CHAPTER 308

PETROLEUM MARKET SHARE ACT

§1671. Short title

This chapter may be known and cited as the "Petroleum Market Share Act." [PL 1991, c. 836, §3 (NEW).]

SECTION HISTORY

PL 1991, c. 836, §3 (NEW).

§1672. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1991, c. 836, §3 (NEW).]

1. Affiliate. "Affiliate" means any person who controls, is controlled by or is under common control with any other person.
[PL 1991, c. 836, §3 (NEW).]

2. Control of retail outlet. "Control of retail outlet" means the power, whether or not exercised, to establish, fix or direct the retail price of home heating oil or motor fuel sold by a retail outlet, through ownership of stock in or assets used by the retail outlet or through contract, agency, consignment or otherwise, whether that power can be exercised directly or indirectly or through parent corporations, subsidiaries, related persons and entities or affiliates.
[PL 1991, c. 836, §3 (NEW).]

3. Home heating oil. "Home heating oil" means #2 fuel oil sold for heating residential, industrial or commercial space or water.
[PL 1991, c. 836, §3 (NEW).]

4. Motor fuel oil. "Motor fuel oil" means internal combustion fuel sold for use in motor vehicles as defined in Title 29-A, section 101, subsection 42.
[PL 1995, c. 65, Pt. A, §24 (AMD); PL 1995, c. 65, Pt. A, §153 (AFF); PL 1995, c. 65, Pt. C, §15 (AFF).]

5. Refiner. "Refiner" means any person who is engaged directly or indirectly or whose affiliate is engaged directly or indirectly in the refining of crude oil, including any person who is engaged directly or indirectly in the production of crude oil who contracts with another person to refine petroleum products for the purpose of resale.
[PL 1991, c. 836, §3 (NEW).]

6. Retail outlet. "Retail outlet" means a service station or filling station used in the sale of motor fuel in the State, a sales office servicing retail customers by soliciting or accepting orders for the purchase of home heating oil to end users for consumption in the State, or a bulk storage facility or depot used in the sale of home heating oil to end users for consumption in the State.
[PL 1991, c. 836, §3 (NEW).]

7. Retailer. "Retailer" means a person that sells motor fuel oil or home heating oil to an end user for consumption in the State.
[PL 1991, c. 836, §3 (NEW).]

8. Wholesaler. "Wholesaler" means a person that sells motor fuel oil or home heating oil for resale through retail outlets and retailers.
[PL 1991, c. 836, §3 (NEW).]

SECTION HISTORY

PL 1991, c. 836, §3 (NEW). PL 1995, c. 65, §A24 (AMD). PL 1995, c. 65, §§A153,C15 (AFF).

§1673. Reporting

1. Reporting by wholesaler. A wholesaler shall provide annual reports to the Department of the Attorney General setting forth:

A. The total gallons of home heating oil and motor fuel oil sold by the wholesaler to each retail outlet or retailer; [PL 1993, c. 46, §1 (NEW).]

B. The total gallons of home heating oil and motor fuel oil supplied by the wholesaler to each retail outlet controlled by the wholesaler during any portion of the reporting period; and [PL 1993, c. 46, §1 (NEW).]

C. The total gallons of home heating oil and motor fuel oil sold by the wholesaler from a bulk storage facility or depot directly to any end user for consumption in the State. [PL 1993, c. 46, §1 (NEW).]

[PL 1993, c. 613, §1 (AMD).]

2. Reports by refiner. A refiner shall make the following reports.

A. Within 30 days of the effective date of this chapter, a refiner controlling retailers or retail outlets shall file with the Department of the Attorney General a list showing the business name and location of each retail outlet controlled by the refiner on the effective date of this chapter and specifying whether the retail outlet sells home heating oil, motor fuel oil or both. [PL 1991, c. 836, §3 (NEW).]

B. A refiner shall file annually with the Department of the Attorney General a list showing the number and location of retail outlets controlled by the refiner during the preceding year. [PL 2005, c. 155, §3 (AMD).]

C. A refiner or its affiliate shall provide reports annually to the Department of the Attorney General setting forth the total gallons of home heating oil and motor fuel oil supplied to each retail outlet under its control during any portion of the reporting period and the total gallons of home heating oil and motor fuel oil sold by the refiner or its affiliate from a bulk storage facility or depot directly to any end user for consumption in the State. [PL 2005, c. 155, §4 (AMD).]

[PL 2005, c. 155, §§3, 4 (AMD).]

3. Repeal.

[PL 2005, c. 155, §5 (RP).]

SECTION HISTORY

PL 1991, c. 836, §3 (NEW). PL 1993, c. 46, §§1,2 (AMD). PL 1993, c. 613, §§1,2 (AMD). PL 1995, c. 627, §1 (AMD). PL 1999, c. 151, §1 (AMD). PL 2005, c. 155, §§3-5 (AMD).

§1674. Investigation by Attorney General

The Attorney General may require, by summons, the attendance and testimony of witnesses and the production of books and papers related to the Attorney General's determination of the market shares held by retailers. A summons must be served in the same manner as a summons for a witness in a criminal case and all provisions of law related to that service apply to a summons issued under this section insofar as they are applicable. All investigations or hearings pursuant to this chapter must be held in Kennebec County or in another county as the Attorney General may designate. A Justice of the Superior Court may, by order, upon application of the Attorney General, compel the attendance of witnesses, the production of books and papers and the giving of testimony before the Attorney General

in the same manner and to the same extent as before that court. Failure to obey such an order of the court is punishable by the court as a contempt of court. [PL 1991, c. 836, §3 (NEW).]

SECTION HISTORY

PL 1991, c. 836, §3 (NEW).

§1675. Confidentiality

Information received by the Department of the Attorney General pursuant to sections 1673 and 1674 is confidential. [PL 1993, c. 719, §3 (AMD); PL 1993, c. 719, §12 (AFF).]

SECTION HISTORY

PL 1991, c. 836, §3 (NEW). PL 1993, c. 719, §3 (AMD). PL 1993, c. 719, §12 (AFF).

§1676. Prohibitions of anticompetitive, unfair and deceptive trade practices

1. Geographic radius restrictions on new motor fuel outlets. A refiner controlling a retail outlet for the sale of motor fuel oil in a city, town or municipality may not secure control of additional retail outlets for the sale of motor fuel oil within a 2-mile radius of any of its existing retail outlets in that city, town or municipality unless, in the Attorney General's sole discretion, the Attorney General concludes that the additional outlet will not decrease competition in the retail motor fuel oil market.
[PL 1991, c. 836, §3 (NEW).]

2. Deceptive sales practices. A retailer, wholesaler or refiner may not misrepresent the efficiency of an oil furnace or engage in a deceptive act or practice in connection with the sale of home heating oil, service or equipment.
[PL 1991, c. 836, §3 (NEW).]

3. Resale price-fixing. A refiner may not fix or maintain the price of motor fuel oil sold by a franchisee, as defined in section 1453, subsection 5.
[PL 1991, c. 836, §3 (NEW).]

4. Unfair trade practices. A retailer, wholesaler or refiner may not engage in any unfair methods of competition or unfair or deceptive trade practices, as defined by the Attorney General through rules issued under section 1682.
[PL 1991, c. 836, §3 (NEW).]

SECTION HISTORY

PL 1991, c. 836, §3 (NEW).

§1677. Report by Attorney General to Legislature

Every 2 years beginning April 1, 2010, the Attorney General shall make a report to the Legislature describing the concentration of retail outlets in the State or in sections of the State without disclosing the name of any particular retailer or retail outlet. The Attorney General shall include in the report a recommendation to the Legislature as to whether additional legislation is needed to further limit or curtail the activity of refiners operating retail outlets. In formulating a legislative recommendation, the Attorney General shall consult with industry stakeholders; notwithstanding this consultation requirement, the substance of the recommendation is a matter for the Attorney General's sole discretion. Annually, beginning April 1, 2010, the Attorney General shall post on the Attorney General's publicly accessible website the aggregate data collected pursuant to this chapter. [PL 2009, c. 119, §1 (AMD).]

SECTION HISTORY

PL 1991, c. 836, §3 (NEW). PL 2005, c. 155, §6 (AMD). PL 2009, c. 119, §1 (AMD).

§1678. Petroleum Advisory Committee

(REPEALED)

SECTION HISTORY

RR 1991, c. 2, §34 (COR). PL 1991, c. 836, §3 (NEW). PL 2001, c. 352, §6 (AMD). PL 2005, c. 155, §7 (RP). PL 2005, c. 294, §20 (RP).

§1679. Penalties and injunctive action

A person that violates this chapter is subject to a civil penalty not to exceed $10,000. In any action initiated by the Attorney General seeking a civil penalty for violation of section 1676, each day that the refiner controls a retail outlet in violation of that section constitutes a separate violation. The Attorney General may initiate an action in Superior Court for injunctive and other equitable relief to enforce compliance with this chapter. In any action commenced by the Attorney General for violation of section 1676, the Superior Court may order the refiner to divest any retail outlet established or operated in violation of this chapter and may order the refiner to disgorge any gross revenues earned from sales or operations in violation of this chapter. In any action commenced by the Attorney General under this chapter for injunctive and other equitable relief or for civil penalties, the Attorney General, if on the prevailing side, must be awarded necessary and reasonable investigative costs, reasonable expert witness fees, reasonable attorneys' fees and court costs. [PL 1991, c. 836, §3 (NEW).]

SECTION HISTORY

PL 1991, c. 836, §3 (NEW).

§1680. Private right of action

A retailer, wholesaler or refiner who is injured as a result of a violation of Title 5, section 207 or section 1676 may maintain a civil action in Superior Court against the violator for damages and equitable relief. In any action, the Superior Court shall enter a temporary, preliminary or permanent injunction to restrain further violations or threatened violations of section 1676, regardless of whether the complaining party has an adequate remedy in damages. If the complaining party prevails in any action, the party is entitled to an award of reasonable attorneys' fees and court costs, including expert witness fees. [PL 1991, c. 836, §3 (NEW).]

SECTION HISTORY

PL 1991, c. 836, §3 (NEW).

§1681. Fees

Annually by September 1st, a person who operates or causes to be operated an oil terminal facility within the State, as defined in Title 38, section 542, subsection 7, and a person who is required to register with the Commissioner of Environmental Protection pursuant to Title 38, section 545-B, shall pay to the Attorney General a fee for each 10,000 gallons of home heating oil and motor fuel oil transported into the State during the previous 12-month period ending June 1st. Home heating oil or motor fuel oil that is subsequently exported from the State is excluded from computation, except that home heating oil sold to a retailer or retail outlet located outside the State that sells home heating oil at retail within the State is not excluded. The fee that must be paid by September 1, 1996 and for each subsequent year is 40¢ for each 10,000 gallons or portion thereof. The fees must be deposited in a dedicated, nonlapsing account, known as the Petroleum Marketing Fund. The Attorney General shall administer the fund. [PL 2005, c. 155, §8 (AMD).]

SECTION HISTORY

PL 1991, c. 836, §3 (NEW). PL 1993, c. 46, §3 (AMD). PL 1993, c. 415, §F1 (AMD). PL 1993, c. 613, §3 (AMD). PL 1995, c. 627, §2 (AMD). PL 1999, c. 151, §2 (AMD). PL 2005, c. 155, §8 (AMD).

§1682. Rulemaking

The Attorney General may adopt rules necessary to implement this chapter. [PL 1991, c. 836, §3 (NEW).]

SECTION HISTORY

PL 1991, c. 836, §3 (NEW).

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