

As Amended by House Committee

Session of 2003

HOUSE BILL No. 2330

By Representatives Holland and Patterson

2-12

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

13

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

15 Section 1. (a) Except as otherwise provided, no marketer or retailer
16 of motor fuel shall sell or offer for sale, by posted price or indicating
17 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, not to exceed three days per calendar quarter;
22 or

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

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

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 so the marketer or retailer who is the subject of the complaint shall pro-
4 vide the division with all records and documentation requested in order
5 for the division to determine if a violation of the act has occurred. The
6 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. **The secretary of agriculture may adopt rules and**
13 **regulations as necessary to carry out the duties of the division of**
14 **weights and measures under this act.**

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

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

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

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

24 (f) ~~Any~~ **On the first** violation of the provisions of this section shall
25 ~~render the violator liable for the payment of a civil penalty in a sum of~~
26 ~~\$5,000 for each violation. Any such violation of this act not identified to~~
27 ~~be in connection with a specific identifiable consumer transaction but~~
28 ~~which is continuing in nature shall be deemed a separate violation, the~~
29 **attorney general shall send to the violator by certified mail, return**
30 **receipt requested, an order that the violator cease and desist from**
31 **the violation within 24 hours of receipt of such order, a second**
32 **violation of the provisions of this section shall render the violator**
33 **liable for the payment of a civil penalty in a sum of \$1,000 for each**
34 **day the violation occurs and a third or subsequent violation of the**
35 **provisions of this section shall render the violator liable for the**
36 **payment of a civil penalty in a sum of \$10,000 for each day such**
37 violation occurs.

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

41 (2) enjoin or obtain a restraining order against a marketer or retailer
42 who has violated, is violating or is otherwise likely to violate the provisions
43 of this act; ~~or~~ **and**

- 1 (3) recover court costs and, if applicable, reasonable attorney fees.
2 (g) **Any action brought under subsections (e) to (g), inclusive,**
3 **shall be brought within six months of the act giving rise to such**
4 **action.**
5 Sec. 2. This act shall take effect and be in force from and after its
6 publication in the statute book.