

Senate Study Bill 1239

Bill Text

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1 1 Section 1. NEW SECTION. 473B.1 TITLE PURPOSE.
1 2 1. This chapter is entitled the "Iowa Fair Motor Fuel
1 3 Marketing Act".
1 4 2. The purpose of this chapter is to protect the public
1 5 interest, and to provide for enforcement and penalties with
1 6 respect to the requirements and prohibition of this chapter.
1 7 Sec. 2. NEW SECTION. 473B.2 LEGISLATIVE FINDINGS.
1 8 The general assembly makes the following findings with
1 9 respect to the marketing of motor fuel in Iowa:
1 10 1. In general, subsidies in the marketing of motor fuel
1 11 result whenever profits associated with the marketing of motor
1 12 fuel are transferred between operations, allowing the refined
1 13 fuel to be sold at less than the actual cost to produce such
1 14 fuel.
1 15 2. Subsidies in the marketing of motor fuel most commonly
1 16 occur in one of three ways:
1 17 a. When refiners use profits from the refining of crude
1 18 oil to cover below-normal or negative returns earned from
1 19 motor fuel marketing operations.
1 20 b. When a marketer with more than one location uses
1 21 profits from one location to cover losses resulting from
1 22 below-cost selling of motor fuel at another location.
1 23 c. When a business uses profits from nonmotor fuel sales
1 24 to cover losses resulting from below-cost selling of motor
1 25 fuel.
1 26 3. Independent motor fuel marketers are unable to survive
1 27 the results of subsidized pricing at the market level if all
1 28 of an independent motor fuel marketer's profit comes from
1 29 marketing operations.
1 30 4. Consequently, subsidized pricing is inherently
1 31 predatory because it aims to reduce overall competition in the
1 32 petroleum industry by eliminating independent motor fuel
1 33 marketers from the marketplace, which ultimately harms
1 34 consumers by decreasing competition.
1 35 Sec. 3. NEW SECTION. 473B.3 LEGISLATIVE FINDINGS.
2 1 1. Marketing of motor fuel in the state of Iowa affects
2 2 the public interest, and should be protected because the state
2 3 of Iowa and petroleum marketers have invested millions of
2 4 dollars in maintaining an environmentally safe delivery system
2 5 of motor fuel to all areas of the state.
2 6 2. The public should also be protected against creation of
2 7 monopolies or unfair methods of competition in transactions
2 8 involving the sale of, offers of sale, or inducements to sell
2 9 motor fuel in the wholesale and retail trades in this state.
2 10 3. Advertising, offering for sale, or selling motor fuel
2 11 below cost or at a cost lower than charged to other persons on
2 12 the same marketing level with the intent of injuring
2 13 competitors or destroying or substantially lessening
2 14 competition is an unfair and deceptive practice that should be
2 15 prohibited in this state.
2 16 Sec. 4. NEW SECTION. 473B.4 DEFINITIONS.
2 17 As used in this chapter, unless the context otherwise
2 18 requires:
2 19 1. "Affiliate" means any person who, other than by means
2 20 of franchise, controls, is controlled by, or is under common
2 21 control with any other person.

2 22 2. "Basic cost of motor fuel" means the lower of the
2 23 following two amounts:
2 24 a. The invoice cost of the motor fuel to the wholesaler or
2 25 retailer.
2 26 b. The lowest replacement cost of motor fuel to the
2 27 wholesaler or retailer. The replacement cost is calculated
2 28 within five days prior to the date of sale, in the quantity
2 29 last purchased, less all trade discounts, except customary
2 30 discounts for cash, plus the full value of freight costs and
2 31 taxes, if not already included in the invoice cost of the
2 32 motor fuel.
2 33 In computing its basic cost of motor fuel, its cost of
2 34 doing business, and in meeting competition, a refiner must
2 35 assess such fees in a like manner to its affiliates.

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

3 4 4. "Cost of doing business" or "overhead expenses"
3 5 includes all costs incurred in the conduct of business,
3 6 including, but not limited to the following items:
3 7 a. Labor, including salaries of executives and officers.
3 8 b. Rent, which must be no less than fair market value
3 9 based on current use of the property.
3 10 c. Interest on borrowed capital.
3 11 d. Depreciation.
3 12 e. The selling cost of the property.
3 13 f. Maintenance of equipment.
3 14 g. Transportation or freight cost.
3 15 h. Losses due to breakage or damage.
3 16 i. Credit card fees, or other charges.
3 17 j. Credit losses.
3 18 k. Costs attributable to licenses.
3 19 l. Taxes.
3 20 m. Insurance.
3 21 n. Advertising costs.

3 22 5. "Cost to refiner" means the refiner's posted terminal
3 23 price to the wholesale class of trade. If a refiner does not
3 24 regularly sell to the wholesale class of trade at that
3 25 terminal or does not post such a terminal price, the refiner
3 26 may use as its cost the posted price of any other refiner at
3 27 any terminal within the general trade area that has products
3 28 readily available for sale to the wholesale class of trade.

3 29 6. "Cost to retailer" means, as applied to retail sales,
3 30 the lesser of the invoice or replacement cost of the motor
3 31 fuel within five days prior to the date of sale, in the
3 32 quantity last purchased, less all trade discounts except
3 33 customary discounts for cash, plus state, federal, and local
3 34 taxes, inspection fees, and freight cost if paid by the
3 35 retailer, plus the cost of doing business.

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

4 9 8. "Customary discount for cash" includes any allowance,
4 10 whether a part of a larger discount or not, made to a
4 11 wholesaler or retailer when such person pays in full for motor
4 12 fuel within a specified time.

4 13 9. "Motor fuel" includes all motor fuel upon which a motor
4 14 fuel excise tax is imposed under chapter 452A.

4 15 10. "Refiner" means any person engaged in the production
4 16 or refining of motor fuel, whether such production or refining
4 17 occurs in this state or elsewhere, and includes any affiliate
4 18 of such person.

4 19 11. "Retailer" includes any person who is engaged in this
4 20 state in the business of selling motor fuel at retail to the
4 21 general public for ultimate consumption, and includes any
4 22 group of persons, cooperative associations, buying pools, and
4 23 any other person or group purchasing from licensed
4 24 distributors or wholesalers.

4 25 12. "Sale" or "sell" means any transfer in return for an
4 26 exchange, barter, gift, offer for sale, advertising for sale,
4 27 soliciting of an order, or distribution in any manner or by
4 28 any means whatsoever.

4 29 13. "Sale at retail", "sell at retail", and "retail
4 30 sales" include any sale for consumption or use in the ordinary
4 31 course of trade or usual conduct of the seller's business.

4 32 14. "Sale at wholesale", "sell at wholesale", and
4 33 "wholesales" include any sale made in the ordinary course of
4 34 trade or usual conduct of the wholesaler's business to a
4 35 retailer for the purpose of resale.

5 1 15. "Supplier" means a person who furnishes motor fuel to
5 2 marketing operations, or a different level of distribution.

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

5 7 17. "Wholesale distributor" means any person, including
5 8 any affiliate of such person, in commerce within the state,
5 9 who purchases motor fuel for sale, consignment, or
5 10 distribution to another, or receives motor fuel on consignment
5 11 for consignment or distribution to the person's own motor fuel
5 12 accounts or to accounts of the person's suppliers, but shall
5 13 not include a person who is an employee of, or merely serves
5 14 as, a common carrier providing transportation services for
5 15 such person.

5 16 18. "Wholesaler" means any person qualified as a
5 17 wholesaler of motor fuel with the department of revenue and
5 18 finance, and includes any person who brings or causes to be
5 19 brought into this state motor fuel purchased directly from the
5 20 manufacturer.

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

5 23 It shall be unlawful for any person engaged in commerce in
5 24 this state to sell or offer to sell motor fuel below cost or
5 25 to sell or offer to sell motor fuel at a price lower than the
5 26 seller charges other persons on the same day and on the same
5 27 level of distribution, within the same market area.

5 28 Sec. 6. NEW SECTION. 473B.6 CERTAIN BELOW-COST FUEL
5 29 TRANSFERS PROHIBITED.

5 30 It shall be unlawful for any person engaged in commerce in
5 31 this state to sell or transfer motor fuel to itself or an
5 32 affiliate for resale at another marketing level or
5 33 distribution at a transfer price that is below cost or lower
5 34 than the price the person charges a person who purchases for
5 35 resale on the same day and at the same distribution level,
6 1 within the same market area, where the effect is to injure
6 2 competition.

6 3 Sec. 7. NEW SECTION. 473B.7 CERTAIN SALES AND TRANSFER
6 4 PRICE DIFFERENTIALS AUTHORIZED.

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

6 16 2. It is not a violation of this chapter:

6 17 a. If a price is established in good faith to meet an
6 18 equally low price of a competitor in the same market area on
6 19 the same level of distribution selling the same or similar
6 20 product of like grade and quality.

6 21 b. If a sale is listed under section 473B.10.

6 22 Sec. 8. NEW SECTION. 473B.8 UNLAWFUL ACTS GENERALLY.

6 23 It shall be unlawful:

6 24 1. For any person engaged in commerce in this state to
6 25 sell or offer to sell motor fuel at wholesale or retail, as
6 26 the case may be, where the effect is to injure competition.

6 27 2. For any person, where the effect is to injure
6 28 competition, to offer a rebate, to offer to give a rebate, or
6 29 to offer a concession of any kind in connection with the sale
6 30 of motor fuel.

6 31 3. For any retailer to induce or attempt to induce or to
6 32 procure or attempt to procure the purchase of motor fuel at a
6 33 price less than the cost to a wholesaler.

6 34 Any person who violates any provision of this section shall
6 35 be subject to the provisions and penalties of this chapter.

7 1 Sec. 9. NEW SECTION. 473B.9 BELOW-COST COMBINED SELLING
7 2 PRICE OF MOTOR FUEL AND PROMOTIONAL GIFTS PROHIBITED.

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

7 16 Sec. 10. NEW SECTION. 473B.10 EXCLUSIONS.

7 17 1. This chapter shall not apply to a sale at wholesale or
7 18 retail made in any of the following circumstances:

7 19 a. In an isolated transaction not in the usual course of
7 20 business.

7 21 b. When motor fuel is advertised, offered for sale, or
7 22 sold in a bona fide clearance sale for the purpose of
7 23 discontinuing trade in motor fuel, and the advertising, offer
7 24 to sell, or sale states the reason as discontinuing trade, and
7 25 provides the quantity of the motor fuel for sale.

7 26 c. When motor fuel is advertised, offered for sale, or
7 27 sold as imperfect or damaged, and the advertising, offer of
7 28 sale, or sale states the reason as imperfect or damaged goods,
7 29 and the quantity of the motor fuel for sale.

7 30 d. When motor fuel is sold upon the final liquidation of a
7 31 business.

7 32 e. When motor fuel is advertised, offered for sale, or
7 33 sold by any fiduciary or other officer under the order or
7 34 direction of any court.

7 35 2. The goods subject to sale under subsection 1 must be
8 1 kept separate from other stock on hand, and must be clearly
8 2 and legibly marked with the reason for the sale. Any
8 3 advertisement of the goods must indicate the same facts and
8 4 the quantity to be sold for the exclusion of this section to
8 5 apply.

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

8 10 Sec. 11. NEW SECTION. 473B.11 COMPETITIVE SALES.

8 11 1. Any wholesaler may advertise, offer to sell, or sell
8 12 motor fuel at a price made in good faith to meet the price of

8 13 a competitor who offers the same type of service and who sells
8 14 the same item at cost.

8 15 2. Any retailer may advertise, offer to sell, or sell
8 16 motor fuel at a price made in good faith to meet the price of
8 17 a competitor who sells the same item at cost.

8 18 3. In the absence of proof of the actual cost to a
8 19 competing wholesaler or a competing retailer, the cost may be
8 20 presumed to be the lowest cost to wholesalers or retailers
8 21 within the same market area as determined by a cost survey
8 22 made pursuant to section 473B.15, subsection 2.

8 23 Sec. 12. NEW SECTION. 473B.12 CONTRACTS VIOLATIVE OF
8 24 CHAPTER RENDERED VOIDABLE AND UNENFORCEABLE.

8 25 Any contract, express or implied, made by any person in
8 26 violation of any of the provisions of this chapter is voidable
8 27 and unenforceable and no recovery shall be permitted under
8 28 such a contract by any person who has violated the provisions
8 29 of this chapter.

8 30 Sec. 13. NEW SECTION. 473B.13 SALES BETWEEN WHOLESALERS.

8 31 If a wholesaler sells motor fuel to any other wholesaler,
8 32 the seller shall not be required to include the cost to the
8 33 wholesaler in the wholesaler's selling price; however, the
8 34 latter wholesaler, upon resale of the motor fuel to a
8 35 retailer, must include such cost to the wholesaler in the
9 1 wholesaler's selling price.

9 2 Sec. 14. NEW SECTION. 473B.14 PRIMA FACIE SHOWING OF
9 3 VIOLATION.

9 4 1. A plaintiff presents a prima facie showing of a
9 5 violation under this chapter by establishing any of the
9 6 following:

9 7 a. That the plaintiff's purchase price from a refiner or
9 8 wholesaler is greater than the refiner's transfer price.

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

9 13 c. That the plaintiff's basic cost of motor fuel plus the
9 14 plaintiff's cost of doing business is greater than the posted
9 15 sales price at a retail location of a competitor within the
9 16 plaintiff's marketing area suspected of selling motor fuel in
9 17 violation of this chapter.

9 18 2. In any action brought under section 473B.16 or 473B.17,
9 19 the burden shifts to the defendant upon a prima facie showing
9 20 of a violation.

9 21 Sec. 15. NEW SECTION. 473B.15 COST EVIDENCE.

9 22 1. In determining cost to the wholesaler and cost to the
9 23 retailer, the court shall receive evidence tending to show any
9 24 of the following:

9 25 a. That a person complained against under this chapter
9 26 purchased the motor fuel involved in the complaint, at a
9 27 fictitious price, or upon terms, or in such a manner, or under
9 28 such invoices, as to conceal the true costs, discounts, or
9 29 terms of purchase.

9 30 b. Evidence of the normal, customary, and prevailing terms
9 31 and discounts in connection with other sales of a similar
9 32 nature in the market area.

9 33 2. A cost survey made pursuant to recognized statistical
9 34 and cost accounting practices that determines and establishes
9 35 on the basis of actual existing conditions the lowest cost to
10 1 wholesalers or the lowest cost to retailers for a market area
10 2 relevant to a complaint charging a violation of this chapter
10 3 shall be deemed competent evidence in any action or proceeding
10 4 under this chapter as tending to prove actual cost to the
10 5 wholesaler or retailer complained against. Any party against
10 6 whom any such cost survey is introduced in evidence shall have
10 7 the right to offer evidence tending to prove any inaccuracy of
10 8 such cost survey or any state of facts that impair its
10 9 probative value, or to introduce independent cost evidence.

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

10 12 1. Any person who violates this chapter shall be subject
10 13 to a civil penalty not to exceed ten thousand dollars per
10 14 violation for each offense. Any such person shall also be
10 15 liable for attorney fees incurred by the attorney general or a
10 16 county attorney, and shall also be subject to injunctive
10 17 relief. Each day that a violation of this chapter occurs
10 18 shall be considered a separate violation.

10 19 2. The penalty may be assessed and other relief recovered
10 20 in a civil action brought by the attorney general or a county
10 21 attorney in any district court in any county in which any of
10 22 the alleged violations of this chapter took place, or in any
10 23 county where any of the defendants reside or do business.

10 24 Sec. 17. NEW SECTION. 473B.17 ACTION BY PERSON INJURED
10 25 OR THREATENED BY INJURY INJUNCTIVE RELIEF DAMAGES
10 26 ATTORNEY FEES JURISDICTION.

10 27 1. Any person injured by any violation of this chapter, or
10 28 who would suffer injury from any threatened violation of this
10 29 chapter, may maintain an action in any district court in any
10 30 county in which the injury or threatened injury did or will
10 31 take place, or where any of the parties reside or do business,
10 32 to prevent, restrain, or enjoin such violation or threatened
10 33 violation, including an action for a declaratory judgment,
10 34 injunctive relief, and for actual damages.

10 35 2. If a violation or threatened violation of this chapter
11 1 is established, the court shall enjoin and restrain, or
11 2 otherwise prohibit, such violation or threatened violation
11 3 and, in addition, the court shall assess in favor of the
11 4 plaintiff and against the defendant the costs of suit,
11 5 including reasonable attorney fees.

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

11 12 4. The court may also award court costs and reasonable
11 13 attorney fees to the prevailing party.

11 14 5. Any action under this section shall be brought within
11 15 two years after the alleged violations occurred.

11 16 EXPLANATION

11 17 This bill creates new Code chapter 473B, the "Iowa Fair
11 18 Motor Fuel Marketing Act".

11 19 New Code section 473B.1 of the bill states the title of the
11 20 chapter, and provides that the purpose is to protect the
11 21 public interest, as well as to provide for enforcement and
11 22 penalties.

11 23 New Code section 473B.2 sets forth legislative findings in
11 24 regard to subsidies in the marketing of motor fuel, and new
11 25 Code section 473B.3 provides that the legislative intent is to
11 26 protect the public interest against monopolies or unfair
11 27 methods of competition in sales of motor fuel, as well as to
11 28 prevent injury to competition from the sale of motor fuel
11 29 below cost.

11 30 New Code section 473B.4 provides definitions for the new
11 31 chapter, including "affiliate", "basic cost of motor fuel",
11 32 "competition", "cost of doing business", "cost to refiner",
11 33 "cost to wholesaler", "customary discount for cash", "motor
11 34 fuel", "refiner", "retailer", "sale", "sale at retail", "sale
11 35 at wholesale", "supplier", "transfer price", "wholesale
12 1 distributor", and "wholesaler".

12 2 New Code section 473B.5 prohibits certain below-cost sales
12 3 of motor fuel. New Code section 473B.6 prohibits certain
12 4 below-cost transfers of motor fuel where the effect is to
12 5 injure competition.

12 6 New Code section 473B.7 provides that a price differential

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

12 16 New Code section 473B.9 provides that when a sale involves
12 17 two items, one of which is motor fuel, the combined price of
12 18 the two items may not be below the cost to the wholesaler or
12 19 retailer of the total of all items.

12 20 New Code section 473B.10 provides that certain sales are
12 21 excluded from the provision of Code chapter 473B, provided
12 22 that the sales are properly advertised and the goods are
12 23 clearly marked and kept separate: (1) an isolated transaction
12 24 not in the usual course of business; (2) a bona fide clearance
12 25 sale for discontinuing trade in motor fuel; (3) imperfect or
12 26 damaged goods; (4) final liquidation of a business; and (5)
12 27 sale by a fiduciary or other officer under the order or
12 28 direction of a court. The price of a sale under Code section
12 29 473B.10 is not the price of a competitor for purposes of Code
12 30 chapter 473B.

12 31 New Code section 473B.11 provides that any wholesaler or
12 32 retailer may meet the price of a competitor who offers the
12 33 same type of service and who sells the same item. In the
12 34 absence of proof of actual cost, evidence from a cost survey
12 35 may be used.

13 1 New Code section 473B.12 provides that a contract made in
13 2 violation of any provision of Code chapter 473B is voidable
13 3 and unenforceable.

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

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

13 20 New Code section 473B.15 addresses the issue of cost
13 21 surveys as evidence of actual cost, and other issues relating
13 22 to cost evidence.

13 23 New Code section 473B.16 provides for civil penalties not
13 24 to exceed \$10,000 per violation, recovery of attorney fees,
13 25 and the availability of injunctive relief. Each day of
13 26 violation is a separate violation. The penalty may be
13 27 assessed and recovered in a civil action by the attorney
13 28 general or a county attorney.

13 29 New Code section 473B.17 provides for a private cause of
13 30 action by any person injured or threatened by injury by a
13 31 violation of Code chapter 473B. The person may sue for
13 32 injunctive relief, declaratory judgment, and for actual
13 33 damages that are trebled. The prevailing party is also
13 34 entitled to court costs and reasonable attorney fees. The
13 35 Code section contains a two-year statute of limitations.

