

FILED MAR 02  
TRANSPORTATION

SENATE FILE 2218  
BY KIBBIE

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  
2 penalties.

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

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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.

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

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

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

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

1 wares, or merchandise.

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

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

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

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

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

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

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

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

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

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

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

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

34 f. The offer to sell is made in good faith to meet the  
35 price of a competitor who is offering the same product.

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

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

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

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

11 3. A retail motor fuel outlet is exempt from subsection 2  
12 if, prior to the effective date of this Act, the retail motor  
13 fuel outlet was operated by a subsidiary of a producer or  
14 refiner of motor fuel.

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

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

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

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

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

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

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

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

33 EXPLANATION

34 This bill relates to the marketing of motor fuel.

35 New Code section 323B.4 prohibits sales of motor fuel by

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

11 New Code section 323B.4 also requires a motor fuel outlet  
12 to be operated by a retail motor fuel dealer, and requires  
13 that it not be operated by a producer or a refiner either by a  
14 commissioned agent, company personnel, or subsidiary company  
15 of the producer or refiner or pursuant to a contract with a  
16 person who manages the retail motor fuel outlet on a fee  
17 arrangement with the producer or refiner. Motor fuel outlets  
18 operated by a subsidiary of a producer or a refiner prior to  
19 July 1, 2004, are exempt from this requirement, however.

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

28 The bill also contains a short title, a statement of  
29 legislative intent, and definitions.

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