

4170--A

2011-2012 Regular Sessions

I N S E N A T E

March 22, 2011

Introduced by Sens. ALESI, PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to zone pricing of gasoline, and to amend chapter 579 of the laws of 2008, amending the general business law relating to zone pricing of gasoline, in relation to zone pricing for retail motor fuel based on geographic location

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

1 Section 1. Paragraph (a) of subdivision 1 of section 399-ee of the
2 general business law is relettered paragraph (a-1) and a new paragraph
3 (a) is added to read as follows:
4 (A) "ADDITIONAL COSTS" MEANS ALL REPLACEMENT AND TRANSPORTATION COSTS
5 AND TAXES INCURRED.
6 S 2. Paragraph (g) of subdivision 1 of section 399-ee of the general
7 business law, as added by chapter 579 of the laws of 2008, is amended to
8 read as follows:
9 (g) "Relevant geographic market" means the geographic area [of effective
10 competition] WHICH IS SUPPLIED BY THE SAME TERMINAL FACILITY.
11 S 3. Paragraph (m) of subdivision 1 of section 399-ee of the general
12 business law, as added by chapter 579 of the laws of 2008, is amended to
13 read as follows:
14 (m) "Zone pricing" means the [arbitrary] ESTABLISHMENT OF price
15 differences BASED ON THE GEOGRAPHICAL LOCATION OF THE RETAIL OUTLET
16 within the relevant geographic market, [based on] WITHOUT REGARD TO the
17 posted terminal price [or] ANY ADDITIONAL COSTS where the effect is to
18 injure competition.
19 S 4. Subdivision 2 of section 399-ee of the general business law, as
20 added by chapter 579 of the laws of 2008, is amended to read as follows:

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

LBD09988-03-1

1 2. No wholesaler, OR DEALER shall engage in zone pricing with respect
2 to any motor fuel of like grade or quality, WHICH IS SUPPLIED TO DEALER
3 OPERATED RETAIL OUTLETS.

4 S 5. Subdivision 3 of section 399-ee of the general business law, is
5 amended by adding a new undesignated paragraph to read as follows:

6 NOTWITHSTANDING ANY RIGHT OF ACTION TO THE ATTORNEY GENERAL AS
7 PROVIDED IN THIS SECTION, A WHOLESALER OR DEALER WHO HAS BEEN INJURED BY
8 REASON OF A VIOLATION OF THIS SECTION MAY BRING AN ACTION IN HIS OR HER
9 OWN NAME TO ENJOIN SUCH UNLAWFUL ACT, HOWEVER, NO DAMAGES OF ANY NATURE
10 SHALL BE RECOVERABLE IN SUCH ACTION.

11 S 6. Section 2 of chapter 579 of the laws of 2008, amending the gener-
12 al business law relating to zone pricing of gasoline, is amended to read
13 as follows:

14 S 2. Legislative findings and intent. The legislature hereby finds and
15 declares that for the past several years motor fuel prices have greatly
16 fluctuated. In some cases, price fluctuations are caused by natural
17 market conditions. In other cases, fluctuations result from artificial
18 manipulation of the market. One such artificial pricing manipulation is
19 zone pricing. Zone pricing is the setting of different wholesale prices
20 for retail motor fuel [that operate in different geographic areas] BASED
21 ON GEOGRAPHIC LOCATION. Zone pricing increases the price of retail motor
22 fuel for certain consumers, leading to inequities among consumers and
23 regions around the state. Therefore, the legislature hereby declares
24 that while natural market occurrences may lead to price fluctuations,
25 artificial changes in motor fuel prices unfairly harm many consumers
26 around the state.

27 S 7. This act shall take effect immediately.