

Senate Bill No. 8

(By Senators Snyder, Blair, Unger and Cookman)

[Introduced January 8, 2014; referred to the Committee on
Transportation and Infrastructure; and then to the Committee on
Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §47-11G-1, §47-11G-2,
§47-11G-3, §47-11G-4, §47-11G-5, §47-11G-6 and §47-11G-7, all
relating to prohibiting the practice of zone pricing; defining
"zone pricing" as the setting of different wholesale prices
for retail motor fuel that operate in different geographic
areas; setting forth legislative findings and intent;
establishing unlawful acts; making directors, officers and
agents of an entity also liable; permitting causes of actions
and injunctions; setting forth responsibilities of the
Attorney General; establishing criminal penalties; and
providing that certain contracts are unenforceable.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended

1 by adding thereto a new article, designated §47-11G-1, §47-11G-2,
2 §47-11G-3, §47-11G-4, §47-11G-5, §47-11G-6 and §47-11G-7, all to
3 read as follows:

4 **ARTICLE 11G. ZONE PRICING OF GASOLINE PROHIBITED.**

5 **§47-11G-1. Legislative findings and intent; definition.**

6 (a) The legislature hereby finds and declares that for the
7 past several years motor fuel prices have greatly fluctuated. In
8 some cases, price fluctuations are caused by natural market
9 conditions. In other cases, fluctuations result from artificial
10 manipulation of the market. One such artificial pricing
11 manipulation is zone pricing. For the purposes of this article
12 "zone pricing" is the setting of different wholesale prices for
13 retail motor fuel that operate in different geographic areas. Zone
14 pricing increases the price of retail motor fuel for certain
15 consumers, leading to inequities among consumers and regions around
16 the state. Therefore, the legislature hereby declares that while
17 natural market occurrences may lead to price fluctuations,
18 artificial changes in motor fuel prices unfairly harm many
19 consumers around the state.

20 **§47-11G-2. Unlawful acts.**

21 It is be unlawful for any person, partnership, firm,
22 corporation, joint-stock company, or other association engaged in
23 business as a retailer or wholesaler within this state, to engage
24 in zone pricing for the purposes of unfairly diverting trade from

1 or otherwise injuring one or more competitors and destroying
2 competition. Each violation is a misdemeanor and, upon conviction,
3 any person, partnership, firm, corporation, joint-stock company, or
4 other association violating this section is subject to the penalty
5 set out in section six of this article.

6 **§47-11G-3. Personal responsibility of directors, officers or**
7 **agents.**

8 Any person who, either as director, officer or agent of any
9 firm or corporation or as agent of any person who violates this
10 article, assists or aids, directly or indirectly, in that violation
11 shall be responsible equally with the person, firm or corporation
12 for whom he or she acts. Each violation is a misdemeanor, and upon
13 conviction that person who violates this section is also subject to
14 the penalty set out in section six of this article.

15 **§47-11G-4. Injunctions and damage suits.**

16 Any person, firm, partnership, corporation, joint-stock
17 company, or trade association may maintain a proceeding to enjoin
18 a continuance of any act or acts in violation of this article and,
19 if injured thereby, for the recovery of damages in the circuit
20 court of the county wherein the zone pricing is alleged to have
21 occurred. If the court finds that the defendant is violating or has
22 violated this article, it shall enjoin that defendant from
23 continuing the practice. It is not necessary that actual damages to
24 the plaintiff be alleged or proved. In addition to such injunctive

1 relief, the plaintiff in the action is entitled to recover from the
2 defendant three times the amount of the actual damages, if any,
3 sustained.

4 **§47-11G-5. Certifications to and duty of Attorney General as to**
5 **companies convicted or enjoined; suits to forfeit**
6 **charters and privileges and enjoin business**
7 **permanently; jurisdiction.**

8 Whenever any person, firm, partnership, corporation,
9 joint-stock company, or trade association has been founded to have
10 violated this article, or enjoined from violating this article, it
11 is be the duty of the clerk of the court to certify the conviction
12 or injunction decree to the Attorney General. Upon the third
13 conviction for the violation of this article, or whenever an entity
14 has been enjoined three times from violating this article, the
15 Attorney General shall institute proper suits in any circuit court
16 in this state for the forfeiture of its charter, rights, franchises
17 or privileges and powers exercised by that entity, and to enjoin
18 permanently the violator from transacting business within this
19 state. Jurisdiction is vested in the circuit courts of this state
20 to carry into effect of sections four and six of this article.

21 **§47-11G-6. Penalties for violations.**

22 In addition to any other penalties, any person, firm,
23 partnership, corporation, joint-stock company or other association,

1 whether as principal, agent, officer or director, for himself, or
2 itself, or for another person, or for any person, firm,
3 partnership, corporation, joint-stock company or other association,
4 who or which violates this article, is guilty of a misdemeanor for
5 each single violation and upon conviction, shall be fined not less
6 than \$25,000 nor more than \$100,000, or by confined in jail not
7 exceeding ninety days, or both fined and confined.

8 **§47-11G-7. Contracts violating article illegal and unenforceable.**

9 A contract, express or implied, made by any person, firm,
10 partnership, corporation, joint-stock company or other association,
11 in violation of this article, is an illegal contract and no
12 recovery may be made.

NOTE: The purpose of this bill is to prohibit the practice of zone pricing of gasoline. The bill defines zone pricing as the setting of different wholesale prices for retail motor fuel that operate in different geographic areas. The bill makes legislative findings and intent. The bill establishes unlawful acts. The bill makes directors, officers and agents of an entity also liable to ensure that all parties in the supply chain of retail gasoline are covered by the statute. The bill permits causes of actions and injunctions. The bill sets forth responsibilities of the Attorney General. The bill establishes criminal penalties. The bill provides that certain contracts are unenforceable.

This article is new; therefore, strike-throughs and underscoring have been omitted.