

Commerce & Labor Committee

HB 1998

Brief Description: *Prohibiting the sale of motor vehicle fuels below their actual costs.*

Sponsors: *Representatives G. Chandler, Clements, Dunshee, Reardon, Hunt, Schoesler, Esser, Linville and Delvin.*

Brief Summary of Bill

- *Prohibits a pattern of retail sales of motor vehicle fuel below cost.*
- *Creates a civil remedy for violations.*
- *Provides limited exceptions.*

Hearing Date: *2/20/01*

Staff: *Sydney Forrester (786-7120).*

Background:

Washington Laws: *The Department of Agriculture regulates motor vehicle fuel content, and the Department of Licensing regulates motor vehicle fuel taxes. However, no state agency regulates motor vehicle fuel prices. Washington laws relating to sales below cost include the regulations on cigarettes, alcohol, telecommunications services, and certain commodities.*

Federal Laws: *Federal anti-competitive and antitrust legislation revolves around the Sherman Act, the Clayton Act, and the Robinson-Patman Act. These statutes prohibit anti-competitive restraints of trade, monopolies, and price discrimination in a variety of contexts. Case law in the area of sales below cost claims has posed certain burdens of proof for plaintiffs and has resulted in fewer successful plaintiffs over time.*

Laws of Other States: *Most states have some form of fair competition legislation; Seventeen have enacted fair competition legislation specific to motor vehicle fuel. Each*

state's law is different but many contain similar provisions. The major practices addressed by these laws are discriminatory pricing and below cost sales.

Summary of Bill:

A pattern of retail sales of motor fuel below cost would be prohibited when the pattern of sales injured one or more competitors or reduced competition. The cost of motor fuel would be determined by adding the product cost and the nonproduct cost.

Product cost would be determined by the invoice cost from the supplier, plus taxes, less any discounts actually received. Nonproduct cost would be determined by adding the occupational cost (rent/lease, equipment, taxes, utilities, fees and permits, insurance) and the operational cost (personnel expenses attributable to the sale of motor fuel by the retail dealer).

An injured dealer would be able to bring a civil claim for actual damages, costs, and attorney fees, and also could seek an injunction in superior court. The sale of motor fuel at a price less than the supplier's invoice cost plus 9 percent, combined with at least one injured retail dealer would shift the burden of proof to the defendant. If a court found a defendant exerted unfair economic power, it would be required to impose a civil penalty. If a court found a pattern of sales below cost had injured one or more competitors or reduced competition, it would be required to impose a fine of not less than \$500 and not more than \$10,000 per day during which the violation occurred and continued.

Dealers would not be liable for sales below cost: a) during a going out of business sale; b) as part of a grand opening; or c) as a good faith effort to meet the price of another competitor.

The bill declares an emergency and would take effect immediately.

Rules Authority: *The bill does not contain provisions addressing the rule-making powers of an agency.*

Appropriation: *None.*

Fiscal Note: *Requested on February 15, 2001.*

Effective Date: *The bill contains an emergency clause and takes effect immediately.*