

The attached amendments (Chapter 74 of the Laws of 2004) to the New York Motor Fuel Marketing Practices Act (Chapter 691 of the Laws of 2003) became effective November 7, 2004.

STATE OF NEW YORK

5954

IN SENATE

January 20, 2004

Introduced by Sen. NOZZOLIO -- 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
New York
motor fuel marketing practices act

The People of the State of New York, represented in Senate
and Assembly, do enact as follows:

1 Section 1. Section 370-c of the general business law, as
added by

2 chapter 691 of the laws of 2003, is amended to read as follows:

3 § 370-c. Predatory practices unlawful; exceptions. (a) (1) It
is unlaw-

4 ful for any refiner engaged in commerce in this state to sell
any grade

5 or quality of motor fuel at a retail outlet at a price which
is less

6 than [~~ninety-eight~~] ninety-five percent of the refiner cost
where the

7 effect is to injure competition.

8 (2) It is unlawful for any nonrefiner engaged in commerce
in this

9 state to sell any grade or quality of motor fuel at a retail
outlet at a

10 price which is less than [~~ninety-eight~~] ninety-five
percent of the

11 nonrefiner cost where the effect is to injure competition.

12 (b) It is unlawful for any refiner, including any affiliate
or agent

13 thereof, to sell any grade or quality of motor fuel at a
retail outlet
14 at a price that is less than [~~ninety-eight~~] ninety-five percent
of the
15 price charged by that refiner to any wholesaler or dealer
under written
16 contract for the like grade and quality of motor fuel, to
the extent
17 that the wholesaler or dealer resells in the relevant
geographic market
18 where the refiner's retail price is in effect and where the
effect is to
19 injure competition.
20 (c) (1) An isolated, inadvertent incident involving activity
prohibit-
21 ed pursuant to subdivision (a) or (b) of this section shall
not be a
22 violation of this article.
23 (2) A refiner's sale at a price which is less than
[~~ninety-eight~~]
24 ninety-five percent of the refiner cost or a nonrefiner's
sale at a
25 price which is less than [~~ninety-eight~~] ninety-five
percent of the
26 nonrefiner cost made in good faith to meet an equally low
retail price
27 of a competitor selling motor fuel of like grade or quality in
the same
28 relevant geographic market which can be used in the same motor
vehicle,

EXPLANATION--Matter in italics (underscored) is new; matter in
brackets

[-] is old law to be omitted.

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1 or of the same or similar items in combination with motor
fuel of like
2 grade or quality which can be used in the same motor vehicle,
is not a
3 violation of this article.
4 § 2. Subdivision (a) of section 370-d of the general
business law, as
5 added by chapter 691 of the laws of 2003, is amended to read as
follows:
6 (a) It is unlawful for any person engaged in commerce in this
state:
7 (1) To sell for resale any grade or quality of motor fuel at
a price
8 which is less than [~~ninety-eight~~] ninety-five percent of the
price at
9 which the seller contemporaneously sells motor fuel of like
grade or
10 quality to another person on the same level of distribution, in
the same

11 class of trade, and within the same relevant geographic
market as the
12 purchaser where the effect is to injure competition.
13 (2) To knowingly receive for resale any grade or quality of
motor fuel
14 at a price which is less than [~~ninety-eight~~] ninety-five
percent of the
15 price at which the seller from which the motor fuel is
purchased or
16 received contemporaneously sells motor fuel of like grade or
quality to
17 any person on the same level of distribution, in the same
class of
18 trade, and within the same relevant geographic market as the
purchaser
19 where the effect is to injure competition.
20 § 3. Subdivision (b) of section 370-i of the general
business law, as
21 added by chapter 691 of the laws of 2003, is amended to read as
follows:
22 (b) Any complaints regarding violations of this article shall
be first
23 filed with the state consumer protection board who [~~shall~~] may
conduct
24 an investigation and may request in writing the production of
documents
25 and records as part of its investigation. Trade secrets and
proprietary
26 business information contained in the documents or records
received by
27 the state consumer protection board pursuant to a written
request or a
28 subpoena are confidential. If the person upon whom such request
was made
29 fails to produce the documents or records within thirty days
after the
30 date of the request, the state consumer protection board may
issue and
31 serve subpoenas to compel the production of such documents and
records.
32 If any person shall refuse to comply with a subpoena issued
under this
33 section, the state consumer protection board may petition a
court of
34 competent jurisdiction to enforce the subpoena and such
sanctions as the
35 court may direct. Refiners shall afford the state consumer
protection
36 board reasonable access to the refiners' posted terminal
price. After
37 completion of an investigation, the state consumer
protection board
38 shall either: (i) dismiss the complaint following a
determination that
39 no violation occurred; (ii) dismiss the complaint following a
determi-

40 nation that there has been a de minimus injury to competition;
or (iii)

41 determine that a violation has likely occurred and, if so,
shall attempt

42 to resolve the matter by settlement. If no settlement is
achieved, then

43 the matter shall be referred to the attorney general
for further

44 proceedings, including, if necessary, legal action.

45 § 4. This act shall take effect on the one hundred eightieth
day after

46 it shall have become a law; provided, however, that the
amendments to

47 section 370-c, subdivision (a) of section 370-d and
subdivision (b) of

48 section 370-i of the general business law made by sections one,
two and

49 three of this act shall not affect the repeal of such sections
and shall

50 be deemed repealed therewith.
