

HOUSE No. 3325

By Mr. Kujawski of Webster, petition of Paul Kujawski for legislation to regulate the retail sale of motor fuel at prices below the cost paid by retail dealers. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

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:

1 SECTION 1. Section 295A of Chapter 94 of the General Laws, as
2 appearing in the 2004 Official Edition, is hereby amended by
3 striking out paragraph (6) thereof and inserting in place thereof the
4 following paragraph:—

5 (6) The term “cost to the retail dealer” shall mean the cost of such
6 motor fuel to the dealer plus the cost of doing business, including
7 that part of the overhead of such dealer properly attributable to the
8 sale of such motor fuel according to generally accepted methods of
9 accounting procedure, which overhead shall include without limita-
10 tion, labor (including the salaries of proprietors and corporate offi-
11 cials and others or a reasonable value for the services of such where
12 no direct wage or salary is paid to them), rent (or a reasonable return
13 on capital invested in real property used in said business) deprecia-
14 tion, selling costs (including gifts or premiums or other valuable
15 considerations passing from the dealer to the purchaser in connec-
16 tion with the sale of motor fuel), maintenance of equipment,
17 delivery costs, all types of licenses, taxes, insurance, and adver-
18 tising. In the case of a retail dealer who is also a refiner, the cost of
19 such motor fuel to the dealer shall be presumed to be the New York
20 Harbor barge mean price as stated by a reputable price reporting
21 service plus the cost of transportation of the motor fuel to the applic-
22 able terminal plus the cost of doing business as defined herein. In
23 any action under the provisions of Section 295T, a retail dealer who
24 is also a refiner may rebut this presumption by demonstrating by a

25 preponderance of the evidence that his actual cost of motor fuel for
26 retail sale subject to the provisions of Section 295P is other than the
27 presumed cost.

1 SECTION 2. Section 295P of said Chapter 94 of the General
2 Laws, as appearing in the 2004 Official Edition, is hereby amended
3 by striking out said Section 295P and inserting in place thereof the
4 following section:—

5 Section 295P. No retail dealer shall advertise, offer to sell, or sell
6 at retail motor fuel at less than cost to such retail dealer where the
7 effect of such advertisements, offers or sales is to injure competitors
8 or destroy substantially or lessen competition.

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

5 Section 295T. (a) On complaint of any retail dealer the superior
6 court shall have jurisdiction in equity to restrain and enjoin any act
7 declared illegal by the provisions of Section two hundred and
8 ninety-five P. If the court grants relief to any such retail dealer, the
9 court shall award such retail dealer costs and reasonable attorney's
10 fees, including reasonable costs incurred in connection with dis-
11 covery and the engagement of experts. Nothing in this section shall
12 affect or preclude the right of such retail dealer to any remedy other-
13 wise authorized by law. Any act declared illegal by the provisions of
14 Section two hundred and ninety-five P shall be an unfair act or prac-
15 tice in the conduct of trade or commerce for purposes of Chapter
16 93A.

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