. 473B.7 CERTAIN SALES AND TRANSFER
4 PRICE DIFFERENTIALS AUTHORIZED.

5 1. It is not a violation of this chapter if a difference
6 exists between the transfer price of motor fuel of like grade
7 and quality and the price charged to a person who purchases
8 for resale at the same level of distribution, including any
9 discounts, rebates, allowances, services, or facilities
10 granted any of a supplier's own marketing operations in excess
11 of those provided to a person who purchases for resale at the
12 same level of distribution, if the lower price is due to a
13 cost differential incurred because of a difference in shipping
14 method, transportation, marketing, sale, or quantity, in which
15 such motor fuel is sold.

16 2. It is not a violation of this chapter:

17 a. If a price is established in good faith to meet an
18 equally low price of a competitor in the same market area on
19 the same level of distribution selling the same or similar
20 product of like grade and quality.

21 b. If a sale is listed under section 473B.10.

22 Sec. 8. NEW SECTION. 473B.8 UNLAWFUL ACTS GENERALLY.

23 It shall be unlawful:

24 1. For any person engaged in commerce in this state to
25 sell or offer to sell motor fuel at wholesale or retail, as
26 the case may be, where the effect is to injure competition.

27 2. For any person, where the effect is to injure
28 competition, to offer a rebate, to offer to give a rebate, or
29 to offer a concession of any kind in connection with the sale
30 of motor fuel.

31 3. For any retailer to induce or attempt to induce or to
32 procure or attempt to procure the purchase of motor fuel at a
33 price less than the cost to a wholesaler.

34 Any person who violates any provision of this section shall
35 be subject to the provisions and penalties of this chapter.

1 Sec. 9. NEW SECTION. 473B.9 BELOW-COST COMBINED SELLING
2 PRICE OF MOTOR FUEL AND PROMOTIONAL GIFTS PROHIBITED.

3 In all advertisements, offers for sale, or sales involving
4 two or more items, at least one item of which is motor fuel,
5 at a combined price, and in all advertisements, offers of
6 sale, or sales, involving the giving of any gift or concession
7 of any kind, including coupons, the wholesaler's or retailer's
8 combined selling price shall not be below the cost to the
9 wholesaler or the cost to the retailer, respectively, of the
10 total of all articles, products, commodities, gifts, and
11 concessions included in such transactions, except that if any
12 such articles, products, commodities, gifts, and concessions
13 shall not be motor fuel, the basic cost shall be determined in
14 a manner similar to that provided in section 473B.4,
15 subsection 2.

16 Sec. 10. NEW SECTION. 473B.10 EXCLUSIONS.

17 1. This chapter shall not apply to a sale at wholesale or
18 retail made in any of the following circumstances:

19 a. In an isolated transaction not in the usual course of
20 business.

21 b. When motor fuel is advertised, offered for sale, or
22 sold in a bona fide clearance sale for the purpose of
23 discontinuing trade in motor fuel, and the advertising, offer
24 to sell, or sale states the reason as discontinuing trade, and
25 provides the quantity of the motor fuel for sale.

26 c. When motor fuel is advertised, offered for sale, or
27 sold as imperfect or damaged, and the advertising, offer of
28 sale, or sale states the reason as imperfect or damaged goods,
29 and the quantity of the motor fuel for sale.

30 d. When motor fuel is sold upon the final liquidation of a
31 business.

32 e. When motor fuel is advertised, offered for sale, or
33 sold by any fiduciary or other officer under the order or
34 direction of any court.

35 2. The goods subject to sale under subsection 1 must be

1 kept separate from other stock on hand, and must be clearly
2 and legibly marked with the reason for the sale. Any
3 advertisement of the goods must indicate the same facts and
4 the quantity to be sold for the exclusion of this section to
5 apply.

6 3. The price of motor fuel advertised, offered for sale,
7 or sold under the exceptions specified in this section shall
8 not be considered the price of a competitor under this
9 chapter.

10 Sec. 11. NEW SECTION. 473B.11 COMPETITIVE SALES.

11 1. Any wholesaler may advertise, offer to sell, or sell
12 motor fuel at a price made in good faith to meet the price of
13 a competitor who offers the same type of service and who sells
14 the same item at cost.

15 2. Any retailer may advertise, offer to sell, or sell
16 motor fuel at a price made in good faith to meet the price of
17 a competitor who sells the same item at cost.

18 3. In the absence of proof of the actual cost to a
19 competing wholesaler or a competing retailer, the cost may be
20 presumed to be the lowest cost to wholesalers or retailers
21 within the same market area as determined by a cost survey
22 made pursuant to section 473B.15, subsection 2.

23 Sec. 12. NEW SECTION. 473B.12 CONTRACTS VIOLATIVE OF
24 CHAPTER RENDERED VOIDABLE AND UNENFORCEABLE.

25 Any contract, express or implied, made by any person in
26 violation of any of the provisions of this chapter is voidable
27 and unenforceable and no recovery shall be permitted under
28 such a contract by any person who has violated the provisions
29 of this chapter.

30 Sec. 13. NEW SECTION. 473B.13 SALES BETWEEN WHOLESALERS.

31 If a wholesaler sells motor fuel to any other wholesaler,
32 the seller shall not be required to include the cost to the
33 wholesaler in the wholesaler's selling price; however, the
34 latter wholesaler, upon resale of the motor fuel to a
35 retailer, must include such cost to the wholesaler in the

1 wholesaler's selling price.

2 Sec. 14. NEW SECTION. 473B.14 PRIMA FACIE SHOWING OF
3 VIOLATION.

4 1. A plaintiff presents a prima facie showing of a
5 violation under this chapter by establishing any of the
6 following:

7 a. That the plaintiff's purchase price from a refiner or
8 wholesaler is greater than the refiner's transfer price.

9 b. That the plaintiff's purchase price from a refiner or
10 wholesaler plus the plaintiff's cost of doing business is
11 greater than the refiner's or wholesaler's retail posted sales
12 price.

13 c. That the plaintiff's basic cost of motor fuel plus the
14 plaintiff's cost of doing business is greater than the posted
15 sales price at a retail location of a competitor within the
16 plaintiff's marketing area suspected of selling motor fuel in
17 violation of this chapter.

18 2. In any action brought under section 473B.16 or 473B.17,
19 the burden shifts to the defendant upon a prima facie showing
20 of a violation.

21 Sec. 15. NEW SECTION. 473B.15 COST EVIDENCE.

22 1. In determining cost to the wholesaler and cost to the
23 retailer, the court shall receive evidence tending to show any
24 of the following:

25 a. That a person complained against under this chapter
26 purchased the motor fuel involved in the complaint, at a
27 fictitious price, or upon terms, or in such a manner, or under
28 such invoices, as to conceal the true costs, discounts, or
29 terms of purchase.

30 b. Evidence of the normal, customary, and prevailing terms
31 and discounts in connection with other sales of a similar
32 nature in the market area.

33 2. A cost survey made pursuant to recognized statistical
34 and cost accounting practices that determines and establishes
35 on the basis of actual existing conditions the lowest cost to

1 wholesalers or the lowest cost to retailers for a market area
 2 relevant to a complaint charging a violation of this chapter
 3 shall be deemed competent evidence in any action or proceeding
 4 under this chapter as tending to prove actual cost to the
 5 wholesaler or retailer complained against. Any party against
 6 whom any such cost survey is introduced in evidence shall have
 7 the right to offer evidence tending to prove any inaccuracy of
 8 such cost survey or any state of facts that impair its
 9 probative value, or to introduce independent cost evidence.

10 Sec. 16. NEW SECTION. 473B.16 CIVIL PENALTIES AND
 11 INJUNCTIVE RELIEF.

12 1. Any person who violates this chapter shall be subject
 13 to a civil penalty not to exceed ten thousand dollars per
 14 violation for each offense. Any such person shall also be
 15 liable for attorney fees incurred by the attorney general or a
 16 county attorney, and shall also be subject to injunctive
 17 relief. Each day that a violation of this chapter occurs
 18 shall be considered a separate violation.

19 2. The penalty may be assessed and other relief recovered
 20 in a civil action brought by the attorney general or a county
 21 attorney in any district court in any county in which any of
 22 the alleged violations of this chapter took place, or in any
 23 county where any of the defendants reside or do business.

24 Sec. 17. NEW SECTION. 473B.17 ACTION BY PERSON INJURED
 25 OR THREATENED BY INJURY -- INJUNCTIVE RELIEF -- DAMAGES --
 26 ATTORNEY FEES -- JURISDICTION.

27 1. Any person injured by any violation of this chapter, or
 28 who would suffer injury from any threatened violation of this
 29 chapter, may maintain an action in any district court in any
 30 county in which the injury or threatened injury did or will
 31 take place, or where any of the parties reside or do business,
 32 to prevent, restrain, or enjoin such violation or threatened
 33 violation, including an action for a declaratory judgment,
 34 injunctive relief, and for actual damages.

35 2. If a violation or threatened violation of this chapter

1 is established, the court shall enjoin and restrain, or
2 otherwise prohibit, such violation or threatened violation
3 and, in addition, the court shall assess in favor of the
4 plaintiff and against the defendant the costs of suit,
5 including reasonable attorney fees.

6 3. In the action it is not necessary that actual damages
7 to the plaintiff be proved, but where alleged and proved, the
8 plaintiff in such action, shall be entitled to recover from
9 the defendant the damages sustained by the plaintiff. Any
10 actual damages found to have resulted from violations of this
11 chapter shall be trebled by the court in making its award.

12 4. The court may also award court costs and reasonable
13 attorney fees to the prevailing party.

14 5. Any action under this section shall be brought within
15 two years after the alleged violations occurred.

16 EXPLANATION

17 This bill creates new Code chapter 473B, the "Iowa Fair
18 Motor Fuel Marketing Act".

19 New Code section 473B.1 of the bill states the title of the
20 chapter, and provides that the purpose is to protect the
21 public interest, as well as to provide for enforcement and
22 penalties.

23 New Code section 473B.2 sets forth legislative findings in
24 regard to subsidies in the marketing of motor fuel, and new
25 Code section 473B.3 provides that the legislative intent is to
26 protect the public interest against monopolies or unfair
27 methods of competition in sales of motor fuel, as well as to
28 prevent injury to competition from the sale of motor fuel
29 below cost.

30 New Code section 473B.4 provides definitions for the new
31 chapter, including "affiliate", "basic cost of motor fuel",
32 "competition", "cost of doing business", "cost to refiner",
33 "cost to wholesaler", "customary discount for cash", "motor
34 fuel", "refiner", "retailer", "sale", "sale at retail", "sale
35 at wholesale", "supplier", "transfer price", "wholesale

1 distributor", and "wholesaler".

2 New Code section 473B.5 prohibits certain below-cost sales
3 of motor fuel. New Code section 473B.6 prohibits certain
4 below-cost transfers of motor fuel where the effect is to
5 injure competition.

6 New Code section 473B.7 provides that a price differential
7 that is due to a difference in costs of shipping,
8 transportation, marketing, sale, or quantity will not
9 constitute a violation of Code chapter 473B. In addition, a
10 price that is established in good faith to meet a price
11 offered by a competitor will not violate Code chapter 473B.
12 Finally, sales that are listed under new Code section 473B.10,
13 including such unique sales as damaged goods or liquidation
14 sales that are specially advertised and conducted, do not
15 violate Code chapter 473B.

16 New Code section 473B.9 provides that when a sale involves
17 two items, one of which is motor fuel, the combined price of
18 the two items may not be below the cost to the wholesaler or
19 retailer of the total of all items.

20 New Code section 473B.10 provides that certain sales are
21 excluded from the provision of Code chapter 473B, provided
22 that the sales are properly advertised and the goods are
23 clearly marked and kept separate: (1) an isolated transaction
24 not in the usual course of business; (2) a bona fide clearance
25 sale for discontinuing trade in motor fuel; (3) imperfect or
26 damaged goods; (4) final liquidation of a business; and (5)
27 sale by a fiduciary or other officer under the order or
28 direction of a court. The price of a sale under Code section
29 473B.10 is not the price of a competitor for purposes of Code
30 chapter 473B.

31 New Code section 473B.11 provides that any wholesaler or
32 retailer may meet the price of a competitor who offers the
33 same type of service and who sells the same item. In the
34 absence of proof of actual cost, evidence from a cost survey
35 may be used.

1 New Code section 473B.12 provides that a contract made in
2 violation of any provision of Code chapter 473B is voidable
3 and unenforceable.

4 New Code section 473B.13 provides for the calculation of
5 prices when one wholesaler sells to another, who then sells to
6 a retailer.

7 New Code section 473B.14 provides that a prima facie
8 violation under the Code chapter is established by showing any
9 of the following: (1) that the plaintiff's purchase price
10 from a refiner or wholesaler is greater than the refiner's
11 transfer price; (2) that the plaintiff's purchase price from a
12 refiner or wholesaler plus the plaintiff's cost of doing
13 business is greater than the refiner's or wholesaler's retail
14 posted sales price; (3) that the plaintiff's basic cost of
15 motor fuel plus the plaintiff's cost of doing business is
16 greater than the posted sales price at a retail location of a
17 competitor within the plaintiff's marketing area. After
18 showing a prima facie case, the burden of proof shifts to the
19 defendant.

20 New Code section 473B.15 addresses the issue of cost
21 surveys as evidence of actual cost, and other issues relating
22 to cost evidence.

23 New Code section 473B.16 provides for civil penalties not
24 to exceed \$10,000 per violation, recovery of attorney fees,
25 and the availability of injunctive relief. Each day of
26 violation is a separate violation. The penalty may be
27 assessed and recovered in a civil action by the attorney
28 general or a county attorney.

29 New Code section 473B.17 provides for a private cause of
30 action by any person injured or threatened by injury by a
31 violation of Code chapter 473B. The person may sue for
32 injunctive relief, declaratory judgment, and for actual
33 damages that are trebled. The prevailing party is also
34 entitled to court costs and reasonable attorney fees. The
35 Code section contains a two-year statute of limitations.

FILED MAR 19 1977

SENATE FILE 496
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 1239)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
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4 2. The purpose of this chapter is to protect the public
5 interest, and to provide for enforcement and penalties with
6 respect to the requirements and prohibition of this chapter.

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8 The general assembly makes the following findings with
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11 result whenever profits associated with the marketing of motor
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23 c. When a business uses profits from nonmotor fuel sales
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26 3. Independent motor fuel marketers are unable to survive
27 the results of subsidized pricing at the market level if all
28 of an independent motor fuel marketer's profit comes from
29 marketing operations.

30 4. Consequently, subsidized pricing is inherently
31 predatory because it aims to reduce overall competition in the
32 petroleum industry by eliminating independent motor fuel
33 marketers from the marketplace, which ultimately harms
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4 dollars in maintaining an environmentally safe delivery system
5 of motor fuel to all areas of the state.

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9 motor fuel in the wholesale and retail trades in this state.

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33 In computing its basic cost of motor fuel, its cost of
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35 assess such fees in a like manner to its affiliates.

1 3. "Competition" includes any person who competes with
2 another person in the same market area at the same level of
3 distribution.

4 4. "Cost of doing business" or "overhead expenses"
5 includes all costs incurred in the conduct of business,
6 including, but not limited to the following items:

7 a. Labor, including salaries of executives and officers.

8 b. Rent, which must be no less than fair market value
9 based on current use of the property.

10 c. Interest on borrowed capital.

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12 e. The selling cost of the property.

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23 price to the wholesale class of trade. If a refiner does not
24 regularly sell to the wholesale class of trade at that
25 terminal or does not post such a terminal price, the refiner
26 may use as its cost the posted price of any other refiner at
27 any terminal within the general trade area that has products
28 readily available for sale to the wholesale class of trade.

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32 quantity last purchased, less all trade discounts except
33 customary discounts for cash, plus state, federal, and local
34 taxes, inspection fees, and freight cost if paid by the
35 retailer, plus the cost of doing business.

1 7. "Cost to wholesaler" means, as applied to wholesale
2 distribution, the lesser of the invoice or replacement cost of
3 the motor fuel within five days prior to the date of sale, in
4 the quantity last purchased, less all trade discounts except
5 customary discounts for cash, plus state, federal, and local
6 taxes, inspection fees, freight charges not otherwise included
7 in the cost of motor fuel, cartage to the retail outlet if
8 paid by the wholesaler, plus the cost of doing business.

9 8. "Customary discount for cash" includes any allowance,
10 whether a part of a larger discount or not, made to a
11 wholesaler or retailer when such person pays in full for motor
12 fuel within a specified time.

13 9. "Motor fuel" includes all motor fuel upon which a motor
14 fuel excise tax is imposed under chapter 452A.

15 10. "Refiner" means any person engaged in the production
16 or refining of motor fuel, whether such production or refining
17 occurs in this state or elsewhere, and includes any affiliate
18 of such person.

19 11. "Retailer" includes any person who is engaged in this
20 state in the business of selling motor fuel at retail to the
21 general public for ultimate consumption, and includes any
22 group of persons, cooperative associations, buying pools, and
23 any other person or group purchasing from licensed
24 distributors or wholesalers.

25 12. "Sale" or "sell" means any transfer in return for an
26 exchange, barter, gift, offer for sale, advertising for sale,
27 soliciting of an order, or distribution in any manner or by
28 any means whatsoever.

29 13. "Sale at retail", "sell at retail", and "retail
30 sales" include any sale for consumption or use in the ordinary
31 course of trade or usual conduct of the seller's business.

32 14. "Sale at wholesale", "sell at wholesale", and
33 "wholesales" include any sale made in the ordinary course of
34 trade or usual conduct of the wholesaler's business to a
35 retailer for the purpose of resale.

1 15. "Supplier" means a person who furnishes motor fuel to
2 marketing operations, or a different level of distribution.

3 16. "Transfer price" includes the price used by a person
4 in transferring motor fuel to itself or an affiliate for
5 resale at another marketing level. Such price shall be
6 determined using standard, functional accounting procedures.

7 17. "Wholesale distributor" means any person, including
8 any affiliate of such person, in commerce within the state,
9 who purchases motor fuel for sale, consignment, or
10 distribution to another, or receives motor fuel on consignment
11 for consignment or distribution to the person's own motor fuel
12 accounts or to accounts of the person's suppliers, but shall
13 not include a person who is an employee of, or merely serves
14 as, a common carrier providing transportation services for
15 such person.

16 18. "Wholesaler" means any person qualified as a
17 wholesaler of motor fuel with the department of revenue and
18 finance, and includes any person who brings or causes to be
19 brought into this state motor fuel purchased directly from the
20 manufacturer.

21 Sec. 5. NEW SECTION. 473B.5 CERTAIN BELOW-COST FUEL
22 SALES PROHIBITED.

23 It shall be unlawful for any person engaged in commerce in
24 this state to sell or offer to sell motor fuel below cost or
25 to sell or offer to sell motor fuel at a price lower than the
26 seller charges other persons on the same day and on the same
27 level of distribution, within the same market area.

28 Sec. 6. NEW SECTION. 473B.6 CERTAIN BELOW-COST FUEL
29 TRANSFERS PROHIBITED.

30 It shall be unlawful for any person engaged in commerce in
31 this state to sell or transfer motor fuel to itself or an
32 affiliate for resale at another marketing level or
33 distribution at a transfer price that is below cost or lower
34 than the price the person charges a person who purchases for
35 resale on the same day and at the same distribution level,

1 within the same market area, where the effect is to injure
2 competition.

3 Sec. 7. NEW SECTION. 473B.7 CERTAIN SALES AND TRANSFER
4 PRICE DIFFERENTIALS AUTHORIZED.

5 1. It is not a violation of this chapter if a difference
6 exists between the transfer price of motor fuel of like grade
7 and quality and the price charged to a person who purchases
8 for resale at the same level of distribution, including any
9 discounts, rebates, allowances, services, or facilities
10 granted any of a supplier's own marketing operations in excess
11 of those provided to a person who purchases for resale at the
12 same level of distribution, if the lower price is due to a
13 cost differential incurred because of a difference in shipping
14 method, transportation, marketing, sale, or quantity, in which
15 such motor fuel is sold.

16 2. It is not a violation of this chapter:

17 a. If a price is established in good faith to meet an
18 equally low price of a competitor in the same market area on
19 the same level of distribution selling the same or similar
20 product of like grade and quality.

21 b. If a sale is listed under section 473B.10.

22 Sec. 8. NEW SECTION. 473B.8 UNLAWFUL ACTS GENERALLY.

23 It shall be unlawful:

24 1. For any person engaged in commerce in this state to
25 sell or offer to sell motor fuel at wholesale or retail, as
26 the case may be, where the effect is to injure competition.

27 2. For any person, where the effect is to injure
28 competition, to offer a rebate, to offer to give a rebate, or
29 to offer a concession of any kind in connection with the sale
30 of motor fuel.

31 3. For any retailer to induce or attempt to induce or to
32 procure or attempt to procure the purchase of motor fuel at a
33 price less than the cost to a wholesaler.

34 Any person who violates any provision of this section shall
35 be subject to the provisions and penalties of this chapter.

1 Sec. 9. NEW SECTION. 473B.9 BELOW-COST COMBINED SELLING
2 PRICE OF MOTOR FUEL AND PROMOTIONAL GIFTS PROHIBITED.

3 In all advertisements, offers for sale, or sales involving
4 two or more items, at least one item of which is motor fuel,
5 at a combined price, and in all advertisements, offers of
6 sale, or sales, involving the giving of any gift or concession
7 of any kind, including coupons, the wholesaler's or retailer's
8 combined selling price shall not be below the cost to the
9 wholesaler or the cost to the retailer, respectively, of the
10 total of all articles, products, commodities, gifts, and
11 concessions included in such transactions, except that if any
12 such articles, products, commodities, gifts, and concessions
13 shall not be motor fuel, the basic cost shall be determined in
14 a manner similar to that provided in section 473B.4,
15 subsection 2.

16 Sec. 10. NEW SECTION. 473B.10 EXCLUSIONS.

17 1. This chapter shall not apply to a sale at wholesale or
18 retail made in any of the following circumstances:

19 a. In an isolated transaction not in the usual course of
20 business.

21 b. When motor fuel is advertised, offered for sale, or
22 sold in a bona fide clearance sale for the purpose of
23 discontinuing trade in motor fuel, and the advertising, offer
24 to sell, or sale states the reason as discontinuing trade, and
25 provides the quantity of the motor fuel for sale.

26 c. When motor fuel is advertised, offered for sale, or
27 sold as imperfect or damaged, and the advertising, offer of
28 sale, or sale states the reason as imperfect or damaged goods,
29 and the quantity of the motor fuel for sale.

30 d. When motor fuel is sold upon the final liquidation of a
31 business.

32 e. When motor fuel is advertised, offered for sale, or
33 sold by any fiduciary or other officer under the order or
34 direction of any court.

35 2. The goods subject to sale under subsection 1 must be

1 kept separate from other stock on hand, and must be clearly
2 and legibly marked with the reason for the sale. Any
3 advertisement of the goods must indicate the same facts and
4 the quantity to be sold for the exclusion of this section to
5 apply.

6 3. The price of motor fuel advertised, offered for sale,
7 or sold under the exceptions specified in this section shall
8 not be considered the price of a competitor under this
9 chapter.

10 Sec. 11. NEW SECTION. 473B.11 COMPETITIVE SALES.

11 1. Any wholesaler may advertise, offer to sell, or sell
12 motor fuel at a price made in good faith to meet the price of
13 a competitor who offers the same type of service and who sells
14 the same item at cost.

15 2. Any retailer may advertise, offer to sell, or sell
16 motor fuel at a price made in good faith to meet the price of
17 a competitor who sells the same item at cost.

18 3. In the absence of proof of the actual cost to a
19 competing wholesaler or a competing retailer, the cost may be
20 presumed to be the lowest cost to wholesalers or retailers
21 within the same market area as determined by a cost survey
22 made pursuant to section 473B.15, subsection 2.

23 Sec. 12. NEW SECTION. 473B.12 CONTRACTS VIOLATIVE OF
24 CHAPTER RENDERED VOIDABLE AND UNENFORCEABLE.

25 Any contract, express or implied, made by any person in
26 violation of any of the provisions of this chapter is voidable
27 and unenforceable and no recovery shall be permitted under
28 such a contract by any person who has violated the provisions
29 of this chapter.

30 Sec. 13. NEW SECTION. 473B.13 SALES BETWEEN WHOLESALERS.

31 If a wholesaler sells motor fuel to any other wholesaler,
32 the seller shall not be required to include the cost to the
33 wholesaler in the wholesaler's selling price; however, the
34 latter wholesaler, upon resale of the motor fuel to a
35 retailer, must include such cost to the wholesaler in the

1 wholesaler's selling price.

2 Sec. 14. NEW SECTION. 473B.14 PRIMA FACIE SHOWING OF
3 VIOLATION.

4 1. A plaintiff presents a prima facie showing of a
5 violation under this chapter by establishing any of the
6 following:

7 a. That the plaintiff's purchase price from a refiner or
8 wholesaler is greater than the refiner's transfer price.

9 b. That the plaintiff's purchase price from a refiner or
10 wholesaler plus the plaintiff's cost of doing business is
11 greater than the refiner's or wholesaler's retail posted sales
12 price.

13 c. That the plaintiff's basic cost of motor fuel plus the
14 plaintiff's cost of doing business is greater than the posted
15 sales price at a retail location of a competitor within the
16 plaintiff's marketing area suspected of selling motor fuel in
17 violation of this chapter.

18 2. In any action brought under section 473B.16 or 473B.17,
19 the burden shifts to the defendant upon a prima facie showing
20 of a violation.

21 Sec. 15. NEW SECTION. 473B.15 COST EVIDENCE.

22 1. In determining cost to the wholesaler and cost to the
23 retailer, the court shall receive evidence tending to show any
24 of the following:

25 a. That a person complained against under this chapter
26 purchased the motor fuel involved in the complaint, at a
27 fictitious price, or upon terms, or in such a manner, or under
28 such invoices, as to conceal the true costs, discounts, or
29 terms of purchase.

30 b. Evidence of the normal, customary, and prevailing terms
31 and discounts in connection with other sales of a similar
32 nature in the market area.

33 2. A cost survey made pursuant to recognized statistical
34 and cost accounting practices that determines and establishes
35 on the basis of actual existing conditions the lowest cost to

1 wholesalers or the lowest cost to retailers for a market area
2 relevant to a complaint charging a violation of this chapter
3 shall be deemed competent evidence in any action or proceeding
4 under this chapter as tending to prove actual cost to the
5 wholesaler or retailer complained against. Any party against
6 whom any such cost survey is introduced in evidence shall have
7 the right to offer evidence tending to prove any inaccuracy of
8 such cost survey or any state of facts that impair its
9 probative value, or to introduce independent cost evidence.

10 Sec. 16. NEW SECTION. 473B.16 INJUNCTIVE AND OTHER
11 RELIEF BY ATTORNEY GENERAL OR COUNTY ATTORNEY.

12 A person who competes with another person in the same
13 market area at the same level of distribution and who violates
14 any provision of this chapter shall be subject to injunctive
15 and other relief in a civil action brought by the attorney
16 general or a county attorney in any district court in any
17 county in which any of the alleged violations of this chapter
18 took place, or in any county where any of the defendants
19 reside or do business. Any such person shall also be liable
20 for attorney fees and costs incurred by the attorney general
21 or the county attorney.

22 Sec. 17. NEW SECTION. 473B.17 ACTION BY PERSON INJURED
23 OR THREATENED BY INJURY -- INJUNCTIVE RELIEF -- DAMAGES --
24 ATTORNEY FEES -- JURISDICTION.

25 1. Any person who competes with another person in the same
26 market area at the same level of distribution who is injured
27 by any violation of this chapter, or who would suffer injury
28 from any threatened violation of this chapter, may maintain an
29 action in any district court in any county in which the injury
30 or threatened injury did or will take place, or where any of
31 the parties reside or do business, to prevent, restrain, or
32 enjoin such violation or threatened violation, including an
33 action for a declaratory judgment, injunctive relief, and for
34 actual damages.

35 2. If a violation or threatened violation of this chapter

1 is established, the court shall enjoin and restrain, or
2 otherwise prohibit, such violation or threatened violation
3 and, in addition, the court shall assess in favor of the
4 plaintiff and against the defendant the costs of suit,
5 including reasonable attorney fees.

6 3. In the action it is not necessary that actual damages
7 to the plaintiff be proved, but where alleged and proved, the
8 plaintiff in such action, shall be entitled to recover from
9 the defendant the damages sustained by the plaintiff. Any
10 actual damages found to have resulted from violations of this
11 chapter shall be trebled by the court in making its award.

12 4. The court may also award court costs and reasonable
13 attorney fees to the prevailing party.

14 5. If a court determines that any action brought under
15 this section is frivolous, the person bringing the action
16 shall be liable for all of the other party's costs and
17 expenses incurred in the defense of the action, including
18 reasonable attorney fees. The party shall also be subject to
19 the provisions of section 617.16 regarding frivolous actions,
20 if the party has unsuccessfully prosecuted three or more
21 actions in the preceding five-year period.

22 6. Any action under this section shall be brought within
23 two years after the alleged violations occurred.

24 EXPLANATION

25 This bill creates new Code chapter 473B, the "Iowa Fair
26 Motor Fuel Marketing Act".

27 New Code section 473B.1 of the bill states the title of the
28 chapter, and provides that the purpose is to protect the
29 public interest, as well as to provide for enforcement and
30 penalties.

31 New Code section 473B.2 sets forth legislative findings in
32 regard to subsidies in the marketing of motor fuel, and new
33 Code section 473B.3 provides that the legislative intent is to
34 protect the public interest against monopolies or unfair
35 methods of competition in sales of motor fuel, as well as to

1 prevent injury to competition from the sale of motor fuel
2 below cost.

3 New Code section 473B.4 provides definitions for the new
4 chapter, including "affiliate", "basic cost of motor fuel",
5 "competition", "cost of doing business", "cost to refiner",
6 "cost to wholesaler", "customary discount for cash", "motor
7 fuel", "refiner", "retailer", "sale", "sale at retail", "sale
8 at wholesale", "supplier", "transfer price", "wholesale
9 distributor", and "wholesaler".

10 New Code section 473B.5 prohibits certain below-cost sales
11 of motor fuel. New Code section 473B.6 prohibits certain
12 below-cost transfers of motor fuel where the effect is to
13 injure competition.

14 New Code section 473B.7 provides that a price differential
15 that is due to a difference in costs of shipping,
16 transportation, marketing, sale, or quantity will not
17 constitute a violation of Code chapter 473B. In addition, a
18 price that is established in good faith to meet a price
19 offered by a competitor will not violate Code chapter 473B.
20 Finally, sales that are listed under new Code section 473B.10,
21 including such unique sales as damaged goods or liquidation
22 sales that are specially advertised and conducted, do not
23 violate Code chapter 473B.

24 New Code section 473B.9 provides that when a sale involves
25 two items, one of which is motor fuel, the combined price of
26 the two items may not be below the cost to the wholesaler or
27 retailer of the total of all items.

28 New Code section 473B.10 provides that certain sales are
29 excluded from the provision of Code chapter 473B, provided
30 that the sales are properly advertised and the goods are
31 clearly marked and kept separate: (1) an isolated transaction
32 not in the usual course of business; (2) a bona fide clearance
33 sale for discontinuing trade in motor fuel; (3) imperfect or
34 damaged goods; (4) final liquidation of a business; and (5)
35 sale by a fiduciary or other officer under the order or

1 direction of a court. The price of a sale under Code section
2 473B.10 is not the price of a competitor for purposes of Code
3 chapter 473B.

4 New Code section 473B.11 provides that any wholesaler or
5 retailer may meet the price of a competitor who offers the
6 same type of service and who sells the same item. In the
7 absence of proof of actual cost, evidence from a cost survey
8 may be used.

9 New Code section 473B.12 provides that a contract made in
10 violation of any provision of Code chapter 473B is voidable
11 and unenforceable.

12 New Code section 473B.13 provides for the calculation of
13 prices when one wholesaler sells to another, who then sells to
14 a retailer.

15 New Code section 473B.14 provides that a prima facie
16 violation under the Code chapter is established by showing any
17 of the following: (1) that the plaintiff's purchase price
18 from a refiner or wholesaler is greater than the refiner's
19 transfer price; (2) that the plaintiff's purchase price from a
20 refiner or wholesaler plus the plaintiff's cost of doing
21 business is greater than the refiner's or wholesaler's retail
22 posted sales price; (3) that the plaintiff's basic cost of
23 motor fuel plus the plaintiff's cost of doing business is
24 greater than the posted sales price at a retail location of a
25 competitor within the plaintiff's marketing area. After
26 showing a prima facie case, the burden of proof shifts to the
27 defendant.

28 New Code section 473B.15 addresses the issue of cost
29 surveys as evidence of actual cost, and other issues relating
30 to cost evidence.

31 New Code section 473B.16 provides for injunctive and other
32 relief and recovery of attorney fees in a civil action brought
33 by the attorney general or a county attorney.

34 New Code section 473B.17 provides for a private cause of
35 action by a competitor injured or threatened by injury by a

1 violation of Code chapter 473B. The competitor may sue for
2 injunctive relief, declaratory judgment, and for actual
3 damages that are trebled. The prevailing party is also
4 entitled to court costs and reasonable attorney fees. The
5 court may assess costs and expenses, including reasonable
6 attorney fees, in the event of a frivolous action. The Code
7 section contains a two-year statute of limitations.

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