
SENATE BILL 5980

State of Washington

57th Legislature

2001 Regular Session

By Senators Prentice, Winsley and Kline

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

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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