

**HOUSE . . . . . No. 3090**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand 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:*

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

4           (6) The term "cost to the retail dealer" shall mean the cost of such motor fuel to the dealer  
5 plus the cost of doing business, including that part of the overhead of such dealer properly  
6 attributable to the sale of such motor fuel according to generally accepted methods of accounting  
7 procedure, which overhead shall include without limitation, labor (including the salaries of  
8 proprietors and corporate officials and others or a reasonable value for the services of such where  
9 no direct wage or salary is paid to them), rent (or a reasonable return on capital invested in real  
10 property used in said business) depreciation, selling costs (including gifts or premiums or other  
11 valuable considerations passing from the dealer to the purchaser in connection with the sale of  
12 motor fuel), maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and  
13 advertising. In the case of a retail dealer who is also a refiner, the cost of such motor fuel to the  
14 dealer shall be presumed to be the New York Harbor barge mean price as stated by a reputable

15 price reporting service plus the cost of transportation of the motor fuel to the applicable terminal  
16 plus the cost of doing business as defined herein. In any action under the provisions of section  
17 295T, a retail dealer who is also a refiner may rebut this presumption by demonstrating by a  
18 preponderance of the evidence that his actual cost of motor fuel for retail sale subject to the  
19 provisions of section 295P is other than the presumed cost.

20 SECTION 2. Section 295P of said chapter 94 of the General Laws, as appearing in the  
21 2004 Official Edition, is hereby amended by striking out said section 295P and inserting in place  
22 thereof the following section:-

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

26 SECTION 3. Section 295T of said chapter 94 of the General Laws, as appearing in the  
27 2004 Official Edition, is hereby amended by striking out said section 295T and inserting in place  
28 thereof the following section:-

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

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