

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 a.m. on March 18, 2004 in Room 241-N of the Capitol.

All members were present except:

Representative Don Hill- excused
Representative Kevin Yoder- excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Norm Furse, Revisor of Statutes
Renaë Jefferies, Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee: Thomas M. Palace, Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas
Constantine Cotsoradis, Kansas Department of Agriculture

Others attending:

See Attached List.

The Chairman opened the meeting and stated that **SB 66 - Title insurance; prohibiting certain actions** had a hearing on March 16 and had planned to work the bill today. However, the real estate agents and title companies have reached a compromise and both will enlighten us tomorrow and we might be able to get the bill out of committee.

The Chairman said that **HB 2928 - Motor fuel tax rates and prohibited acts and remedies for certain acts involving sales of motor fuel below cost** had a hearing on March 16 and Mr. Palace offered a balloon amendment that would make the bill acceptable.

Mr. Palace briefed the committee on the changes requested. There was a motion which passed to request a Substitute Bill on March 16 so all the stricken material would not have to be reprinted (Attachment 1).

Constantine Cosoradis, Weights and Measures Division, Kansas Department of Agriculture, said he did not know how many complaints would be forthcoming. The Department initially asked for additional funding to cover the costs of the complaints. The Department will make do. It depends on the number of complaints to know what funding is needed and that is an unknown. The Department had checked with Minnesota and they had approximately 1500 complaints a year. Kansas has less stations than Minnesota so it is estimated there could be approximately 900 complaints. Minnesota's complaints have continued to stay steady.

Representative Patterson said that the penalties would generate revenue.

Representative Ruff moved and Representative Swenson seconded to move Sub HB 2928 out favorably. The motion carried.

Representative Sharp voted "NO".

The meeting adjourned at 9:25 a.m. The next meeting will be March 19, 2004.



MEMO TO: House Commerce Committee
FROM: Thomas M. Palace, Executive Director of the Petroleum Marketers and
Convenience Store Association of Kansas
DATE: March 16, 2004
RE: HB 2928

Mr. Chairman and members of the House Commerce Committee:

My name is Tom Palace and I am the Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA), a statewide trade association that represents over 300 independent petroleum marketers and convenience store owners throughout Kansas.

We appreciate the opportunity to appear before you as a proponent of sections 5-7 of HB 2928.

I have included in my testimony my previous testimony for HB 2330. HB 2928 includes several minor changes that are the result of previous testimony made by opponents to the bill and committee suggestions. They are:

1. Page 6, line 20-21. We put this language in based on comments made by the opponents.
2. Page 6, line 29. In previous testimony we included credit card fees as part of our definition of cost. However, after reviewing the bill it was not clear that the term "fees" included credit card fees. We wanted to make it clear that cost included credit card fees.
3. Page 7, line 39-40. We inserted this language to make sure that the secretary of agriculture had the ability to adopt rules and regulations to implement this act.
4. Page 7 line 41. Section 2 amends the Petroleum Inspection Fee Fund (PIFF) into the bill. The fund was established in 1996 by the petroleum industry and the Department of Agriculture, Division of Weights and Measures (W&M) uses the money generated by this fund to do quality and quantity testing of fuel pumps and meters. The enforcing arm of HB 2928 is W&M, and this provision allows W&M to use funds from this account to enforce this program in addition to costs associated with regulating motor fuel dispensing devices.

Mr. Chairman, these are the changes that were made to HB 2330. The major change to this bill is the inclusion of the Petroleum Inspection Fee Fund to be used to offset the fiscal note that may affect this legislation. All other changes were made in accordance with testimony given back in January.

This committee was supportive of passing this legislation out earlier in the session and we urge your support to do so today.

Thank You

Petroleum Marketers and Convenience Store Association of Kansas
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Comme Labor
3-18-04
Atch #1



MEMO TO: House Commerce Committee
FROM: Thomas M. Palace, Executive Director of the Petroleum Marketers and
Convenience Store Association of Kansas
DATE: January 27, 2004
RE: HB 2330

Mr. Chairman and members of the House Commerce Committee:

My name is Tom Palace and I am the Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA), a statewide trade association that represents over 300 independent petroleum marketers and convenience store owners throughout Kansas.

We appreciate the opportunity to appear before you as a proponent to HB 2330.

I want to commend and thank Representatives Doug Patterson and Tom Holland for their efforts to get this bill in front of this committee today.

The Problem

The practice of selling motor fuel "below cost" has but one goal: the elimination of competition. The evolution of the "big box retailers" or discount retailers is taking its toll on the small independent gas station marketer that has served his community for years. The consumer has long been the benefactor of price wars, over-supply of gasoline, an inflation-proof commodity and now the "big box" retailer. In today's environment, consumers chase price, and discount retailers use gasoline as a "loss leader" to get more people into their stores to purchase other items that have higher profit margins. Independent marketers can show you that the competition they face comes down to gasoline being sold at 2-10 cents below cost. A small retailer cannot compete for long with that kind of pricing. In many cases, a retailer is unable to even purchase fuel at the price their competitor is charging.

Below cost selling of gasoline has occurred for years, and is usually specific in nature and ongoing in certain areas. I would be remiss if I did not say that some of our PMCA members have been guilty of lowering the price of fuel occasionally to gain more market share. But they do not and cannot continue this practice over an extended period of time. Discount pricing also occurs at grand openings, on anniversaries and customer appreciation days. We have accounted for the special "promotional" days in the bill, but limit how long they can be permitted. However, since the big box retailers have added fuel pumps at their sites, special promotions appear more and more often on a prolonged period of time and such activity affects almost every county in the state...or will when a discount retailer comes to town. This problem is exacerbated when competing on the borders of Kansas. Border marketers are currently hampered by an 8

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cent disparity in cost in both Missouri and Oklahoma on gasoline. Marketers must make difficult decisions on pricing because on the Kansas side they not only compete with the discount retailers, but they also have to contend with the 8 cent disadvantage due to lower fuel tax rates in neighboring states.

OVERVIEW OF HB 2330

1. HB 2330 was introduced in the House Commerce Committee during the 2003 Legislative Session. Representatives Doug Patterson and Tom Holland are the sponsors.
2. HB 2330 states that 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.
3. Included in the bill are special exceptions when below cost selling does not apply: grand openings, sales made to introduce a new or remodeled business, sales made during special promotions (customer appreciation, anniversary) which cannot exceed three days per calendar quarter, or sales made in good faith to meet an equally low retail price.
4. Cost is defined as: (1) product cost and actual freight or transportation cost plus applicable taxes and fees, (2) If actual product and freight figures are unavailable, "cost" means the invoice price or the average of the *three lowest terminal prices posted by supplier* 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; plus actual freight charges equal to or *offered from a common carrier for hire designated for the terminal from which the most recent supply of motor fuel delivered to the retail location* plus applicable taxes and fees pursuant to federal, state and local law, and (3) *credit cards fees*.
5. Kansas Division of Weights and Measures (W/M) will be the primary enforcement arm. A marketer can make a formal complaint to Weights and Measures, and if W/M/ has reason to believe that a marketer or retailer has violated this act, they can demand that such marketer or retailer raise their price. Within 10 business days, the marketer or retailer is required to submit all records and documentation to W/M determine if a violation has occurred.

-W/M has the authority to "red tag," (take pumps out of service) if a marketer or retailer does not comply with the act.

-If it is determined that the act has been violated, W/M shall notify the attorney general and provide all documentation to that office.
6. The attorney general may bring an action, to obtain a declaratory judgment, obtain a restraining order against a marketer, recover any penalty provided by the act, and recover reasonable expenses and investigation fees of the division of W/M and the attorney general.

7. Violation of the act shall render the violator liable for a payment of a civil penalty in the sum of \$5,000 for each violation (sale).

Opposition

There is a misconception that if passed this law will increase prices (see study in packet). This law states only that you cannot sell gasoline below your actual "hard" costs. It is very unlikely that any retailer that has a product that equates to 65% of their gross receipts could stay in business by selling the product at cost...let alone under cost.

Federal Anti-Trust Laws for "predatory pricing" currently on the books have not been effective in halting motor fuel sales made below the acquisition cost. When using these predatory pricing laws, the court must prove "intent to harm" which is virtually impossible short of having an informant who can show proof that a company is literally trying to put another company out of business.

The Federal Trade Commission (FTC) has weighed in on this issue several times. In a letter (see attached) to New York Governor George Pataki, the FTC stated "during the past two decades, a growing body of empirical economic research has assessed the impact of state 'sales below cost' laws on retail gasoline prices. Most studies find these laws raise gasoline prices or leave them unchanged. Some suggest that the laws raise retail gasoline prices by one or two cents per gallon. One study currently in draft form finds that these laws increase gasoline prices initially and lower them in subsequent years, but it is not clear whether these findings meet economists' customary standards for statistical significance. Many of the studies suffer from methodological problems that make it unclear whether they are measuring the impact of sales below cost laws or something else. The most carefully-controlled study, conducted by a senior economist in the FTC's Bureau of Economics, found that the laws had no effect on retail prices."

Fiscal Note

We have been told that there is a fiscal note with this bill. The Department of Agriculture Division of Weights and Measures (W/M) is currently checking fuel pumps for quality and quantity testing, a plan PMCA initiated in 1996. W/M inspects retail fuel outlets to determine that fuel pumps are releasing the proper amount of gallons purchased, and the division tests the quality of the fuel for proper octane levels. Retail marketers are paying for this through the Petroleum Inspection Fee Fund (PIF). The fund generates approximately \$860,000 annually. Of this amount, \$250,000 goes directly to the general fund, leaving what is left to run the program.

W/M has stated they need approximately 2 employees and \$106,000 to run the fair marketing enforcement program. We have been told that there is approximately \$60,000 left over that goes unused per year based on agreements with outside contractors to conduct the quality and quantity sampling. Without knowing how many below cost complaints the division will receive, we cannot justify at this early juncture two additional employees to run this program. PMCA would rather use the available resources and come back at a later date to determine if an increase in the

PIF would be needed.

Will This Bill Solve The Problem

Mr. Chairman and committee members, this legislation is not geared toward keeping a marginal marketer in business. It does not guarantee a profit for ineffective retailers. It will, however, stop the most horrendous cases of below cost selling and gives the small marketer the opportunity to compete.

Big box or hypermarket retailers are here to stay. What this bill proposes is to make sure there is a counterbalance, providing competitive pricing and a ready supply of fuel to Kansas Consumers.

PMCA urges your support of HB 2330 as amended.

HOUSE BILL No. 2928

By Committee on Taxation

3-11

9 AN ACT concerning motor fuel ~~taxation~~ relating to ~~rates of tax, sale of~~ sale of
 10 ~~motor fuel~~ certain prohibited acts; civil penalties; duties of division of 55-427
 11 weights and measures and attorney general; private remedy; amending
 12 K.S.A. 2003 Supp. ~~79-3492b, 79-34,113, 79-34,141 and 79-34,142~~
 13 repealing the existing ~~sections~~ section

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

16 ~~Section 1. K.S.A. 2003 Supp. 79-3492b is hereby amended to read~~
 17 ~~as follows: 79-3492b. Alternatively to the methods otherwise set forth in~~
 18 ~~this act, special LP-gas permit users operating motor vehicles on the pub-~~
 19 ~~lic highways of this state may upon application to the director on forms~~
 20 ~~prescribed by the director elect to pay taxes in advance on LP-gas for~~
 21 ~~each and every motor vehicle owned or operated by them and propelled~~
 22 ~~in whole or in part with LP-gas during the calendar year and thereafter~~
 23 ~~to purchase LP-gas tax free in lieu of securing a bonded user's permit~~
 24 ~~and filing monthly reports and tax payments and keeping the records~~
 25 ~~otherwise provided for in this act. The amount of such tax for each motor~~
 26 ~~vehicle shall, except as otherwise provided, be based upon the gross~~
 27 ~~weight of the motor vehicle and the number of miles it was operated on~~
 28 ~~the public highways of this state during the previous year pursuant to the~~
 29 ~~following schedules.~~

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On and after July 1, 2002, until July 1, 2003, 2002.

Less than \$500 miles	\$500 to 1,000 miles	1,001 to 1,500 miles	1,501 to 19,999 miles	20,000 to 29,999 miles	30,000 to 39,999 miles	40,000 to 49,999 miles	50,000 to 99,999 miles	100,000 and over
Class A: more than 5,000 pounds and not more than 6,000 pounds.	\$14.00	\$23.00	\$23.00	\$26.00	\$26.00	\$26.00	\$26.00	\$26.00
Class B: more than 6,000 pounds and not more than 7,000 pounds.	\$19.00	\$28.00	\$28.00	\$31.00	\$31.00	\$31.00	\$31.00	\$31.00
Class C: more than 7,000 pounds and not more than 8,000 pounds.	\$24.00	\$33.00	\$33.00	\$36.00	\$36.00	\$36.00	\$36.00	\$36.00
Class D: more than 8,000 pounds and not more than 9,000 pounds.	\$29.00	\$38.00	\$38.00	\$41.00	\$41.00	\$41.00	\$41.00	\$41.00
Class E: more than 9,000 pounds and not more than 10,000 pounds.	\$34.00	\$43.00	\$43.00	\$46.00	\$46.00	\$46.00	\$46.00	\$46.00
Class F: more than 10,000 pounds and not more than 11,000 pounds.	\$39.00	\$48.00	\$48.00	\$51.00	\$51.00	\$51.00	\$51.00	\$51.00
Class G: more than 11,000 pounds and not more than 12,000 pounds.	\$44.00	\$53.00	\$53.00	\$56.00	\$56.00	\$56.00	\$56.00	\$56.00
Class H: more than 12,000 pounds and not more than 13,000 pounds.	\$49.00	\$58.00	\$58.00	\$61.00	\$61.00	\$61.00	\$61.00	\$61.00
Class I: more than 13,000 pounds and not more than 14,000 pounds.	\$54.00	\$63.00	\$63.00	\$66.00	\$66.00	\$66.00	\$66.00	\$66.00
Class J: more than 14,000 pounds and not more than 15,000 pounds.	\$59.00	\$68.00	\$68.00	\$71.00	\$71.00	\$71.00	\$71.00	\$71.00
Class K: more than 15,000 pounds and not more than 16,000 pounds.	\$64.00	\$73.00	\$73.00	\$76.00	\$76.00	\$76.00	\$76.00	\$76.00
Class L: more than 16,000 pounds and not more than 17,000 pounds.	\$69.00	\$78.00	\$78.00	\$81.00	\$81.00	\$81.00	\$81.00	\$81.00
Class M: more than 17,000 pounds.	\$74.00	\$83.00	\$83.00	\$86.00	\$86.00	\$86.00	\$86.00	\$86.00
Class N: more than 18,000 pounds.	\$79.00	\$88.00	\$88.00	\$91.00	\$91.00	\$91.00	\$91.00	\$91.00
Class O: more than 19,000 pounds.	\$84.00	\$93.00	\$93.00	\$96.00	\$96.00	\$96.00	\$96.00	\$96.00
Class P: more than 20,000 pounds and not more than 21,000 pounds.	\$89.00	\$98.00	\$98.00	\$101.00	\$101.00	\$101.00	\$101.00	\$101.00
Class Q: more than 21,000 pounds and not more than 22,000 pounds.	\$94.00	\$103.00	\$103.00	\$106.00	\$106.00	\$106.00	\$106.00	\$106.00
Class R: more than 22,000 pounds and not more than 23,000 pounds.	\$99.00	\$108.00	\$108.00	\$111.00	\$111.00	\$111.00	\$111.00	\$111.00
Class S: more than 23,000 pounds and not more than 24,000 pounds.	\$104.00	\$113.00	\$113.00	\$116.00	\$116.00	\$116.00	\$116.00	\$116.00
Class T: more than 24,000 pounds and not more than 25,000 pounds.	\$109.00	\$118.00	\$118.00	\$121.00	\$121.00	\$121.00	\$121.00	\$121.00
Class U: more than 25,000 pounds and not more than 26,000 pounds.	\$114.00	\$123.00	\$123.00	\$126.00	\$126.00	\$126.00	\$126.00	\$126.00
Class V: more than 26,000 pounds and not more than 27,000 pounds.	\$119.00	\$128.00	\$128.00	\$131.00	\$131.00	\$131.00	\$131.00	\$131.00
Class W: more than 27,000 pounds and not more than 28,000 pounds.	\$124.00	\$133.00	\$133.00	\$136.00	\$136.00	\$136.00	\$136.00	\$136.00
Class X: more than 28,000 pounds and not more than 29,000 pounds.	\$129.00	\$138.00	\$138.00	\$141.00	\$141.00	\$141.00	\$141.00	\$141.00
Class Y: more than 29,000 pounds and not more than 30,000 pounds.	\$134.00	\$143.00	\$143.00	\$146.00	\$146.00	\$146.00	\$146.00	\$146.00
Class Z: more than 30,000 pounds.	\$139.00	\$148.00	\$148.00	\$151.00	\$151.00	\$151.00	\$151.00	\$151.00

Class I: more than 13,000 pounds and not more than 14,000 pounds.

Class J: more than 14,000 pounds and not more than 15,000 pounds.

Class K: more than 15,000 pounds and not more than 16,000 pounds.

Class L: more than 16,000 pounds and not more than 17,000 pounds.

Class M: more than 17,000 pounds.

Class N: more than 18,000 pounds.

Class O: more than 19,000 pounds.

Class P: more than 20,000 pounds and not more than 21,000 pounds.

Class Q: more than 21,000 pounds and not more than 22,000 pounds.

Class R: more than 22,000 pounds and not more than 23,000 pounds.

Class S: more than 23,000 pounds and not more than 24,000 pounds.

Class T: more than 24,000 pounds and not more than 25,000 pounds.

Class U: more than 25,000 pounds and not more than 26,000 pounds.

Class V: more than 26,000 pounds and not more than 27,000 pounds.

Class W: more than 27,000 pounds and not more than 28,000 pounds.

Class X: more than 28,000 pounds and not more than 29,000 pounds.

Class Y: more than 29,000 pounds and not more than 30,000 pounds.

Class Z: more than 30,000 pounds.

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Effective after July 1, 2010:

Class A: 3,000 pounds or less	less than \$100 miles	\$14.00	\$100 to 10,000 miles	\$68.00	10,001 to 15,000 miles	\$102.00	15,001 to 19,999 miles	\$136.00	20,000 to 29,999 miles	\$204.00	30,000 to 39,999 miles	\$272.00	40,000 to 49,999 miles	\$340.00	50,000 to 59,999 miles	\$408.00	60,000 to and over	\$476.00
Class B: more than 3,000 pounds, and not more than 4,500 pounds		\$28.00	\$168.00	\$172.00	\$216.00	\$250.00	\$284.00	\$318.00	\$352.00	\$386.00	\$420.00	\$454.00	\$488.00	\$522.00	\$556.00	\$590.00	\$624.00	
Class C: more than 4,500 pounds, and not more than 12,000 pounds		\$70.00	\$170.00	\$204.00	\$238.00	\$272.00	\$306.00	\$340.00	\$374.00	\$408.00	\$442.00	\$476.00	\$510.00	\$544.00	\$578.00	\$612.00	\$646.00	
Class D: more than 12,000 pounds, and not more than 16,000 pounds		\$95.00	\$190.00	\$224.00	\$258.00	\$292.00	\$326.00	\$360.00	\$394.00	\$428.00	\$462.00	\$496.00	\$530.00	\$564.00	\$598.00	\$632.00	\$666.00	
Class E: more than 16,000 pounds, and not more than 21,000 pounds		\$122.00	\$216.00	\$250.00	\$284.00	\$318.00	\$352.00	\$386.00	\$420.00	\$454.00	\$488.00	\$522.00	\$556.00	\$590.00	\$624.00	\$658.00	\$692.00	
Class F: more than 21,000 pounds, and not more than 26,000 pounds		\$139.00	\$233.00	\$267.00	\$301.00	\$335.00	\$369.00	\$403.00	\$437.00	\$471.00	\$505.00	\$539.00	\$573.00	\$607.00	\$641.00	\$675.00	\$709.00	
Class G: more than 26,000 pounds, and not more than 32,000 pounds		\$211.00	\$305.00	\$339.00	\$373.00	\$407.00	\$441.00	\$475.00	\$509.00	\$543.00	\$577.00	\$611.00	\$645.00	\$679.00	\$713.00	\$747.00	\$781.00	
Class H: more than 32,000 pounds		\$291.00	\$385.00	\$419.00	\$453.00	\$487.00	\$521.00	\$555.00	\$589.00	\$623.00	\$657.00	\$691.00	\$725.00	\$759.00	\$793.00	\$827.00	\$861.00	
Class I: airmail carrier vehicles operated by general companies																		
Class J: airmail carrier vehicles operated by express companies																		

Section 101.01, Chapter 101, Code of Criminal Procedure, and Chapter 101, Code of Criminal Procedure, are amended to read as follows:

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1 In the event any additional motor vehicles equipped to use LP-gas as a
 2 fuel are placed in operation by a special LP-gas permit user after the first
 3 month of any calendar year, a tax shall become due and payable to this
 4 state and is hereby imposed at the tax rate prescribed herein prorated on
 5 the basis of the weight and mileage for the months operated in the cal-
 6 endar year. The director shall issue special permit decals for each motor
 7 vehicle on which taxes have been paid in advance as provided herein,
 8 which shall be affixed on each such vehicle in the manner prescribed by
 9 the director.

10 Sec. 2. K.S.A. 2003 Supp. 79-34,118 is hereby amended to read as
 11 follows: 79-34,118. Upon application to the director of taxation and pay-
 12 ment of the fee prescribed under this section any interstate motor fuel
 13 user may obtain a trip permit which will authorize one commercial motor
 14 vehicle to be operated within this state without compliance with the other
 15 provisions of the interstate motor fuel use act and in lieu of the tax im-
 16 posed by K.S.A. 79-34,109 and amendments thereto. The fee for each
 17 trip permit issued under this section shall be \$12.50 until July 1, 2003;
 18 and \$13 until July 1, 2020, and \$10 thereafter. The secretary of revenue
 19 shall adopt rules and regulations specifying the conditions under which
 20 trip permits will be issued and providing for the issuance thereof. The
 21 secretary may designate agents or contract with private individuals, firms
 22 or corporations to issue such trip permits so that such permits will be
 23 obtainable at convenient locations.

24 Sec. 3. K.S.A. 2003 Supp. 79-34,141 is hereby amended to read as
 25 follows: 79-34,141.

26 (a) On and after July 1, 2002 2004, until July 1, 2003 2020, the tax
 27 imposed under this act shall be not less than:

- 28 (1) On motor-vehicle fuels, \$.23 per gallon, or fraction thereof;
- 29 (2) on special fuels, \$.25 per gallon, or fraction thereof; and
- 30 (3) on LP-gas, \$.22 per gallon, or fraction thereof.

31 (b) On and after July 1, 2003, until July 1, 2020, the tax imposed
 32 under this act shall be not less than:

- 33 ~~(1) On motor-vehicle fuels, \$.24 per gallon, or fraction thereof;~~
- 34 ~~(2) on special fuels, \$.26 per gallon, or fraction thereof; and~~
- 35 ~~(3) on LP-gas, \$.23 per gallon, or fraction thereof;~~

36 ~~(c) On and after July 1, 2020, the tax rates imposed under this act~~
 37 shall be not less than:

- 38 (1) On motor-vehicle fuels, \$.18 per gallon, or fraction thereof;
- 39 (2) on special fuels, \$.20 per gallon, or fraction thereof; and
- 40 (3) on LP-gas, \$.17 per gallon, or fraction thereof.

41 Sec. 4. K.S.A. 2003 Supp. 79-34,142 is hereby amended to read as
 42 follows: 79-34,142.

43 (a) On and after July 1, 2002 2004, until July 1, 2003 2020, the state

1 ~~The treasurer shall credit amounts received pursuant to K.S.A. 79-3408, 79-~~
 2 ~~3408c, 79-3491a, 79-3492 and 79-34,118 and amendments thereto as fol-~~
 3 ~~lows: To the state highway fund 64.6% and to the special city and county~~
 4 ~~highway fund 35.4%.~~
 5 ~~(b) On and after July 1, 2003, until July 1, 2020, the state treasurer~~
 6 ~~shall credit amounts received pursuant to K.S.A. 79-3408, 79-3408c, 79-~~
 7 ~~3491a, 79-3492 and 79-34,118, and amendments thereto, as follows: To~~
 8 ~~the state highway fund 66.37% and to the special city and county highway~~
 9 ~~fund 33.63%.~~
 10 ~~(c) On and after July 1, 2020, the state treasurer shall credit amounts~~
 11 ~~received pursuant to K.S.A. 79-3408, 79-3408c, 79-3491a, 79-3492 and~~
 12 ~~79-34,118 and amendments thereto as follows: To the state highway fund~~
 13 ~~65.9% and to the special city and county highway fund 34.1%.~~

New Section 1.

14 **New Sec. 5** (a) Except as otherwise provided, no marketer or retailer
 15 of motor fuel shall sell or offer for sale, by posted price or indicating
 16 meter, motor fuel at a price below cost.
 17 (b) The provisions of this section shall not apply to: (1) Any sales or
 18 offers to sell made during a grand opening, sales or offers to sell made
 19 to introduce a new or remodeled business or sales or offers to sell made
 20 during special promotions, final liquidation of a business, bona fide clear-
 21 ance sales and court ordered sales, not to exceed three days per calendar
 22 quarter; or
 23 (2) any sales or offers to sell made in good faith to meet an equally
 24 low retail price of a competitor in the ordinary course of trade or the
 25 usual conduct of business selling motor fuel of like grade as required by
 26 federal or state law.
 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 and any credit card processing fees or if such
 30 costs are unavailable then "cost" means the average of the three lowest
 31 prices posted by suppliers on the day at the terminal from which the most
 32 recent supply of motor fuel delivered to the retail location was acquired
 33 as published by a nationally recognized petroleum price reporting service
 34 and actual freight offered from a common carrier for hire designated for
 35 the terminal from which the most recent supply of motor fuel delivered
 36 to the retail location, plus applicable taxes and fees pursuant to federal,
 37 state and local law and any credit card processing fees.
 38 (d) If the division of weights and measures of the department of ag-
 39 riculture receives a complaint and has reason to believe that a marketer
 40 or retailer has violated the provisions of this act, the division shall
 41 promptly contact the marketer or retailer and demand that such marketer
 42 or retailer raise their price of motor fuel to comply with the provisions of
 43 this act. Within 10 business days, the division shall investigate and deter-

mine whether the allegations contained in the complaint are still true. If valid, the marketer or retailer who is the subject of the complaint shall provide the division with all records and documentation requested in order for the division to determine if a violation of the act has occurred. The division shall take out of service any pumps of any marketer or retailer who fails to comply with the division's request for records and documentation as provided in this act. If the division determines that the marketer or retailer is violating the provisions of this act, the division shall notify the attorney general of such violation and provide the attorney general with all records, documentation and findings of the division related to such violation.

(c) The attorney general may bring an action: (1) To obtain a declaratory judgment that a violation of the provisions of this act has occurred;

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

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

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

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

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

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

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

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

~~Sec. 6. K.S.A. 2003 Supp. 79-3492b, 79-34.118, 79-34.141 and 79-34.142 are hereby repealed.~~

Sec. 2. K.S.A. 2003 Supp. 55-427 is hereby amended to read as follows: 55-427.

(a) Every manufacturer, importer or distributor of any of the above-named petroleum products subject to inspection and liable for the payment of fees as provided in the petroleum products inspection law, shall report in full and detail before the 25th day of every month at the office of the director of taxation, on blanks prepared, furnished and approved by the director of taxation, the quantity of each of the above-named petroleum products sold in the state of Kansas during the preceding calendar month, and shall, at the time of forwarding such report, compute and pay to the director of taxation at the director's office, the amount of fees due the state on all petroleum products subject to inspection during the preceding month.

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

(c) There is hereby created in the state treasury the petroleum inspection fee fund which shall be administered by the secretary

112

of agriculture. All moneys credited to the petroleum inspection fee fund shall be used for the expenses incurred for the performance of the duties and functions of the secretary of agriculture and the Kansas department of agriculture prescribed by K.S.A. 55-422 through 55-446, and amendments thereto, and K.S.A. 83-501, and amendments thereto, or any rules and regulations adopted thereunder, relating to the regulation of the quality of petroleum products, and for the expenses incurred for the performance of the duties and functions of the secretary of agriculture and the Kansas department of agriculture prescribed by K.S.A. 83-401 through 83-410, and amendments thereto, or any rules and regulations adopted thereunder, and K.S.A. 83-501, and amendments thereto, or any rules and regulations adopted thereunder, relating to the regulation of motor fuel dispensing devices, as defined by K.S.A. 83-401, and amendments thereto, and for expenses incurred for the performance of duties and functions of the secretary of agriculture and the Kansas department of agriculture prescribed by section 1, and amendments thereto, or any rules and regulations adopted thereunder, relating to the enforcement of section 1, and amendments thereto. All expenditures from the petroleum inspection fee fund shall be made in accordance with the provisions of appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of agriculture or by a person or persons designated by the secretary.

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

treasury and such moneys shall be credited in accordance with the following:

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

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

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

1-14

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

Sec. 4.