

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

564J0467

SENATE BILL NO. 133

Introduced by: Senators Vitter, Abdallah, Duenwald, Kelly, Moore, Sutton (Duane), and Symens and Representatives Olson (Mel) and Cutler

1 FOR AN ACT ENTITLED, An Act to establish the Motor Fuel Fair Competition Act for retail
2 dealers and to establish certain civil penalties.

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

4 Section 1. The secretary of the Department of Revenue and Regulation shall administer this
5 Act.

6 Section 2. Terms used in this Act mean:

- 7 (1) "Cost," the invoice cost of the motor vehicle fuel plus the cost of doing business by
8 a retail dealer;
- 9 (2) "Cost of doing business," includes the federal gasoline tax, South Dakota motor fuel
10 tax, South Dakota tank inspection fee, South Dakota sales and use tax on
11 transportation, delivery costs, credit card processing fees, and other taxes or fees
12 levied on motor vehicle fuel;
- 13 (3) "Delivery costs," the rate charged by any marketer or common carrier to haul motor
14 vehicle fuel;
- 15 (4) "Invoice cost," the actual price of the delivered motor vehicle fuel to the retail



1 location;

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

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

10 Section 5. Any offer for sale of motor vehicle fuel by a retail dealer or retail location by the
11 way of posted price or indicating meter that is below cost as defined in subdivision (1) of
12 section 2 of this Act is a violation of this Act. The secretary of the Department of Revenue and
13 Regulation shall assess a civil penalty equal to three times the value of the motor vehicle fuel
14 sold for each day or part of the day that the posted price was below cost. Any person aggrieved
15 by any action or decision of the secretary of the Department of Revenue and Regulation may
16 seek review of such action or decision pursuant to chapter 10-59 and the contested case
17 provisions of chapters 1-26.

18 Section 6. The secretary of the Department of Revenue and Regulation may require
19 documentation from the retail dealer to determine if there is a violation of this Act and the
20 amount of the civil penalty. Any person who fails to provide the documentation required by this
21 section is subject to a civil penalty of five thousand dollars per document. If the person believes
22 that the assessment arose from a mistake of fact or error of law, the person may request a
23 hearing in accordance with § 10-59-9.

24 Section 7. That § 10-59-1 be amended to read as follows:

1 10-59-1. The provisions of this chapter apply to any taxes or fees or persons subject to taxes
2 or fees imposed by chapters 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-45D, 10-46, 10-46A,
3 10-46B, 10-46C, 10-47B, 10-52, 10-52A, 32-3, 32-3A, 32-5, 32-5B, 32-6B, 32-9, 32-10, and
4 34A-13 and §§ 22-25-48, 49-31-51, 50-4-13 to 50-4-17, inclusive, and the provisions of this Act
5 and chapter 10-45B.