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SENATE BILL 5547

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State of Washington

52nd Legislature

1991 Regular Session

By Senators Thorsness, Rasmussen and Talmadge; by request of Attorney General.

Read first time February 6, 1991. Referred to Committee on Energy & Utilities.

1 AN ACT Relating to petroleum distribution; adding a new chapter to  
2 Title 19 RCW; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature finds that the marketing  
5 of motor fuel and heating oil in the state of Washington has become  
6 highly concentrated with a limited number of refiners of crude oil,  
7 some of which are integrated into retail operations. Such  
8 concentration has the effect of curtailing the normal, healthy benefits  
9 of competition, and allowing some suppliers to take unfair advantage of  
10 purchasers. This conduct is injurious to the public interest and  
11 should be prohibited.

12 The legislature further finds that motor fuel and heating oil are  
13 essential to the welfare of the people of the state and that the  
14 inability of purchasers to purchase those products at a competitive

1 price will result in severe hardship to purchasers and to the economy  
2 of the state of Washington.

3 The legislature further finds that as the market for the supply of  
4 motor fuel and heating oil becomes more concentrated, the potential for  
5 anticompetitive behavior increases. Therefore, the office of the  
6 attorney general, consumer and business fair practices division, should  
7 be notified whenever significant acquisitions or mergers in the  
8 petroleum industry take place.

9 NEW SECTION. **Sec. 2.** Unfair petroleum marketing practices are  
10 matters affecting the public interest for the purpose of applying  
11 chapter 19.86 RCW and are not reasonable in relation to the development  
12 and preservation of business. A violation of this chapter constitutes  
13 an unfair or deceptive act or practice in trade or commerce for the  
14 purpose of applying chapter 19.86 RCW.

15 NEW SECTION. **Sec. 3.** Unless the context clearly requires  
16 otherwise, the definitions in this section apply throughout this  
17 chapter.

18 (1) "Person" means natural persons, corporations, trusts,  
19 unincorporated associations, and partnerships.

20 (2) "Petroleum products" means products that are obtained from the  
21 processing of crude oil, natural gas, and other hydrocarbon compounds  
22 including, but not limited to motor fuel and heating oil.

23 (3) "Refiner" means a person who makes petroleum products in the  
24 state of Washington from crude oil, unfinished oils, natural gas plant  
25 liquids, or other hydrocarbons.

26 (4) "Retailer" means a person who purchases motor fuel or heating  
27 oil from a wholesaler or a refiner for resale to consumers in the state  
28 of Washington.

1 (5) "Supplier" means a refiner, wholesaler, retailer, or other  
2 reseller of motor fuel or heating oil doing business in the state of  
3 Washington.

4 (6) "Ultimate parent authority" means an entity that is not  
5 controlled by another entity.

6 (7) "Wholesaler" means a person who purchases motor fuel or heating  
7 oil from a refiner and sells it to a retailer, bulk purchaser, or other  
8 wholesaler.

9 NEW SECTION. **Sec. 4.** (1) An unfair margin for the sale of  
10 motor fuel or heating oil is prohibited.

11 (2) For purposes of this section the term "margin" means:

12 (a) For a refiner, the difference between the prior day's high  
13 closing price per gallon for Alaskan North Slope crude oil on the Los  
14 Angeles spot market and the price per gallon at which the refiner sells  
15 the motor fuel or heating oil. The high closing price for Alaskan  
16 North Slope crude oil shall be the highest closing price published by  
17 trade publications of general circulation;

18 (b) For a wholesaler or retailer, the difference between the  
19 purchase and sales price on a per gallon basis.

20 (3) An unfair margin for the sale of motor fuel or heating oil  
21 occurs when the margin for that sale is twenty-five percent or more  
22 higher than the average margin during the preceding twenty-eight days  
23 and the selling price is higher than the previous day's final selling  
24 price.

25 (4) Each sale made at an unfair margin by a supplier shall  
26 constitute a separate unfair act and violation of this section.

27 NEW SECTION. **Sec. 5.** It is an unfair practice for a supplier  
28 of motor fuel or heating oil to limit or allocate the quantity of

1 product available to a purchaser purchasing under contract from the  
2 supplier, unless the limitations or allocations are applied in a  
3 reasonable and nondiscriminatory manner among all wholesalers and  
4 retailers, including company-owned and operated retail outlets, on the  
5 same level of distribution within the same trade area.

6 NEW SECTION. **Sec. 6.** A direct or indirect purchaser who has  
7 been injured in the purchaser's business or property, or the attorney  
8 general on behalf of consumers who are direct or indirect purchasers  
9 and have been injured in their business or property, may bring a civil  
10 action in superior court against a supplier to enjoin violations of  
11 this chapter or to seek damages, or both, and the costs of bringing the  
12 suit, including reasonable attorneys' fees. When a defendant is  
13 subjected to claims by both direct and indirect purchasers, the court  
14 shall take reasonable steps to avoid duplicate liability for the same  
15 injury, including transfer and consolidation of all actions.

16 NEW SECTION. **Sec. 7.** The court shall impose a civil penalty  
17 for each violation of sections 4 and 5 of this act, in an amount not to  
18 exceed one dollar per gallon sold by the supplier in violation of this  
19 chapter.

20 NEW SECTION. **Sec. 8.** (1) No supplier may acquire, directly or  
21 indirectly, from any other supplier, voting securities or assets that  
22 have a current market value of more than one million dollars, unless  
23 both suppliers notify the office of the attorney general, consumer and  
24 business fair practices division at least sixty days prior to the date  
25 of the proposed acquisition. This sixty-day waiting period shall  
26 commence upon receipt of the notification by the office of the attorney  
27 general.

1 (2) For purposes of this section, an acquisition includes mergers,  
2 acquisitions of assets, joint ventures, consolidations, and  
3 acquisitions of voting securities. Such notification shall include:

4 (a) Copies of all materials provided to the federal trade  
5 commission pursuant to 15 U.S.C. Sec. 18, if applicable;

6 (b) If no filing with the federal trade commission is required:

7 (i) The names and addresses of the ultimate parent entities of the  
8 acquiring and acquired person;

9 (ii) A description of the acquisition, a statement of its purpose,  
10 and proposed date of completion;

11 (iii) Copies of all documents constituting the acquisition  
12 agreement;

13 (iv) A statement of the percentage of assets or voting securities  
14 of the acquired person that will be held by each acquiring person as a  
15 result of the acquisition and the total dollar value of the assets or  
16 voting securities;

17 (v) Copies of all documents filed with the securities and exchange  
18 commission in conjunction with the acquisition;

19 (vi) The most recent annual reports for the acquiring and acquired  
20 persons, including income statements and balance sheets, as well as any  
21 related audit reports;

22 (vii) Any report that analyzes the proposed acquisition's  
23 competitive impact in the state of Washington;

24 (viii) Identification of any industry in which the acquiring and  
25 acquired persons are both engaged in the state of Washington and the  
26 geographic markets in which they operate;

27 (ix) Disclosure of any exchange agreements or other supply  
28 agreements between the acquired and acquiring persons that  
29 substantially affect the supply of petroleum products in the state of  
30 Washington; and

1 (x) Identification by the acquiring person of any other  
2 acquisitions or sales of assets or voting securities from or to any  
3 other petroleum products supplier during the prior ten years in the  
4 state of Washington.

5 (3) Any person who fails to comply with a provision of this section  
6 is liable to the state of Washington for a civil penalty of not more  
7 than one-tenth of one percent of the market value of the acquired  
8 assets, for each day during which the person is in violation of this  
9 section. The attorney general may bring a civil action in superior  
10 court to enforce compliance with this section and, upon a determination  
11 of noncompliance, the court shall award reasonable attorneys' fees and  
12 costs in favor of the attorney general. The court may order compliance  
13 and grant such other relief as it determines necessary and appropriate.

14 (4) If the attorney general determines that good cause exists, the  
15 sixty-day waiting period may be terminated early and the acquisition  
16 may be allowed to proceed. The attorney general may require the  
17 submission of additional information or documentary material relevant  
18 to the proposed acquisition. If additional information is requested,  
19 the waiting period shall be extended for an additional thirty days  
20 unless otherwise agreed by the attorney general.

21 (5) Nothing in this section shall limit the authority of the  
22 attorney general to secure at any time from any person documentary  
23 material, and testimony, or other information under RCW 19.86.110, or  
24 any other provision of law.

25 NEW SECTION. **Sec. 9.** The governor may suspend the operation  
26 of this chapter, except section 8 of this act, upon finding and  
27 declaring that an energy emergency exists pursuant to RCW 43.21G.040.  
28 Such suspension may last for all or part of the duration of the energy

1 emergency, but under no circumstances may it be extended beyond the  
2 duration of the energy emergency.

3 NEW SECTION. **Sec. 10.** This chapter does not limit any of the  
4 provisions of chapter 19.86 RCW or otherwise limit the ability of the  
5 courts to declare certain acts or practices as unfair or deceptive.

6 NEW SECTION. **Sec. 11.** This chapter shall not repeal, amend, or  
7 modify any law now in existence.

8 NEW SECTION. **Sec. 12.** If any provision of this act or its  
9 application to any person or circumstance is held invalid, the  
10 remainder of the act or the application of the provision to other  
11 persons or circumstances is not affected.

12 NEW SECTION. **Sec. 13.** This chapter may be known and cited as  
13 the petroleum distribution act.

14 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act shall  
15 constitute a new chapter in Title 19 RCW.