
Motor Fuel Marketing Act



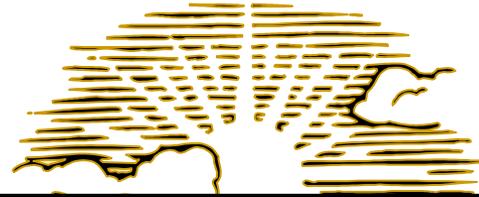
Sunset Review

Business and Labor Interim Committee

Prepared by the Office of Legislative Research and General
Counsel

September 20, 2006

Sunset Review: Legislative Action



Sunset Question

Should the Motor
Fuel Marketing Act
be reauthorized?

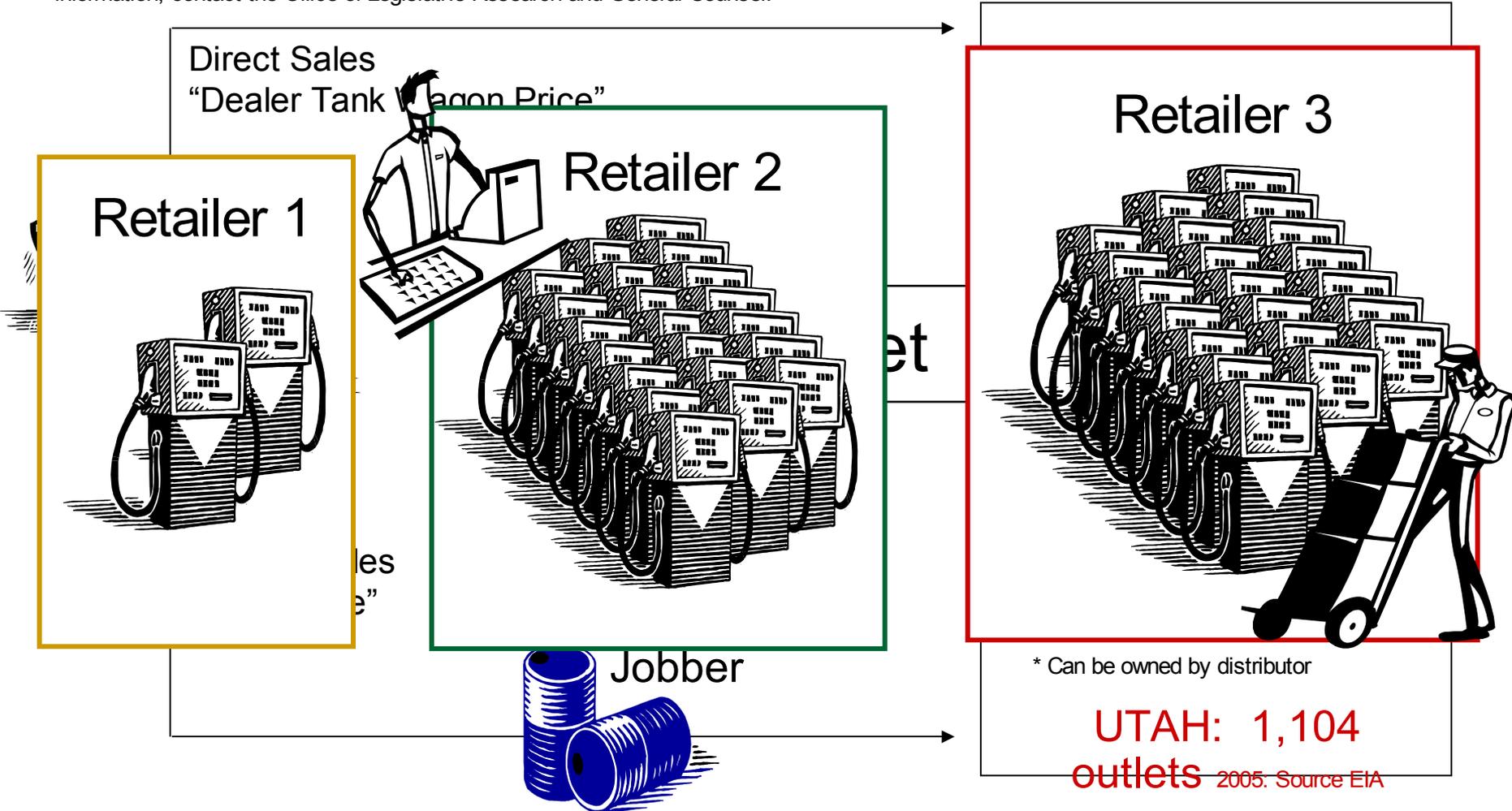
Today's Discussion



- Overview of Industry
- Highlights of Act and its History
- Other States
- Sunset Review Legislative Options

Overview of Industry

This is a general example of a basic market structure and not a comprehensive statement of all possible market transactions. For additional information, contact the Office of Legislative Research and General Counsel.

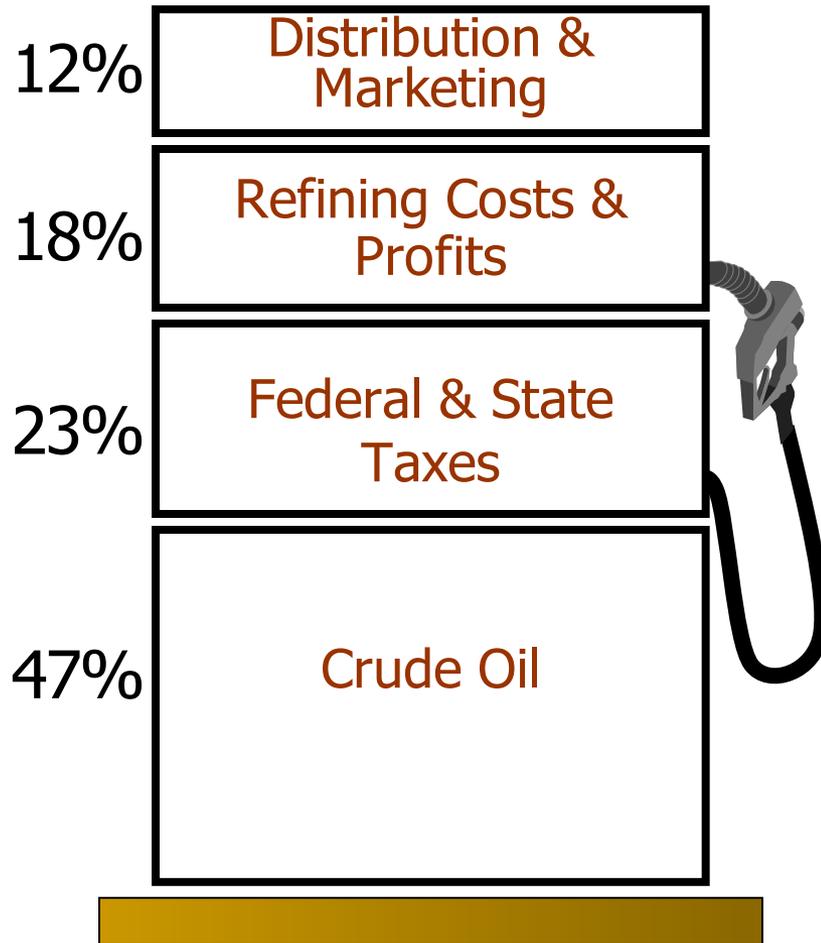


Sources include: Gasoline Price Changes: The Dynamic of Supply, Demand, and Competition (FTC 2005); Permanent Subcommittee on Investigations, Committee of Governmental Affairs, "Gas Prices: How are They Really Set?" (2002)

Overview of Industry

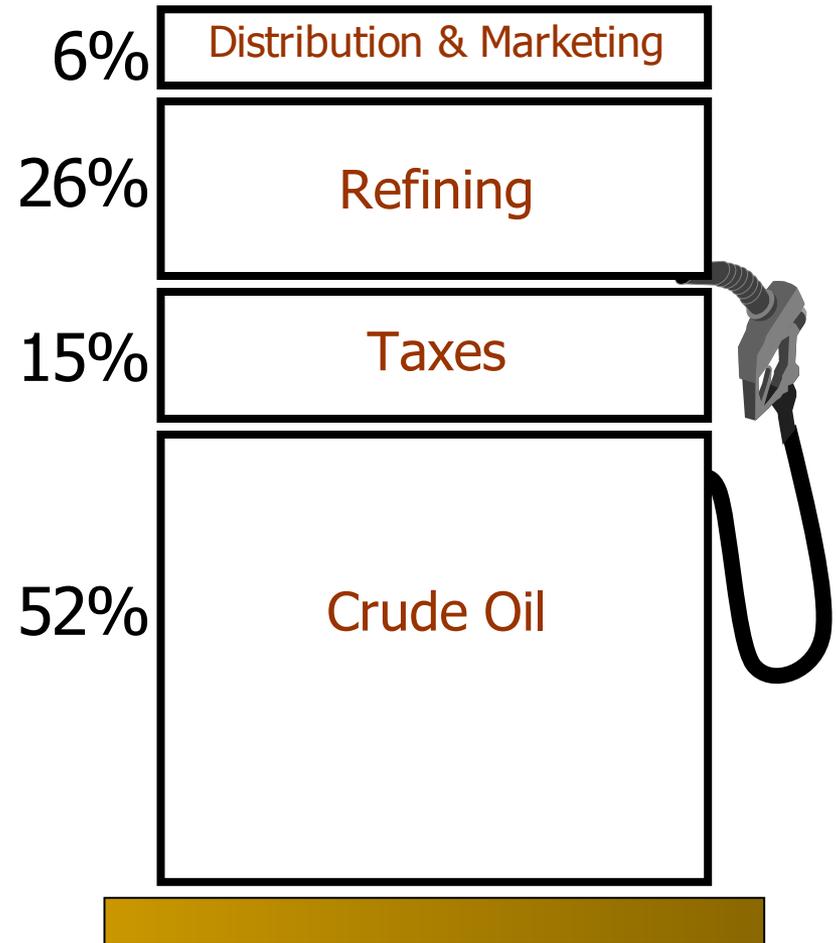
2004 Average – Regular Grade

Retail Price: \$1.85/gallon



July 2006 – Gasoline

Retail Price: \$2.98/gallon



Source: EIA, A Primer on Gasoline Prices (May 2006) and URL: <http://tonto.eia.doe.gov/oog/info/gdu/gasdiesel.asp> (Visited 9/7/06)

Highlights of Act and Its History

Unlawful Pricing: LEGISLATIVE HISTORY

2005 Interim
2006 Gen. Sess.

Enactment

Basic
Structure

Consumer Protection
Legislation

Substantive Amendments

E.g.:

- “intent or effect”
- definitions including “cost”
- exceptions
- attorneys fees and costs
- recordkeeping
- rulemaking by Division

Significantly Rewritten

E.g.:

- enforcement by AG
(not Division of Consumer Protection)
- definitions including “cost”
- price and cost information
- sales on marketing levels
- exceptions
- repealed burden of proof
- repealed rulemaking
- confidentiality/use of info
- applicability of act
- sunset date

1981

1983

1987

1991 1992

1994

2001

This outlines select provisions and is not a complete description of relevant legislation. For more information contact the Office of Legislative Research and General Counsel

Highlights of Act and Its History

Original Legislative Findings: Address Unlawful Pricing

- “Unfair competition in the marketing of motor fuels occurs whenever costs associated with the marketing of motor fuels are recovered from other

Sunset Questions

What are the objectives?

Does the Act accomplish them?

from marketing operations.

- “Subsidized pricing is inherently predatory and is reducing competition in the petroleum industry, and if it continues unabated, will threaten the consuming public.”

S.B. 200 (1981 Gen. Sess.) (language has been repealed).

Highlights of Act and Its History

Unlawful Pricing: **BELOW COST SALES**

- It is unlawful for a person engaged in commerce within the state to sell motor fuel in this state below cost if the intent or effect of the sale is to:
 - ❑ Injure competition;
 - ❑ Induce the buying of other merchandise;
 - ❑ Unfairly divert trade from a competitor; or
 - ❑ Otherwise injure a competitor.

Highlights of Act and Its History

Unlawful Pricing: **BELOW COST SALES**

Lowest or latest invoice cost/transfer price
- trade discount, allowance, or rebate
+ freight charges
+ federal, state, and local taxes
+ nontax government charges
COST



Last 5 days
or, if none,
the latest

If not included in invoice cost/transfer price

Highlights of Act and Its History

Unlawful Pricing: **BELOW COST SALES**

■ Exceptions

- A good faith effort to meet the equally low price of a competitor
- Sale exempt from Unfair Practices Act, e.g., if certain conditions are met:
 - Closing out stock
 - When the goods are damaged or deteriorated in quality
 - By an officer acting under the orders of any court
 - To meet the legal prices of a competitor selling the same article, product, or commodity in the same locality/trade area
 - By manufacturers, producers, brokers, or wholesale distributors meeting prices established by interstate competition

Highlights of Act and Its History

Unlawful Pricing: **DISCRIMINATORY PRICING**

- If the intent or effect of sale is to injure competition, it is unlawful for a person engaged in commerce in the state in the course of that commerce, either directly or indirectly to sell motor fuel:
 - through an affiliate for retail sale in the state on a different marketing level of distribution at a price lower than the price it charges a person who purchases motor fuel of like grade and quality at reasonably the same time for retail sale in this state on the same level of distribution; or
 - for resale in this state at a price lower than the seller charges other persons purchasing motor fuel of like grade and quality at reasonably the same time for resale in this state on the same level of distribution

Highlights of Act and Its History

Unlawful Pricing: **DISCRIMINATORY PRICING**

■ Exception

- Difference at same level of distribution between the transfer/sales price and the price charged to a purchaser for resale if the difference makes only due allowance for differences in the cost of:
 - Manufacturing
 - Transportation, shipping, or other delivery method
 - Marketing or sale resulting from the method or quantity in which the motor fuel is sold or delivered
- A good faith effort to meet the price of a competitor
- Sale exempt from Unfair Practices Act

Highlights of Act and Its History

Examples of Other Provisions

- Refiner to establish/upon request to disclose to AG transfer price/posted rack price
- AG may investigate and commence civil actions
 - AG action to enjoin acts/seek civil penalties not to exceed \$5,000 per day for each business location where violation occurs
- Private party may bring civil action
 - Private civil action includes declaratory judgment, injunctive relief, treble damages, and exemplary damages
- Statute of limitation, venue, attorney fees, and costs
- Recordkeeping
- Applicability regardless of size
- Confidentiality and use of information given to AG

Highlights of Act and Its History

Examples of Legal Issues

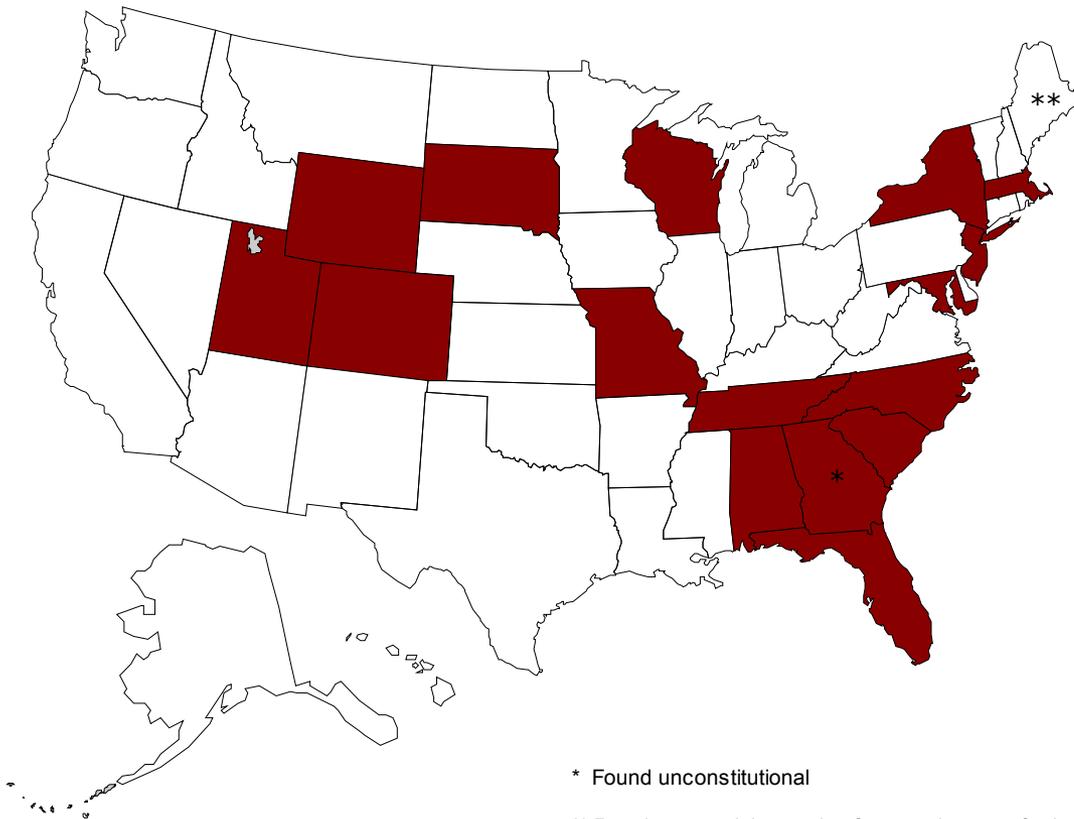
- Relationship to other laws

- Constitutionality



Other States

2005 Limited State Survey



As of 10/2005 at
Least 11 States
Addressed
Unlawful Pricing
of Motor Fuel

* Found unconstitutional

** Requires special reporting for certain motor fuel sales as part of Unfair Sales Act

- A 50-state survey was not conducted and so additional states may have relevant statutes
- States with only general laws prohibiting below cost sales that do not specifically address motor fuel are not included
- Only statutes were searched
- Data was obtained from multiple sources including NCSL and a Kentucky law review

Sunset Review: Legislative Action

- Take no action
 - MFM Act will be repealed 7/1/07 unless Legislature acts
- Recommend extend repeal date without changes
 - Generally requires separate bill
- Recommend extend repeal date with changes
 - Generally requires separate bill
- Recommend remove from sunset act with changes
 - Generally requires separate bill
- Other

Sunset Question

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Sunset Review: Legislative Action

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 - MFM Act will be repealed 7/1/07 unless Legislature acts
- Recommend extend repeal date without changes
 - Generally included in omnibus bill
 - Number of years generally ranging 1-10
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