

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

447I0434

SENATE BILL NO. 211

Introduced by: Senators Sutton (Duane), Moore, and Symens and Representatives Juhnke
and Olson (Mel)

1 FOR AN ACT ENTITLED, An Act to establish the Motor Fuel Fair Competition Act.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. The secretary of the Department of Revenue shall administer this Act.

4 Section 2. Terms used in this Act mean:

5 (1) "Average terminal or rack price," the arithmetic mean of all gross prices for an
6 individual grade of motor vehicle fuel at the nearest terminal to the retail location
7 within South Dakota by measurement in miles using the direct measurement upon a
8 map as published by a nationally recognized petroleum price reporting service;

9 (2) "Cost," the price stated by the Oil Pricing Index Service (OPIS) or other nationally
10 recognized petroleum price reporting service at the nearest terminal to the retail
11 location on the day of the retail sale, freight at stated terminal of which the bill of
12 lading was created, all federal and state taxes and fees, plus a portion of the operating
13 expenses or cost of doing business at the rate of six percent per gallon above cost;

14 (3) "Freight," the rate charged by a common carrier to haul the motor vehicle fuel;

15 (4) "Marketer," any person who is engaged in the motor vehicle fuel business as a



1 wholesale distributor or retail dealer;

2 (5) "Motor vehicle fuel," gasoline or gasoline blended fuel;

3 (6) "Retail dealer," any person who sells or distributes motor vehicle fuel to the end user
4 within this state and the retail location is either attended or unattended;

5 (7) "Retail location," any place that sells motor vehicle fuel to the end user and the place
6 is either attended or unattended;

7 (8) "Terminal," or "oil refinery," a dock, a platform, or an open bay with metered pipes,
8 hoses, or both, that is used for delivering motor fuel from a refinery or terminal to a
9 cargo tank for subsequent transfer or use as motor vehicle fuel. The term includes a
10 pipe, series of pipes, or pipeline used to withdraw motor fuel from one pipeline system
11 to another pipeline system or storage facility, if the fuel withdrawn is committed for
12 sale or use in this state;

13 (9) "Wholesale distributor," any person who purchases motor vehicle fuel from a supplier
14 or another wholesale distributor, or removes the fuel from a terminal at the rack, for
15 subsequent sale to another wholesale distributor or retail dealer.

16 Section 3. Any incentive that discounts the end retail price below cost to consumers at the
17 time of purchase of the motor vehicle fuel is prohibited.

18 Section 4. No retailer dealer may sell motor vehicle fuel below cost if the motor vehicle fuel
19 offered for sale by the way of posted price or indicating meter at a retail location is dispensed
20 into any passenger automobile and truck by either a customer or a retail dealer attendant.

21 Section 5. Any offer for sale of motor vehicle fuel by a retail dealer or retail location by the
22 way of posted price or indicating meter that is below cost as defined in section 2 of this Act is
23 a violation of this Act. Any violation of this Act shall result in a civil penalty equal to three times
24 the value of the motor vehicle fuel sold for each day or part of the day that the posted price was

- 1 below cost. In addition, any retail dealer or retail location in violation of this Act is responsible
- 2 for all court costs and attorney fees.