
HOUSE BILL 2442

State of Washington 59th Legislature 2006 Regular Session

By Representatives Hudgins, Chase, Morrell, Appleton, Moeller, Murray, Kagi, Simpson, Sells, Upthegrove and O'Brien

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1 AN ACT Relating to enhancing the availability of alternative fuel
2 at retail gasoline stations; amending RCW 19.120.010 and 19.120.080;
3 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) "Alcohol fuel" means any alcohol made from a product other than
4 petroleum or natural gas that is used alone or in combination with
5 gasoline or other petroleum products for use as a fuel in self-
6 propelled motor vehicles.

7 (4) "Biodiesel" means a mono alkyl ester of long chain fatty acids
8 derived from vegetable oils or animal fats for use in
9 compression-ignition engines and that meets the requirements of the
10 American society of testing and materials specification D 6751 in
11 effect as of January 1, 2003.

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

15 ~~((4))~~ (6) "Motor fuel" means gasoline or diesel fuel of a type
16 distributed for use in self-propelled motor vehicles and includes
17 gasohol.

18 ~~((5))~~ (7) "Motor fuel franchise" means any oral or written
19 contract, either expressed or implied, between a motor fuel refiner-
20 supplier and motor fuel retailer under which the motor fuel retailer is
21 supplied motor fuel for resale to the public under a trademark owned or
22 controlled by the motor fuel refiner-supplier or for sale on commission
23 or for a fee to the public, or any agreements between a motor fuel
24 refiner-supplier and motor fuel retailer under which the retailer is
25 permitted to occupy premises owned, leased, or controlled by the
26 refiner-supplier for the purpose of engaging in the retail sale of
27 motor fuel under a trademark owned or controlled by the motor fuel
28 refiner-supplier supplied by the motor fuel refiner-supplier.

29 ~~((6))~~ (8) "Motor fuel refiner-supplier" means any person, firm,
30 or corporation, including any affiliate of the person, firm, or
31 corporation, engaged in the refining of crude oil into petroleum who
32 supplies motor fuel for sale, consignment, or distribution through
33 retail outlets.

34 ~~((7))~~ (9) "Motor fuel retailer" means a person, firm, or
35 corporation that resells motor fuel entirely at one or more retail
36 motor fuel outlets pursuant to a motor fuel franchise entered into with
37 a refiner-supplier.

1 ~~((8))~~ (10) "Offer or offer to sell" includes every attempt or
2 offer to dispose of or solicitation of an offer to buy a franchise or
3 an interest in a franchise.

4 ~~((9))~~ (11) "Person" means a natural person, corporation,
5 partnership, trust, or other entity and in the case of an entity, it
6 shall include any other entity which has a majority interest in such an
7 entity or effectively controls such other entity as well as the
8 individual officers, directors, and other persons in act of control of
9 the activities of each such entity.

10 ~~((10))~~ (12) "Price" means the net purchase price, after
11 adjustment for commission, brokerage, rebate, discount, services or
12 facilities furnished, or other such adjustment.

13 ~~((11))~~ (13) "Publish" means publicly to issue or circulate by
14 ~~((newspaper, mail, radio, or television))~~ using print media, electronic
15 voice, text, or data transmissions, or other broadcast media or
16 otherwise to disseminate to the public.

17 ~~((12))~~ (14) "Retail motor fuel outlet" means any location where
18 motor fuel is distributed for purposes other than resale.

19 ~~((13))~~ (15) "Sale or sell" includes every contract of sale,
20 contract to sell, or disposition of a franchise.

21 ~~((14))~~ (16) "Trademark" means any trademark, trade name, service
22 mark, or other identifying symbol or name.

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

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

28 (1) The parties shall deal with each other in good faith.

29 (2) For the purposes of this chapter and without limiting its
30 general application, it shall be an unfair or deceptive act or practice
31 or an unfair method of competition and therefore unlawful and a
32 violation of this chapter for any person to:

33 (a) Require a motor fuel retailer to purchase or lease goods or
34 services of the motor fuel refiner-supplier or from approved sources of
35 supply unless and to the extent that the motor fuel refiner-supplier
36 satisfies the burden of proving that such restrictive purchasing
37 agreements are reasonably necessary for a lawful purpose justified on

1 business grounds, and do not substantially affect competition:
2 PROVIDED, That this provision shall not apply to the initial inventory
3 of the motor fuel franchise. In determining whether a requirement to
4 purchase or lease goods or services constitutes an unfair or deceptive
5 act or practice or an unfair method of competition the courts shall be
6 guided by the decisions of the courts of the United States interpreting
7 and applying the anti-trust laws of the United States.

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

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

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

23 (e) Prohibit or in any way prevent a motor fuel retailer from
24 offering and selling, consistent with all other applicable federal or
25 state laws, any of the following fuels for use in self-propelled motor
26 vehicles:

27 (i) Compressed natural gas;

28 (ii) Liquefied natural gas;

29 (iii) Liquefied petroleum gas;

30 (iv) Hydrogen;

31 (v) Electricity;

32 (vi) Methanol, ethanol, and other alcohol fuel;

33 (vii) Biodiesel;

34 (viii) Mixtures containing methanol, ethanol, other alcohol fuel,
35 or biodiesel, mixed with diesel, gasoline, or other fuels;

36 (ix) Fuels other than alcohol fuel that are derived from biological
37 materials; and

1 (x) Any other fuel the secretary of the United States department of
2 energy determines by regulation to be an alternative fuel within the
3 meaning of 42 U.S.C. Sec. 13211(2) until the legislature acts to add
4 the fuel to the list in this subsection or to clearly reject the fuel
5 from being added to the list in this subsection.

6 (f) Discriminate between motor fuel retailers based on a motor fuel
7 retailer's decision to offer and sell, consistent with all other
8 applicable federal or state laws, any of the following fuels for use in
9 self-propelled motor vehicles:

10 (i) Compressed natural gas;

11 (ii) Liquefied natural gas;

12 (iii) Liquefied petroleum gas;

13 (iv) Hydrogen;

14 (v) Electricity;

15 (vi) Methanol, ethanol, and other alcohol fuel;

16 (vii) Biodiesel;

17 (viii) Mixtures containing methanol, ethanol, other alcohol fuel,
18 or biodiesel mixed with gasoline or other fuels;

19 (ix) Fuels other than alcohol fuel that are derived from biological
20 materials; and

21 (x) Any other fuel the secretary of the United States department of
22 energy determines by regulation to be an alternative fuel within the
23 meaning of 42 U.S.C. Sec. 13211(2) until the legislature acts to add
24 the fuel to the list in this subsection or to clearly reject the fuel
25 from being added to the list in this subsection.

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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