

CHAPTER TEXT:

LAWS OF NEW YORK, 2008

CHAPTER 579

AN ACT to amend the general business law, in relation to zone pricing of gasoline

Became a law September 25, 2008, with the approval of the Governor.
Passed by a majority vote, three-fifths being present.

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

Section 1. This act shall be known and may be cited as "the consumer protection and fair and equitable motor fuel pricing act of 2008".

§ 2. Legislative findings and intent. The legislature hereby finds and declares that for the past several years motor fuel prices have greatly fluctuated. In some cases, price fluctuations are caused by natural market conditions. In other cases, fluctuations result from artificial manipulation of the market. One such artificial pricing manipulation is zone pricing. Zone pricing is the setting of different wholesale prices for retail motor fuel that operate in different geographic areas. Zone pricing increases the price of retail motor fuel for certain consumers, leading to inequities among consumers and regions around the state. Therefore, the legislature hereby declares that while natural market occurrences may lead to price fluctuations, artificial changes in motor fuel prices unfairly harm many consumers around the state.

§ 3. The general business law is amended by adding a new section 399-ee to read as follows:

§ 399-ee. Zone pricing of gasoline prohibited. 1. As used in this section:

(a) "Affiliate" means any person whose stock is more than fifty percent owned by or who, regardless of stock ownership, is controlled by or is under common control with any other person.

(b) "Competition" means the vying for motor fuel sales between any two or more sellers in the same relevant geographic market.

(c) "Dealer" means any person, other than a refiner or wholesaler, who is engaged in the business of selling motor fuel at a retail outlet.

(d) "Motor fuel" means any petroleum product, including any special fuel which is used for the propulsion of any motor vehicle.

(e) "Posted terminal price" means a refiner's posted price at a terminal, by grade and quality of motor fuel, to the wholesale class of trade within a general trade area. If a refiner does not have a posted terminal price in a general trade area, such refiner's posted terminal price shall be deemed to be no lower than the lowest posted terminal price of motor fuel of like grade and quality of any other refiner selling to the wholesale class of trade in the general trade area.

(f) "Refiner" means any person who produces and stores or exchanges motor fuel at a terminal facility and who sells or transfers motor fuel through the loading rack at such terminal facility, and includes an affiliate of such refiner with respect to such affiliate's sale of motor fuel.

EXPLANATION--Matter in italics is new; matter in brackets [-] is old law to be omitted.

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(g) "Relevant geographic market" means the geographic area of effective competition.

(h) "Retail outlet" means a facility, including land and improvements, where motor fuel is offered for sale at retail to the public.

(i) "Sale" or "sell" means any retail transfer, gift, barter, sale, offer for sale, or advertisement for sale in any manner or by any means whatsoever.

(j) "Supplier" means any person who conveys, transports, or otherwise causes motor fuel to be delivered to another person, except that any person who conveys, transports, or otherwise causes motor fuel to be delivered as part of a retail sale shall not be considered a supplier.

(k) "Terminal facility" means any inland, waterfront, or offshore appurtenance on land used for the purpose of receiving, storing, handling, or transferring motor fuel, but does not include bulk storage facilities owned or operated by a wholesaler.

(l) "Wholesaler" means any person, other than a refiner or dealer, who purchases motor fuel at a terminal facility and supplies motor fuel to retail outlets.

(m) "Zone pricing" means the arbitrary price differences within the relevant geographic market, based on the posted terminal price or where the effect is to injure competition.

2. No wholesaler shall engage in zone pricing with respect to any motor fuel of like grade or quality.

3. In addition to any other remedies provided by law, whenever there shall be a violation of this section, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and, upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining or restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceedings, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than ten thousand dollars for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

§ 4. This act shall take effect on the sixtieth day after it shall have become a law; provided, however, that the attorney general shall promulgate, on an emergency basis, all rules and regulations necessary for the timely implementation of this act on its effective date.

The Legislature of the STATE OF NEW YORK **ss:**

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

DEAN G. SKELOS
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly