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HOUSE BILL 1998

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State of Washington

57th Legislature

2001 Regular Session

By Representatives G. Chandler, Clements, Dunshee, Reardon, Hunt, Schoesler, Esser, Linville and Delvin

Read first time 02/12/2001. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to fair competition in motor fuel marketing; adding  
2 a new chapter to Title 19 RCW; prescribing penalties; and declaring an  
3 emergency.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that the practice of  
6 selling petroleum below cost in order to attract patronage is generally  
7 a form of deceptive advertising and an unfair method of competition in  
8 commerce. This practice causes commercial dislocations, misleads the  
9 consumer, directly burdens and obstructs commerce, and diverts business  
10 from dealers who maintain a fair price policy. Bankruptcies among  
11 merchants who fail because of the competition of those who use such  
12 methods result in unemployment, disruption of leases, nonpayment of  
13 taxes and loans, and contribute to an inevitable train of undesirable  
14 consequences, including economic depression.

15 The legislature also finds that promoting fair competition in motor  
16 fuel marketing is in the public interest, that the marketing of motor  
17 fuel has a direct impact on the citizens of the state, and that  
18 petroleum legislation is within the police power of the state of  
19 Washington. The legislature further finds that subsidized pricing is

1 inherently predatory, reduces competition in the petroleum industry,  
2 and threatens the consuming public.

3 The intent of this chapter is to level the playing field between  
4 all retail dealers of petroleum products in order to remove unfair  
5 competitive advantages, to promote competition on the merits at the  
6 retail level of motor fuel marketing, and to promote a competitive  
7 environment that will not penalize efficiency in retail marketing, but  
8 will enhance consumer choice.

9 NEW SECTION. **Sec. 2.** The definitions in this section apply  
10 throughout this chapter unless the context clearly requires otherwise.

11 (1) "Commercial customer" includes any person, partnership, firm,  
12 broker, corporation, joint stock company, or other business or  
13 association engaged in the purchase or sale of motor fuel from a  
14 supplier, whether the purchase or sale is for resale at wholesale or  
15 retail.

16 (2) "Motor fuel" means all grades of gasoline, including but not  
17 limited to leaded and unleaded gasoline and diesel fuel of a type  
18 distributed for use in self-propelled motor vehicles, and includes  
19 gasohol.

20 (3) "Motor fuel cost" means the product cost, plus the nonproduct  
21 cost.

22 (4) "Nonproduct cost" means the occupancy cost and operational  
23 expenses attributable to the retail sale of motor fuel by the retail  
24 dealer.

25 (5) "Nonretail dealer supplier" means a person engaged in the  
26 supply or distribution of motor fuel for sale or delivery to a motor  
27 fuel dealer.

28 (6) "Occupancy cost" means the reasonable rental value of the  
29 retail outlet determined as the fair market rental value of the land,  
30 improvements, and equipment at the retail outlet, as well as the real  
31 and personal property taxes, utilities, any related fees and permit  
32 costs, and insurance related to the retail sale of motor fuel by the  
33 retail dealer.

34 (7) "Operational cost" means all personnel expenses attributable to  
35 the sale of motor fuel by the retail dealer, including but not limited  
36 to personnel expenses of storing, inventorying, ordering, and selling  
37 motor fuel, hourly wage personnel such as store clerks, salaries of  
38 managers or supervisors, workers' compensation insurance premiums,

1 unemployment compensation taxes, payroll taxes, and any other  
2 applicable work force related taxes, employee benefits, and perquisites  
3 offered to employees.

4 (8) "Product cost" means the invoice cost of the motor fuel by  
5 grade to the retail dealer, less all allowances and trade discounts  
6 actually received, plus all applicable federal, state, and local taxes  
7 imposed on motor fuel.

8 (9) "Retail dealer" includes any person, partnership, firm,  
9 corporation, joint stock company, or other business or association  
10 engaged in the sale of motor fuel at retail to the consuming public.

11 (10) "Supplier" includes any person, partnership, firm, broker,  
12 corporation, joint stock company, or other business or association  
13 engaged in the sale of motor fuel to wholesale distributors, commercial  
14 customers, or retail dealers.

15 (11) "Supplier posted terminal price" means the price at which a  
16 petroleum supplier offers to sell motor fuel to the public, including  
17 wholesale distributors and commercial customers, at its distribution  
18 terminals or racks. If a supplier does not have a posted terminal  
19 price, then the supplier posted terminal price shall be the average  
20 posted terminal price at the terminal or rack located closest to the  
21 retail station for like grade or quality, branded or unbranded, motor  
22 fuel in the states of Washington or Oregon.

23 (12) "Wholesale distributors" includes any person, partnership,  
24 firm, broker, corporation, joint stock company, or other business or  
25 association engaged in the purchase of motor fuel from a supplier and  
26 reselling the motor fuel to other wholesale distributors, retail  
27 dealers, or other commercial customers, or that delivers such a product  
28 to retail gasoline stations owned or operated by the wholesale  
29 distributor.

30 NEW SECTION. **Sec. 3.** No retail dealer may engage in a pattern of  
31 selling, offer to sell, or sell motor fuel below the motor fuel cost  
32 when such a pattern of selling, offer to sell, or sale has the effect  
33 of injuring one or more competitors or reducing competition.

34 NEW SECTION. **Sec. 4.** In all actions brought under the provisions  
35 of this chapter, the proof of one or more acts of selling motor fuel at  
36 a cost below the supplier posted terminal price, including applicable  
37 federal, state, and local taxes, plus nine percent, together with proof

1 of the injurious effect of such act or acts is prima facie evidence of  
2 the purpose or intent of injuring one or more competitors or reducing  
3 competition.

4 NEW SECTION. **Sec. 5.** Injury to one or more retail dealers, which  
5 injury is proximately caused by the below cost selling, constitutes an  
6 adverse effect on competition and is deemed to have the effect of  
7 reducing competition for the purposes of this chapter.

8 NEW SECTION. **Sec. 6.** This chapter is deemed remedial in nature,  
9 and does not carry any criminal liability for defendants in any action  
10 brought under this chapter. However, civil penalties must be imposed  
11 in actions where the court finds unfair use of economic power being  
12 exerted by any party found to be in violation of this chapter.

13 For any violation of section 3 of this act, the court shall impose  
14 a civil penalty of no less than five hundred dollars and no more than  
15 ten thousand dollars per day during which the defendant is found to be  
16 in violation of section 3 of this act.

17 Any retail dealer who is injured in his or her business by the  
18 commission of any act prohibited by this chapter may bring a civil  
19 action in superior court to enjoin further violations, to recover the  
20 actual damages sustained by him or her, or both, together with the  
21 costs of the suit, including reasonable attorneys' fees.

22 In addition, all civil liability provisions of RCW 19.86.090 are  
23 incorporated into this chapter for the purposes of remediation or  
24 penalty against any retail dealer found in violation of this chapter.

25 NEW SECTION. **Sec. 7.** The attorney general may bring an action in  
26 the name of the state against any person to restrain and prevent the  
27 doing of any act prohibited by this chapter. The prevailing party may,  
28 in the discretion of the court, recover the costs of the action,  
29 including reasonable attorneys' fees.

30 NEW SECTION. **Sec. 8.** In any proceeding under this chapter, the  
31 following exceptions from liability apply:

32 (1) Retail dealers may not be held liable for selling motor fuel  
33 below cost under this chapter as part of a going out of business sale  
34 as authorized under chapter 19.178 RCW.

1 (2) Retail dealers may not be held liable for selling motor fuel  
2 below cost as part of a grand opening to introduce a new or remodeled  
3 business. However, below cost sales are not allowed for more than  
4 fourteen calendar days and are only allowed at the site where the new  
5 or remodeled business has been constructed or remodeled. Below cost  
6 sales of motor fuel under this subsection that last for more than  
7 fourteen days are a violation of this chapter and subject to remedial  
8 and civil penalties.

9 (3) Retail dealers may not be held liable under this chapter when  
10 they sell motor fuel in a good faith effort to meet the price of  
11 another competitor in the market area where the motor fuel is being  
12 sold, even if the retail dealer is selling below cost.

13 NEW SECTION. **Sec. 9.** This chapter may be known and cited as the  
14 "motor fuels marketing fair competition act of 2001."

15 NEW SECTION. **Sec. 10.** This chapter shall be liberally construed  
16 to effectuate its beneficial purposes.

17 NEW SECTION. **Sec. 11.** If any provision of this act or its  
18 application to any person or circumstance is held invalid, the  
19 remainder of the act or the application of the provision to other  
20 persons or circumstances is not affected.

21 NEW SECTION. **Sec. 12.** Sections 1 through 11 of this act  
22 constitute a new chapter in Title 19 RCW.

23 NEW SECTION. **Sec. 13.** This act is necessary for the immediate  
24 preservation of the public peace, health, or safety, or support of the  
25 state government and its existing public institutions, and takes effect  
26 immediately.

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