

2076

2011-2012 Regular Sessions

I N S E N A T E

January 18, 2011

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to the marketing of motor fuels

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Subdivision 1 of section 199-a of the general business law,
2 as added by chapter 265 of the laws of 1975, is amended to read as
3 follows:
- 4 1. "Distributor" means any person [engaged in the sale, consignment,
5 or distribution of motor fuels to dealers], INCLUDING ANY AFFILIATE OF
6 SUCH PERSON, WHO PURCHASES MOTOR FUEL FOR SALE, CONSIGNMENT, OR DISTRIB-
7 UTION TO ANOTHER, OR WHO RECEIVES MOTOR FUEL ON CONSIGNMENT, FOR
8 CONSIGNMENT OR DISTRIBUTION TO THEIR OWN MOTOR FUEL ACCOUNTS OR TO
9 ACCOUNTS OF THEIR SUPPLIER. "DISTRIBUTOR" DOES NOT INCLUDE A PERSON WHO
10 IS AN EMPLOYEE OF, OR MERELY SERVES AS A COMMON CARRIER PROVIDING TRANS-
11 PORTATION SERVICE FOR SUCH SUPPLIER.
- 12 S 2. Section 199-a of the general business law is amended by adding
13 seven new subdivisions 6, 7, 8, 9, 10, 11 and 12 to read as follows:
- 14 6. "REFINER" MEANS ANY PERSON ENGAGED IN THE REFINING OF CRUDE OIL TO
15 PRODUCE MOTOR FUEL, AND INCLUDES ANY AFFILIATE OF SUCH PERSON.
- 16 7. "MOTOR FUEL" MEANS GASOLINE AND DIESEL FUEL OF A TYPE DISTRIBUTED
17 FOR SELF-PROPELLED VEHICLES DESIGNED PRIMARILY FOR USE ON PUBLIC
18 STREETS, ROADS AND HIGHWAYS.
- 19 8. "CONSUMER RETAIL PRICE" MEANS THE PRICE PER GALLON AT WHICH MOTOR
20 FUEL IS SOLD TO THE PUBLIC AT A DIRECT OPERATED SERVICE STATION. IF
21 MOTOR FUEL IS SOLD WITH ANOTHER ITEM OR SERVICE AT A COMBINED PRICE,
22 THEN THE CONSUMER RETAIL PRICE SHALL BE ADJUSTED TO INCLUDE THE PRICE
23 PER GALLON OF ANY SUCH ITEM OR SERVICE LESS THE COST PER GALLON OF SUCH
24 ITEM OR SERVICE.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 9. "DIRECT OPERATED SERVICE STATION" MEANS A SERVICE STATION OPERATED
2 BY A REFINER OR DISTRIBUTOR OF PETROLEUM PRODUCTS.

3 10. "SAME OR SIMILAR GRADE OR QUALITY OF MOTOR FUEL" MEANS MOTOR FUEL
4 CONTAINING AN ADDITIVE WHICH DOES NOT CHANGE THE OCTANE OR CETANE RATING
5 OF SUCH PRODUCT BY MORE THAN ONE POINT.

6 11. "SAME GEOGRAPHIC AREA" MEANS THE AREA SERVED BY ANY TERMINAL FROM
7 WHICH A DIRECT OPERATED SERVICE STATION RECEIVES ITS MOTOR FUEL OR ANY
8 TERMINAL WITHIN TEN MILES OF SUCH DIRECT OPERATED SERVICE STATION.

9 12. "SCHEME" MEANS ANY THREAT, INTIMIDATION, COMMUNICATION, BOYCOTT,
10 PATTERN OF ACTION, INDUCEMENT OR COERCION.

11 S 3. The general business law is amended by adding a new section 199-o
12 to read as follows:

13 S 199-0. PROHIBITED MARKETING PRACTICES. 1. NO REFINER OR DISTRIBUTOR
14 SHALL SELL MOTOR FUEL TO ANY DEALER AT A PRICE THAT EXCEEDS NINETY-FOUR
15 PERCENT OF THE CONSUMER RETAIL PRICE FOR THE SAME OR SIMILAR GRADE OR
16 QUALITY OF MOTOR FUEL SOLD FROM A DIRECT OPERATED SERVICE STATION IN THE
17 SAME GEOGRAPHIC AREA.

18 2. NO REFINER OR DISTRIBUTOR SHALL ENTER INTO ANY SCHEME OR AGREEMENT
19 TO SET, CHARGE OR MAINTAIN MAXIMUM RETAIL PRICES OF MOTOR FUEL, EXCEPT
20 THAT THIS SUBDIVISION SHALL NOT APPLY TO A REFINER'S, DISTRIBUTOR'S OR
21 WHOLESALE'S RETAIL SALES AT ITS DIRECT OPERATED SERVICE STATION.

22 3. A VIOLATION OF THIS SECTION SHALL BE PUNISHABLE BY A CIVIL FINE NOT
23 TO EXCEED FIVE THOUSAND DOLLARS. THE SECOND OFFENSE AND ANY OFFENSE
24 COMMITTED THEREAFTER SHALL BE PUNISHABLE BY A CIVIL FINE NOT TO EXCEED
25 TEN THOUSAND DOLLARS.

26 4. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION AN APPLICATION
27 MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE
28 STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL
29 PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF
30 NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH
31 VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR
32 JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN
33 INJUNCTION MAY BE ISSUED BY THE COURT OR JUSTICE, ENJOINING AND
34 RESTRAINING ANY FURTHER VIOLATIONS, WITHOUT REQUIRING PROOF THAT ANY
35 PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH
36 PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS
37 PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE
38 HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITU-
39 TION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION THE ATTORNEY
40 GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE
41 RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRAC-
42 TICE LAW AND RULES.

43 5. ANY DEALER WHO HAS BEEN INJURED BY REASON OF ANY VIOLATION OF THIS
44 SECTION MAY BRING AN ACTION IN HIS OR HER OWN NAME TO ENJOIN SUCH UNLAW-
45 FUL ACT OR PRACTICE, AN ACTION TO RECOVER HIS OR HER ACTUAL DAMAGES OR
46 FIVE THOUSAND DOLLARS, WHICHEVER IS GREATER, OR BOTH SUCH ACTIONS. THE
47 COURT MAY, IN ITS DISCRETION, INCREASE THE AWARD OF DAMAGES TO AN AMOUNT
48 NOT TO EXCEED THREE TIMES THE ACTUAL DAMAGES, IF THE COURT FINDS THE
49 DEFENDANT WILLFULLY OR KNOWINGLY VIOLATED THIS SECTION. THE COURT MAY
50 AWARD REASONABLE ATTORNEY'S FEES TO A PREVAILING PLAINTIFF.

51 S 4. This act shall take effect on the one hundred twentieth day after
52 it shall have become a law.