

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Paul Kujawski

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act further regulating the unfair retail sale of motor fuel at prices below cost.

PETITION OF:

NAME:

Paul Kujawski

DISTRICT/ADDRESS:

8th Worcester

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3325 OF 2007-2008.]

The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine
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AN ACT FURTHER REGULATING THE UNFAIR RETAIL SALE OF MOTOR FUEL AT PRICES BELOW COST.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority
of the same, as follows:*

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2 **SECTION 1.** Section 295A of chapter 94 of the General Laws, as appearing in the 2004 Official Edition, is hereby
3 amended by striking out paragraph (6) thereof and inserting in place thereof the following paragraph:-
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5 (6) The term "cost to the retail dealer" shall mean the cost of such motor fuel to the dealer plus the cost of doing
6 business, including that part of the overhead of such dealer properly attributable to the sale of such motor fuel
7 according to generally accepted methods of accounting procedure, which overhead shall include without limitation,
8 labor (including the salaries of proprietors and corporate officials and others or a reasonable value for the services of
9 such where no direct wage or salary is paid to them), rent (or a reasonable return on capital invested in real property
10 used in said business) depreciation, selling costs (including gifts or premiums or other valuable considerations
11 passing from the dealer to the purchaser in connection with the sale of motor fuel), maintenance of equipment,
12 delivery costs, all types of licenses, taxes, insurance, and advertising. In the case of a retail dealer who is also a
13 refiner, the cost of such motor fuel to the dealer shall be presumed to be the New York Harbor barge mean price as
14 stated by a reputable price reporting service plus the cost of transportation of the motor fuel to the applicable
15 terminal plus the cost of doing business as defined herein. In any action under the provisions of section 295T, a
16 retail dealer who is also a refiner may rebut this presumption by demonstrating by a preponderance of the evidence
17 that his actual cost of motor fuel for retail sale subject to the provisions of section 295P is other than the presumed
18 cost.
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21 **SECTION 2.** Section 295P of said chapter 94 of the General Laws, as appearing in the 2004 Official Edition, is
22 hereby amended by striking out said section 295P and inserting in place thereof the following section:-
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24 Section 295P. No retail dealer shall advertise, offer to sell, or sell at retail motor fuel at less than cost to such retail
25 dealer where the effect of such advertisements, offers or sales is to injure competitors or destroy substantially or
26 lessen competition.

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SECTION 3. Section 295T of said chapter 94 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by striking out said section 295T and inserting in place thereof the following section:-

Section 295T. (a) On complaint of any retail dealer the superior court shall have jurisdiction in equity to restrain and enjoin any act declared illegal by the provisions of section two hundred and ninety-five P. If the court grants relief to any such retail dealer, the court shall award such retail dealer costs and reasonable attorney's fees, including reasonable costs incurred in connection with discovery and the engagement of experts. Nothing in this section shall affect or preclude the right of such retail dealer to any remedy otherwise authorized by law. Any act declared illegal by the provisions of section two hundred and ninety-five P shall be an unfair act or practice in the conduct of trade or commerce for purposes of chapter 93A.

(b) It shall be the duty of the attorney general and the several district attorneys, in their respective districts, to prosecute all violators of any provision of section two hundred and ninety-five P.