

2/21/02 Rereferred To: Commerce
2/25/02 Do Pass
TRANSPORTATION

FILED FEB 19 2002
SENATE FILE 2233

BY LUNDBY
3/18/02 Returned to Commerce

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

A BILL FOR

1 An Act relating to the marketing of motor fuel and providing an
2 effective date.

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

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SF 2233
TRANSPORTATION

1 Section 1. NEW SECTION. 323B.1 SHORT TITLE.

2 This chapter shall be known and may be cited as the "Iowa
3 Fair Motor Fuel Marketing Act".

4 Sec. 2. NEW SECTION. 323B.2 LEGISLATIVE FINDINGS AND
5 INTENT.

6 1. The general assembly finds and declares all of the
7 following:

8 a. Marketing of motor fuel in the state of Iowa is
9 affected by the public interest and is vital to the state's
10 economic well-being.

11 b. The state of Iowa and petroleum marketers have invested
12 millions of dollars in maintaining an environmentally safe
13 delivery system for motor fuel to all areas of the state.

14 c. It is the policy of this state to promote the general
15 welfare through the prohibition of sales that create
16 monopolies or unfair methods of competition, in transactions
17 involving the sale of, or offer, or inducement to sell motor
18 fuel in the wholesale and retail markets in this state, and
19 the advertising, offering for sale, or sale of motor fuel
20 below cost or at a cost lower than that charged other persons
21 on the same marketing level is an unfair and deceptive
22 practice.

23 2. The purpose of the Iowa fair motor fuel marketing Act
24 is to carry out the policy stated in subsection 1 in the
25 public interest, providing for exceptions under certain
26 circumstances, and providing for penalties and enforcement.

27 Sec. 3. NEW SECTION. 323B.3 DEFINITIONS.

28 For purposes of this chapter, the following definitions
29 apply:

30 1. "Cost" means, as applied to the wholesale or retail
31 vendor of motor fuel, the actual current delivered invoice or
32 replacement cost, whichever is lower, without deducting
33 customary cash discounts, plus any excise or sales taxes or
34 fees imposed on such commodity, goods, wares, or merchandise
35 subsequent to the purchase of the commodity, goods, wares, or

1 merchandise and prior to the resale of the commodity, goods,
2 wares, or merchandise.

3 2. "Department" means the department of agriculture and
4 land stewardship.

5 3. "Motor fuel" means as defined in section 452A.2.

6 4. "Motor fuel pump" means a stationary pump, meter, or
7 similar measuring device used for measuring retail motor
8 vehicle fuel.

9 5. "Producer" means any person who is engaged in the
10 production of crude oil when it is produced, whether such
11 production occurs in this state or elsewhere, and includes any
12 affiliate of such person.

13 6. "Refiner" means any person engaged in the refining of
14 crude oil to produce motor fuel, whether or not such refining
15 occurs in this state, and includes any affiliate of such
16 person.

17 Sec. 4. NEW SECTION. 323B.4 UNLAWFUL FUEL SALES.

18 1. Any offer for sale of motor fuel by a refiner,
19 wholesaler, or retailer by way of posted price or indicating
20 meter that is below cost is a violation of this chapter unless
21 one of the following exceptions applies:

22 a. The offer to sell is an isolated transaction and not in
23 the usual course of business.

24 b. The offer to sell is pursuant to a bona fide clearance
25 sale for the purpose of discontinuing trade in such motor
26 fuel.

27 c. The motor fuel offered for sale is advertised or sold
28 as imperfect or damaged and the advertisement or offer to sell
29 states the imperfection or damage and the quantity of motor
30 fuel being sold.

31 d. The offer to sell is upon the final liquidation of a
32 business.

33 e. The offer to sell is by any fiduciary or other officer
34 of the court under the order or direction of a court.

35 f. The offer to sell is made in good faith to meet the

1 price of a competitor who is offering the same product.

2 2. a. A retail motor fuel outlet in this state shall be
3 operated by a retail motor fuel dealer.

4 b. A retail motor fuel outlet in this state may not be
5 operated by a producer or refiner of motor fuel in either of
6 the following manners:

7 (1) By a commissioned agent, company personnel, or a
8 subsidiary company of the producer or refiner.

9 (2) Pursuant to a contract with a person who manages the
10 retail motor fuel outlet on a fee arrangement with the
11 producer or refiner.

12 3. A retail motor fuel outlet is exempt from subsection 2
13 if, prior to July 1, 2002, the retail motor fuel outlet was
14 operated by a subsidiary of a producer or refiner of motor
15 fuel.

16 Sec. 5. NEW SECTION. 323B.5 PENALTIES.

17 A person found to be in violation of this chapter shall be
18 subject to a penalty by the department as follows:

19 1. For an initial violation, the motor fuel pumps at the
20 site of the violation shall be tagged and rendered inoperable
21 for twenty-four hours.

22 2. For a second violation within two years, the motor fuel
23 pumps at the site of the violation shall be tagged and
24 rendered inoperable for forty-eight hours.

25 3. For a third violation within two years, the motor fuel
26 pumps at the site of the violation shall be tagged and
27 rendered inoperable for seven days.

28 4. For a fourth violation within two years, the motor fuel
29 pumps at the site of the violation shall be tagged and
30 rendered inoperable for thirty days.

31 Sec. 6. NEW SECTION. 323B.6 RULES.

32 The department shall adopt rules pursuant to chapter 17A as
33 necessary to administer this chapter.

34 Sec. 7. EFFECTIVE DATE. This Act, being deemed of
35 immediate importance, takes effect upon enactment.

EXPLANATION

1
2 This bill relates to the marketing of motor fuel.
3 New Code section 323B.4 prohibits sales of motor fuel by
4 refiners, wholesalers, and retailers that are below cost
5 unless the offer to sell meets a specified exception: (1) it
6 is an isolated transaction not in the usual course of
7 business; (2) it is pursuant to a bona fide clearance sale for
8 the purpose of discontinuing business; (3) the goods are
9 advertised and sold as imperfect; (4) it is part of the final
10 liquidation of the business; (5) it is by a fiduciary or other
11 officer of the court under order or other direction of the
12 court; or (6) it is a good faith offer to meet the price of a
13 competitor offering the same product.

14 New Code section 323B.4 also requires a motor fuel outlet
15 to be operated by a retail motor fuel dealer, and requires
16 that it not be operated by a producer or a refiner either by a
17 commissioned agent, company personnel, or subsidiary company
18 of the producer or refiner or pursuant to a contract with a
19 person who manages the retail motor fuel outlet on a fee
20 arrangement with the producer or refiner. Motor fuel outlets
21 operated by a subsidiary of a producer or a refiner prior to
22 July 1, 2002, are exempt from this requirement, however.

23 Penalties for violations of Code section 323B.4 are set
24 forth in new Code section 323B.5, and involve tagging and
25 rendering the motor fuel pumps inoperable at the site of the
26 violation for periods of time ranging from 24 hours to 30
27 days, depending on whether the violation is a first, second,
28 third, or fourth violation within a two-year period. The
29 penalties are enforced by the department of agriculture and
30 land stewardship.

31 The bill also contains a short title, a statement of
32 legislative intent, and definitions.

33 The bill is effective upon enactment.

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35

SENATE FILE 2233

S-5089

1 Amend Senate File 2233 as follows:

2 1. By striking everything after the enacting
3 clause and inserting the following:

4 "Section 1. Section 551.4, Code 2001, is amended
5 to read as follows:

6 551.4 PENALTY.

7 The following shall be guilty of a serious
8 misdemeanor:

9 1. Any A person, firm, company, association, or
10 corporation violating any of the provisions of
11 ~~sections~~ section 551.1 and or 551.2, and any officer,
12 agent, or receiver of any firm, company, association,
13 or corporation, or any member of the same, or any
14 individual violating any of ~~such~~ the provisions ~~shall~~
15 ~~be guilty of a serious misdemeanor of section 551.1 or~~
16 551.2.

17 2. A producer, refiner, distributor, jobber,
18 wholesaler, or retailer violating any of the
19 provisions of section 551.13, or any officer,
20 director, stockholder, employee, partner, agent, or
21 any other representative violating any of the
22 provisions of section 551.13.

23 Sec. 2. Section 551.5, Code 2001, is amended to
24 read as follows:

25 551.5 CONTRACTS OR AGREEMENTS.

26 All contracts or agreements made in violation of
27 any of the provisions of ~~sections~~ section 551.1, and
28 551.2, or 551.13 shall be void.

29 Sec. 3. Section 551.6, Code 2001, is amended to
30 read as follows:

31 551.6 ENFORCEMENT.

32 It shall be the duty of the county attorneys, in
33 their counties, and the attorney general, to enforce
34 the provisions of sections 551.1 to through 551.5,
35 ~~inclusive,~~ and section 551.13, by appropriate actions
36 in courts of competent jurisdiction.

37 Sec. 4. Section 551.7, Code 2001, is amended to
38 read as follows:

39 551.7 COMPLAINT -- TO WHOM MADE.

40 If a complaint ~~shall be~~ is made to the secretary of
41 state that any corporation authorized to do business
42 in this state is guilty of unfair discrimination,
43 within the terms of ~~sections~~ section 551.1 and, 551.2,
44 or 551.13, ~~it shall be the duty of the secretary of~~
45 ~~state to~~ shall refer the matter to the attorney
46 general who may, if the facts justify it in the
47 attorney general's judgment, institute proceedings in
48 the courts against ~~such~~ the corporation.

49 Sec. 5. Section 551.8, Code 2001, is amended to
50 read as follows:

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1 551.8 REVOCATION OF PERMIT.

2 If any corporation, foreign or domestic, authorized
3 to do business in this state, is found guilty of
4 unfair discrimination, within the terms of ~~sections~~
5 section 551.1, and 551.2, or 551.13, it shall be the
6 ~~duty of~~ the secretary of state to shall immediately
7 revoke the permit of ~~such~~ the corporation to do
8 business in this state.

9 Sec. 6. Section 551.9, Code 2001, is amended to
10 read as follows:

11 551.9 CORPORATION TO BE ENJOINED.

12 If after revocation of its permit ~~such~~ a
13 corporation, or any other corporation not having a
14 permit and found guilty of having violated any of the
15 provisions of ~~sections~~ section 551.1 and, 551.2, or
16 551.13, shall continue or attempt to do business in
17 this state, ~~it shall be the duty of~~ the attorney
18 general, by a proper suit in the name of the state of
19 Iowa, ~~to shall~~ enjoin ~~such~~ the corporation from
20 transacting all business of every kind and character
21 in ~~said~~ this state.

22 Sec. 7. NEW SECTION. 511.13 UNFAIR
23 DISCRIMINATION -- MARKETING OF MOTOR FUEL.

24 1. A producer, refiner, distributor, jobber,
25 wholesaler, or retailer shall not, either directly or
26 indirectly, or through a subsidiary, affiliate
27 corporation, or related business entity, or by any
28 officer, director, stockholder, employee, partner,
29 agent, or any other representative, for the purpose or
30 with the effect of restraining, lessening, or
31 destroying competition or injuring one or more
32 competitors or injuring one or more persons dealing in
33 the marketing of motor fuel, or to impair or prevent
34 fair competition in the sale of motor fuel in the
35 state, engage in or threaten to engage in any of the
36 following trade practices or methods of doing
37 business:

38 a. Make or offer to make any gift of money,
39 merchandise, trading stamps, coupons, service,
40 supplies, or anything of value in connection with the
41 sale to a jobber, distributor, retailer, or consumer
42 in this state of motor fuel.

43 b. Charge a combined price for any motor fuel
44 product together with another commodity or service
45 that is less or is represented to be less than the
46 aggregate of the price of the particular motor fuel
47 product and the price or value of such other commodity
48 or service when separately sold or offered for sale.

49 c. Acting, applying, or attempting to apply any
50 method or device in the sale or distribution of a

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1 motor fuel product in any way that is inconsistent
2 with the intent of this section.

3 2. The penalties and procedures of sections 551.4
4 through 551.11 shall apply to violations of the
5 provisions of this section.

6 Sec. 8. EFFECTIVE DATE. This Act, being deemed of
7 immediate importance, takes effect upon enactment."

8 2. By renumbering as necessary.

By MIKE CONNOLLY

S-5089 FILED FEBRUARY 28, 2002

Legislative Fiscal Bureau

Fiscal Note

SF 2233 – Fair Motor Fuel Marketing Act (LSB 5538 XS)

Analyst: Mary Beth Mellick (Phone: (515) 281-8223) (marybeth.mellick@legis.state.ia.us)

Fiscal Note Version – New

Description

Senate File 2233 relates to the marketing of motor fuel and provides for penalties. The proposed legislation prohibits the sale of motor fuel by refiners, wholesalers, and retailers that are below cost unless the offer to sell meets specified exceptions. The Bill also provides restrictions regarding who will operate a motor fuel outlet.

Assumptions

1. The Department of Agriculture and Land Stewardship (DALs) would be required to audit motor fuel outlets to verify they are in compliance with the Iowa Fair Motor Fuel Marketing Act.
2. The Department of Agriculture and Land Stewardship would require 4.0 FTE auditor positions at approximately \$65,000 each and 1.0 FTE clerk specialist position at \$30,000 to conduct the audits.
3. Computers would be purchased for each new staff member, and travel would be required.
4. A person in violation of the Act would have the option to protest the violation upon a hearing with DALs.

Fiscal Impact

The fiscal impact of SF 2233 would result in increased General Fund expenditures to the Department of Agriculture and Land Stewardship (DALs) as follows:

	<u>FY 2003</u>	<u>FY 2004</u>
DALS Salary/Benefits	\$290,000	\$290,000
Equipment	15,000	0
Travel	15,000	15,000
Hearings	5,000	5,000
Total General Fund Expenditures	<u>\$325,000</u>	<u>\$310,000</u>

Source

The Department of Agriculture and Land Stewardship

/s/ Dennis C Prouty

March 11, 2002

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.
