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HOUSE BILL 2441

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State of Washington

59th Legislature

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By Representatives Hudgins, Chase and Santos

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Committee on Commerce & Labor.

1 AN ACT Relating to enhancing the availability of nonhazardous motor  
2 fuels at retail gasoline stations; amending RCW 19.120.010 and  
3 19.120.080; creating a new section; and prescribing penalties.

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

5 **Sec. 1.** RCW 19.120.010 and 1989 c 11 s 3 are each amended to read  
6 as follows:

7 ((~~Unless the context clearly requires otherwise,~~) The definitions  
8 in this section apply throughout this chapter unless the context  
9 clearly requires otherwise.

10 (1) "Advertisement" means any written or printed communication or  
11 any communication by means of ((~~recorded telephone messages or spoken~~  
12 ~~on radio, television,~~) telecommunications technologies, electronic  
13 voice, text, or data transmissions, broadcast media, or similar  
14 communication media published in connection with an offer or sale of a  
15 franchise.

16 (2) "Affiliate" means any person, firm, or corporation who controls  
17 or is controlled by any motor fuel refiner-supplier, and includes any  
18 subsidiary or affiliated corporation in which the motor fuel refiner-

1 supplier or its shareholders, officers, agents, or employees hold or  
2 control more than twenty-five percent of the voting shares.

3 (3) "Community interest" means a continuing financial interest  
4 between the motor fuel refiner-supplier and motor fuel retailer in the  
5 operation of the franchise business.

6 (4) "Motor fuel" means gasoline or diesel fuel of a type  
7 distributed for use in self-propelled motor vehicles and includes  
8 gasohol.

9 (5) "Motor fuel franchise" means any oral or written contract,  
10 either expressed or implied, between a motor fuel refiner-supplier and  
11 motor fuel retailer under which the motor fuel retailer is supplied  
12 motor fuel for resale to the public under a trademark owned or  
13 controlled by the motor fuel refiner-supplier or for sale on commission  
14 or for a fee to the public, or any agreements between a motor fuel  
15 refiner-supplier and motor fuel retailer under which the retailer is  
16 permitted to occupy premises owned, leased, or controlled by the  
17 refiner-supplier for the purpose of engaging in the retail sale of  
18 motor fuel under a trademark owned or controlled by the motor fuel  
19 refiner-supplier supplied by the motor fuel refiner-supplier.

20 (6) "Motor fuel refiner-supplier" means any person, firm, or  
21 corporation, including any affiliate of the person, firm, or  
22 corporation, engaged in the refining of crude oil into petroleum who  
23 supplies motor fuel for sale, consignment, or distribution through  
24 retail outlets.

25 (7) "Motor fuel retailer" means a person, firm, or corporation that  
26 resells motor fuel entirely at one or more retail motor fuel outlets  
27 pursuant to a motor fuel franchise entered into with a refiner-  
28 supplier.

29 (8) "Nonhazardous motor fuel" means any fuel of a type distributed  
30 for use in self-propelled motor vehicles that does not contain a  
31 hazardous liquid as defined in RCW 19.122.020.

32 (9) "Offer or offer to sell" includes every attempt or offer to  
33 dispose of or solicitation of an offer to buy a franchise or an  
34 interest in a franchise.

35 ((+9)) (10) "Person" means a natural person, corporation,  
36 partnership, trust, or other entity and in the case of an entity, it  
37 shall include any other entity which has a majority interest in such an

1 entity or effectively controls such other entity as well as the  
2 individual officers, directors, and other persons in act of control of  
3 the activities of each such entity.

4 ~~((+10+))~~ (11) "Price" means the net purchase price, after  
5 adjustment for commission, brokerage, rebate, discount, services or  
6 facilities furnished, or other such adjustment.

7 ~~((+11+))~~ (12) "Publish" means publicly to issue or circulate by  
8 ~~((newspaper, mail, radio, or television))~~ using print media, electronic  
9 voice, text, or data transmissions, or other broadcast media or  
10 otherwise to disseminate to the public.

11 ~~((+12+))~~ (13) "Retail motor fuel outlet" means any location where  
12 motor fuel is distributed for purposes other than resale.

13 ~~((+13+))~~ (14) "Sale or sell" includes every contract of sale,  
14 contract to sell, or disposition of a franchise.

15 ~~((+14+))~~ (15) "Trademark" means any trademark, trade name, service  
16 mark, or other identifying symbol or name.

17 **Sec. 2.** RCW 19.120.080 and 2000 c 171 s 72 are each amended to  
18 read as follows:

19 Without limiting the other provisions of this chapter, the  
20 following specific rights and prohibitions shall govern the relation  
21 between the motor fuel refiner-supplier and the motor fuel retailers:

- 22 (1) The parties shall deal with each other in good faith.
- 23 (2) For the purposes of this chapter and without limiting its  
24 general application, it shall be an unfair or deceptive act or practice  
25 or an unfair method of competition and therefore unlawful and a  
26 violation of this chapter for any person to:

27 (a) Require a motor fuel retailer to purchase or lease goods or  
28 services of the motor fuel refiner-supplier or from approved sources of  
29 supply unless and to the extent that the motor fuel refiner-supplier  
30 satisfies the burden of proving that such restrictive purchasing  
31 agreements are reasonably necessary for a lawful purpose justified on  
32 business grounds, and do not substantially affect competition:  
33 PROVIDED, That this provision shall not apply to the initial inventory  
34 of the motor fuel franchise. In determining whether a requirement to  
35 purchase or lease goods or services constitutes an unfair or deceptive  
36 act or practice or an unfair method of competition the courts shall be

1 guided by the decisions of the courts of the United States interpreting  
2 and applying the anti-trust laws of the United States.

3 (b) Discriminate between motor fuel retailers in the charges  
4 offered or made for royalties, goods, services, equipment, rentals,  
5 advertising services, or in any other business dealing, unless and to  
6 the extent that the motor fuel refiner-supplier satisfies the burden of  
7 proving that any classification of or discrimination between motor fuel  
8 retailers is reasonable, is based on motor fuel franchises granted at  
9 materially different times and such discrimination is reasonably  
10 related to such difference in time or on other proper and justifiable  
11 distinctions considering the purposes of this chapter, and is not  
12 arbitrary.

13 (c) Sell, rent, or offer to sell to a motor fuel retailer any  
14 product or service for more than a fair and reasonable price.

15 (d) Require a motor fuel retailer to assent to a release,  
16 assignment, novation, or waiver which would relieve any person from  
17 liability imposed by this chapter.

18 (e) Prohibit or in any way prevent a motor fuel retailer from  
19 offering and selling, consistent with all other applicable federal or  
20 state laws, any nonhazardous motor fuel for use in self-propelled motor  
21 vehicles.

22 (f) Discriminate between motor fuel retailers based on a motor fuel  
23 retailer's decision to offer and sell, consistent with all other  
24 applicable federal or state laws, any nonhazardous motor fuel for use  
25 in self-propelled motor vehicles.

26 (g) In addition to other remedies available under this chapter,  
27 violations of (e) or (f) of this subsection shall be subject to a civil  
28 penalty of not less than five thousand dollars.

29 NEW SECTION. Sec. 3. This act applies prospectively only and not  
30 retroactively. Nothing in this section shall be construed to  
31 invalidate actions taken by motor fuel refiner-suppliers and motor fuel  
32 retailers prior to the effective date of this section.

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