**South Carolina General Assembly**

119th Session, 2011-2012

**S. 1150**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Ryberg

Document Path: l:\s-res\wgr\001pred.rem.wgr.docx

Introduced in the Senate on January 26, 2012

Currently residing in the Senate Committee on **Labor, Commerce and Industry**

Summary: Unfair trade practices

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/26/2012 Senate Introduced and read first time ([Senate Journal‑page 3](file:///h:\sj%20archive\2012\01-26-12.docx))

1/26/2012 Senate Referred to Committee on **Labor, Commerce and Industry** ([Senate Journal‑page 3](file:///h:\sj%20archive\2012\01-26-12.docx))

**VERSIONS OF THIS BILL**

[1/26/2012](file:///p:\pprever\2011-12\1150_20120126.docx)

**A** **BILL**

TO AMEND SECTION 39‑5‑325 OF THE 1976 CODE, RELATING TO UNFAIR TRADE PRACTICES, TO AMEND THE DEFINITION OF BELOW COST TO REDUCE THE ALLOWABLE PROMOTIONAL SALES EXCEPTION FROM FOURTEEN DAYS TO SEVEN DAYS FOR EACH CALENDAR YEAR; TO AMEND 39‑5‑350 TO REMOVE THE AUTHORITY OF THE DEPARTMENT OF CONSUMER AFFAIRS TO OBTAIN RECORDS IN ENFORCEMENT OF THE PROVISIONS OF THIS ARTICLE; AND TO AMEND 39‑5‑360 TO INCREASE THE PENALTIES FOR VIOLATIONS AND TO PROVIDE THAT THE ATTORNEY GENERAL’S OFFICE IS TO RECEIVE FIFTY PERCENT OF ALL FINES FOR VIOLATIONS TO OFFSET THE COST OF PROSECUTION.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 39‑5‑325 of the 1976 Code is amended to read:

“Section 39‑5‑325. (A) Except as otherwise permitted to meet competition as provided by this chapter, it is declared an unfair trade practice and unlawful for any person who is in the retail business of selling motor fuel to sell motor fuel of like grade and quality at retail at a price which is below ~~the~~ cost ~~of acquiring the product plus taxes and transportation~~ where the intent or effect is to destroy or substantially lessen competition or to injure a competitor. ‘Below cost’ is defined as a price that is less than the total of:

(1) the most recently published average reseller cost of motor fuel by grade and quality, as calculated by the Oil Price Information Service (OPIS), for the particular terminal from which the motor fuel was delivered to the retailer, or the actual invoice cost from the supplier of the product, whichever is lower; and

(2) the freight charges and all applicable federal and state taxes and fees not included in the invoice cost.

(B) The provisions of subsection (A) shall not apply in the following situations where:

(1) motor fuel is advertised, offered for sale, or sold in a bona fide clearance sale for the purpose of discontinuing trade in such motor fuel, and the advertising, offer to sell, or sale shall state the reason therefor and the quantity of such motor fuel advertised, offered for sale, or to be sold;

(2) motor fuel is sold upon the final liquidation of a business;

(3) motor fuel is advertised, offered for sale, or sold by any fiduciary or other officer under the order or direction of any court;

(4) motor fuel is sold for promotional purposes including, but not limited to, grand opening, anniversary, or promotional sales. However, the total number of days for promotional sales shall not exceed ~~fourteen~~ seven days within each calendar year; or

(5) an isolated or inadvertent incident occurs that does not exceed two days.

(C) Any person who is in the retail business of selling motor fuel claiming any exemption from subsection (A) under the exceptions provided in subsection (B) must keep and maintain records substantiating this claim. These records must be made available to ~~the Department of Consumer Affairs and~~ the Attorney General’s Office on request made in connection with any investigation of a possible violation of this section by ~~the department or~~ the Attorney General.”

SECTION 2. Section 39‑5‑350(B) of the 1976 Code is amended to read:

“(B) Any person selling motor fuel at wholesale or retail at a price below the actual cost of acquiring the product, including transportation and taxes, claiming exemption from this article on the basis that such sales of motor fuel by that person are at a price to meet existing competition under subsection (A) of this section shall keep and maintain records substantiating each effort to meet the competition, including the identity and place of business of the competitors whose competition that person is meeting. The records must be made available to the ~~Department of Consumer Affairs and the~~ Attorney General on request made in connection with any investigation of a possible violation of this article by ~~the department or~~ the Attorney General.”

SECTION 3. Section 39‑5‑360 of the 1976 Code is amended to read:

“Section 39‑5‑360. Each sale in violation of the terms of this article shall be declared a separate offense and the penalty for each violation thereof shall be a fine of not ~~more~~ less than one hundred dollars nor more than two hundred fifty dollars or imprisonment for not more than thirty days in the discretion of the court. The Attorney General shall retain fifty percent of any fines collected pursuant to this section to offset the cost of investigating and prosecuting a violation of this article. The remaining amount shall be deposited in the state’s general fund.”

SECTION 4. This act takes effect upon approval by the Governor.

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