

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By Rep. Bob Pavlovich, on February 6, 1989, at
10:00 a.m.

ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Paul Verdon and Sue Pennington

Announcements/Discussion: None

HEARING ON HOUSE BILL 464 AND HOUSE JOINT RESOLUTION 12

Presentation and Opening Statement by Sponsor:

Rep. Bradley, House District 79, Bozeman. On both of these measures there will be amendments presented to you. Part of the issue is fairly easy to talk about. There is a section in HJR 12 and actual action in HB 464 dealing with the same issue. These are designed to address the issue of subsidized pricing and predatory practices in the arena of service station dealers and motor fuel products. They allow for regulating the price of motor fuel at wholesale and retail levels; provide for penalties and remedies for sales in violation of established prices; and prohibit unfair practices in the sale of motor fuel. In HJR 12, the amendments that will come to you are relatively simple. The basic thrust in all of this discussion this morning is that in the realm of motor fuels, the small dealers, independent dealers are victims of subsidized pricing and predatory practices taking place right now which are not fair trade practice in this state. HJR 12 proposes to study the marketing that is going on in Montana, look at the accusations and the contentions that have been raised on both sides, find out if there are indeed unfair practices in place and if so the committee would prepare legislation. The purpose of HB 464 is to eliminate subsidized pricing and predatory practices in Montana.

Testifying Proponents and Who They Represent:

Rep. Dave Brown, House District 72, Butte/Silver Bow
Ron Leland, Helena
Riley Johnson, Automotive Trades of Montana (ATOM)
John Taggart, Bozeman
Bettie Taggart, Bozeman
Steve Visocan, Montana WPMA
Houtz Van Steenburg, I-90 Exxon, Bozeman

Proponent Testimony:

Rep. Brown is in full support of both bills. Gas prices in Butte are 11 cents higher than here in Helena. There has to be a reason. There has to be a way to figure out why that is the case. On the resolution I would like everyone to look at the wholesale side as well. Refineries in Canada dumping products such as diesel fuel along the northern border of Montana and wrecking refinery production in Great Falls. Those kind of issues easily fit within the scope of this resolution and if the committee desires I will work with Rep. Bradley to prepare an amendment to do this.

Mr. Johnson went over the amendments to the bill and explained them and the reasons for the amendments. See exhibit 1 for more of Mr. Riley's information.

See exhibit numbers 4 and 5 for Mr. Leland's testimony.

See exhibits 7, 8, 9, 10, 11, 12, 15, 16, and 17 from Mr. Taggart.

Mr. Van Steenburgh works 96 hours a week, and has part time help that works less than 30 hours a week. At the end of the month they take home more than I do. By the time I am done paying rent, taxes, licenses, etc. there is very little left. I think everybody is entitled to make a living. With the dealers doing what they are doing it is almost impossible. I employ five people, when I'm gone that is six families without income. These people will go back to Ohio, Oklahoma, or someplace else to get work. I enjoy my business, I very much would like to keep it.

Mr. Visocan stated that his group supported this legislation. Below cost selling is a problem in Montana. It is a problem throughout the state. It has been the cause of elimination of many small businesses in many parts of the state.

Testifying Opponents and Who They Represent:

Harold Ude, Cenex, Laurel

Bonnie Tippy, SuperAmerica
Ward Shanahan, Chevron USA
Janelle Fallan, Montana Petroleum Association
Don Ingels, Montana Chamber of Commerce

Opponent Testimony:

Mr. Ude stated that Cenex's regional cooperatives provide wholesalers and locally owned cooperatives with petroleum products. Cenex believes this bill will put the state in a position of legislative margins and profits that is unnecessary and will be very difficult to enforce. Cenex does not believe that HB 464 will provide any additional benefits beyond the already existing laws designed to control injuries from below cost pricing. Cenex is also opposed to below cost pricing of retail petroleum and believes the problem can be handled with existing laws.

Ms. Tippy stated that SuperAmerica supports one of the bills and has problems with the other, but I just thought you needed someone up as an opponent. SuperAmerica owns refineries and distribution facilities in other parts of the nation but not in Montana. The 21 SuperAmerica stations in Montana are supplied by refineries in Billings operated by other producers so they're really not a vertically integrated producer or an operation here in the professional meaning of the term. However, the terms of subsection 4 of the bill describes the legal outlet such as SuperAmerica as vertically integrated with certain minimum price purchases. So even though the 21 SuperAmerica gasoline stations in Montana are buying their product not from their own refineries but from other producers under this particular bill and the definitions therein they are treated as vertically integrated producers. Rep. Bradley is totally correct, SuperAmerica does not object to legislation outlawing the low cost selling but only if a law is written so as to allow it to meet competition and is not discriminatory. However, HB 464 in Section 4, page 6, appears to state a policy which would setup a tilted playing field. It is not clear why the supplier or retailer must employ a minimum markup of 8 percent in page 6, line 14. While other retailers have a minimum markup of 6 percent and the opportunity to establish a lower percentage, see page 2, lines 20-23. The degree to which HB 464 is overlapped in existing law as under 30-14-209, is really not clear. Ms. Tippy said they could support this bill with some proper amendments in to it. There really are some problems with discriminating unfairly and we should be playing on an equal playing field. We strongly support the idea of a study. We would like to get some statistics and the facts out on the table. We would like to see the legislature study the whole issue.

See exhibit 14 for Mr. Shanahan's testimony.

Ms. Fallan stated that her association members are responsible for the production of 90 percent of the petroleum produced in the rocky mountain states. In addition to exploration in production, we also transport, refine, market, and retail. For the rest of Ms. Fallan's testimony see exhibit 14.

Mr. Ingels stated that the chamber's is a philosophical opposition to this bill.

Questions From Committee Members: Rep. Bachini asked Mr. Leland if he was a full service station, or was his a self service with a convenience store, what type of service do you have? Mr. Leland said he was self service with a convenience store. You mentioned you paid your employees \$5 per hour, do you pay \$5 or less than \$5? Mr. Leland said this was an average of what he pays.

Rep. Simon asked Rep. Bradley what has been the history of the enforcement of the federal anti-trust law? Are you familiar with this law? Rep. Bradley said her recollection that first, the past attorney general said that the law in this situation is unenforceable and second, somewhere along the line we discontinued funding the anti-trust division in the attorney general's office. How is your bill different? Rep. Bradley said she hoped that the new section, Section 8, will hold several remedies. This is a new approach, I hope this will be available more than what we have now.

Rep. Thomas said that Rep. Bradley had spent a lot of time over the years on this issue and it seems to me that we see where all of a sudden the company signs will change, Conoco decides to change vendors or whatever, they stop doing business with the local stations and another company will come like Sinclair and be the card carrier and signs in front, is there a tie in with that sort of happening as to what you are talking about? Also, are they juggling these people around? In my area mainly all the local retailers are individuals they are not owned by any of the big companies. Is there a tie in to that? Rep. Bradley said she did not know what the purpose is, but there is a lot of movement and I refer that to the people in the business. However, the bill and the study could get into everything that is going on in marketing which is the best part of having the study. The bill itself is much more narrowly directed to a specific practice that we would have singled out and prohibited. So it would not really address that particular problem. As to how much that is happening in the state and for what reason, could I refer that to Riley Johnson? Mr. Johnson said this goes back to the motor fuel franchise agreement in which you have to meet certain

restrictions on their terms. If you don't meet those or a better volume station is put up down the street, they can move their signs. It is a control situation and one of the things we want to look at as far as motor fuel franchise agreements. It gives the small independent no future. Rep. Thomas asked Mr. Johnson how many dealers do we have that are independents? Is there a break down between independents and non independents? Mr. Johnson referred this to Mr. Leland. Mr. Leland said he checked through the department of commerce licensing division and there are approximately 1,300 independents in Montana and 500 of what he considers chain stations or company owned stations.

Rep. Bachini asked Mr. Leland out of the 1300, how many are full service stations? Mr. Leland said he was not able to determine this because it is not broke down on the license list. The trend over the last 4 years, we are losing approximately 100 stations per year.

Closing by Sponsor: Rep. Bradley stated her appreciation for the time given for a complicated issue. If it is the choice of this committee to only pursue the study, then I request that you help me to pursue its conclusion. As you know we pass a lot of studies by joint resolutions and they end up falling through cracks because we only have a limited number of studies we can do in the interim. I think we owe our constituents, the consumers, these business people, getting the facts on the table and finding out truly what is going on. There is real trouble out there and I have concluded that it is not out of our hands. There is something we can do about it and we have this responsibility. With regard to the bill itself, what I request is that you consider putting it in a sub committee. I know it will take a lot of patience and there are amendments that are a necessity. There were a number of comments which said given certain amendments a lot of the opposition would diminish and maybe this is possible. We will be remiss not to look into this issue. People out there are in very serious trouble. Don't be complacent over the thought that legislation along these lines in other states has caused a bit of a price increase on consumers. This is typical facts that follow anti trust action and the diminish of monopolistic practices.

DISPOSITION OF HOUSE BILL 464 AND HJR 12

Motion: None

Discussion: Rep. Pavlovich sent both HB 464 and HJR 12 to a sub-committee with the intention that the sub-committee clean up the resolution and send that back real quick like so that we

can get it on the floor and to take the bill and do something with it if you can with both parties. The subcommittee will consist of Representatives Johnson, McCormick, and Wallin. Rep. Johnson will be chairman.

Amendments, Discussion, and Votes: None

Recommendation and Vote: None

ADJOURNMENT

Adjournment At: 11:50 a.m.



REP. BOB PAVLOVICH, Chairman

BP/sp

3103.min

DAILY ROLL CALL

BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 2 6 89

| NAME | PRESENT | ABSENT | EXCUSED |
|------------------------|---------|--------|---------|
| PAVLOVICH, BOB | ✓ | | |
| DeMARS, GENE | ✓ | | |
| BACHINI, BOB | ✓ | | |
| BLOTKAMP, ROB | ✓ | | |
| HANSEN, STELLA JEAN | ✓ | | |
| JOHNSON, JOHN | ✓ | | |
| KILPATRICK, TOM | ✓ | | |
| McCORMICK, LLOYD "MAC" | ✓ | | |
| STEPPLER, DON | ✓ | | |
| | | | |
| GLASER, BILL | ✓ | | |
| KELLER, VERNON | ✓ | | |
| NELSON, THOMAS | ✓ | | |
| SIMON, BRUCE | ✓ | | |
| SMITH, CLYDE | ✓ | | |
| THOMAS, FRED | ✓ | | |
| WALLIN, NORM | ✓ | | |
| PAUL VERDON | ✓ | | |
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HB 464 &
HJR

FACT SHEET

HB-464 and HJR-12

- 1.) To support the Clayton Act of the Montana Codes in helping to define the cost of motor fuels in cases of discrimination.
- 2.) To help insure fair competition in the market place and prevent large oil companies and wholesalers from dictating the price of motor fuels to eliminate competition at the retail level.
- 3.) To preserve the INDEPENDENT SERVICE STATION OWNERS in Montana. There are now 1,300 independent owners/operators of service stations...out of 1,800 licensees...and the livelihood of these independents are in deep trouble because of subsidized pricing and predatory motor fuel franchise agreements that exist today in Montana.
- 4.) To help preserve jobs in Montana. There are in excess of 6,500 jobs in Montana's independent service stations today. Without help, a majority of these jobs are in question.
- 5.) To help insure that the after tax profits remain in Montana and do not go out-of-state to major refiners, suppliers and wholesalers.

ASK YOUR HOMETOWN, INDEPENDENT SERVICE STATION OWNER WHAT HE/SHE FEELS ABOUT THE PRICING WARS THAT ARE GOING ON IN MONTANA!

MONTANA MUST PRESERVE AND PROTECT IT'S OWN!

DRAFT - Proposed Amendments
by ATOM.

HOUSE BILL NO. *464*

Introduced by Judy Smith, Rep. District 11A

1 INTRODUCED BY *Judy Smith, Rep. District 11A*
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE PRICE OF
5 MOTOR FUEL AT WHOLESALE AND RETAIL LEVELS; PROVIDING FOR
6 PENALTIES AND REMEDIES FOR SALES IN VIOLATION OF ESTABLISHED
7 PRICES; AND PROHIBITING UNFAIR PRACTICES IN THE SALE OF
8 MOTOR FUEL."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11
12 NEW SECTION. Section 1. Short title. [This act] may
13 be cited as the "Montana Petroleum Trade Practices Act".

14 NEW SECTION. Section 2. Purpose. The legislature
15 recognizes that independent and small dealers and
16 distributors of petroleum and related products are vital to
17 a healthy, competitive marketplace and are unable to survive
18 financially in competition with subsidized, below-cost
19 pricing at the retail level by others who have other sources
20 of income. The legislature believes that subsidized,
21 below-cost pricing is a predatory practice that is not
22 conducive to fair trade. The legislature finds that
23 below-cost pricing laws are effective in protecting
24 independent and small retailers and wholesalers in other
25 jurisdictions from subsidized pricing, which is inherently
unfair and destructive and reduces competition in the motor

1 fuel marketing industry and is a form of predatory pricing.
2 The purpose of [this act] is to prevent and eliminate
3 subsidized pricing of petroleum and related products.
4
5 NEW SECTION. Section 3. Definitions. As used in [this
6 act], unless the context requires otherwise, the following
7 definitions apply:
8 (1) "Cost to retailer" means the current invoice cost
9 of motor fuel to the retailer within 30 days prior to the
10 date of sale or the replacement cost of the motor fuel to
11 the retailer, whichever is lower:

(a) ~~less customary discounts for cash except trade~~
~~discounts for cash, and~~
~~discounts for cash, and~~

- (b) plus:
 - (i) any federal or state excise taxes imposed on the motor fuel;
 - (ii) ~~any cost incurred for federal or state mandated insurance programs and underground storage tank programs;~~
 - (iii) any cost incurred for transportation;
 - (iv) any other charges not otherwise included in the invoice cost or the replacement cost of the motor fuel; and
 - (v) a markup to cover a proportionate part of the cost of doing business. In the absence of proof of a lesser cost, the additional markup must be 6% of the cost to the retailer.

(2) "Cost to wholesaler" means the current invoice



INTRODUCED BILL
HB 464

2/6/01
68/169

1 cost of motor fuel to the wholesaler within 30 days prior to
 2 the date of sale or the replacement cost of the motor fuel
 3 to the wholesaler, whichever is lower:
 4 (4) ~~less customary discounts for cash except~~
~~(a) less customary discounts except customary~~
~~trade discounts, and~~
 5 ~~discounts for cash, and~~
 6 (b) plus:
 7 (i) any federal or state excise taxes imposed on the
 8 motor fuel prior to the sale at retail;
 9 ~~(ii) any cost incurred for federal or state mandated~~
 10 ~~insurance programs and underground storage tank programs;~~
 11 (iii) any cost incurred for transportation;
 12 (iv) any other charges not otherwise included in the
 13 invoice cost or the replacement cost of the motor fuel; and
 14 (v) a markup to cover a proportionate part of the cost
 15 of doing business, except for sales at wholesale between
 16 wholesalers. In the absence of proof of a lesser cost, the
 17 additional markup must be 3% of the cost to the wholesaler.
 18 (3) "Motor fuel" means gasoline, gasohol as defined in
 19 15-70-201, and special fuel as defined in 15-70-301.
 20 (4) "Person" means an individual, a sole
 21 proprietorship, a partnership, a corporation, any other form
 22 of business entity, or any individual acting on behalf of
 23 any of them.
 24 (5) "Replacement cost" means the cost, computed as
 25 specified in subsection (1) or (2), at which motor fuel sold

1 could have been bought by the retailer or wholesaler at any
 2 time within 30 days prior to the date of sale if bought in
 3 the same quantity as the retailer's or wholesaler's last
 4 purchase of motor fuel.
 5 (6) "Retailer" means a person engaged in the business
 6 of making sales to the general public within this state or,
 7 in the case of a person selling at both retail and
 8 wholesale, only the retail portion of the business.
 9 (7) "Sale at retail" means a transfer of motor fuel
 10 for valuable consideration, made in the ordinary course of
 11 trade or in the usual course of the retailer's business, to
 12 the purchaser for consumption or use other than resale or
 13 further processing.
 14 (8) "Sale at wholesale" means a transfer of motor fuel
 15 for valuable consideration, made in the ordinary course of
 16 trade or in the usual course of the wholesaler's business,
 17 to a retailer or purchaser for resale or further processing.
 18 (9) "Supplier" means a person who manufactures motor
 19 fuel or who is a controlled subsidiary of a manufacturer of
 20 motor fuel and who is engaged in the business of selling
 21 motor fuel to wholesalers, retailers, and consumers.
 22 (10) "Vertically integrated producer" means a producer
 23 who controls all phases of petroleum production and sale
 24 from the well through wholesalers and retailers.
 25 (11) "Wholesaler" means a person engaged in the

(12) "TRANSPORTATION COSTS" MEAN ACTUAL COST OR IN ABSENCE OF PROOF MEANS ESTABLISHED COMMON CARRIER FREIGHT RATES AS SET BY THE PUBLIC SERVICE COMMISSION OF MONTANA FOR THE IMMEDIATE MARKET AREA IN QUESTION.

1 business of making sales at wholesale or, in the case of a
2 person selling at both retail and wholesale, only the
3 wholesale portion of the business.

4 NEW SECTION. Section 4. Below-cost sale prohibited.

5 (1) A retailer may not sell or offer or advertise a sale at
6 retail at less than the cost to retailer if the effect is to
7 injure or destroy competition or substantially lessen
8 competition, unless the sale is:

9 (a) an isolated transaction and not made in the usual
10 course of business;

11 (b) a bona fide, advertised clearance sale;

12 (c) for charitable purposes or to an unemployment
13 relief agency; or

14 (d) excepted under 30-14-213.

15 (2) A retailer may not refuse to sell or limit,
16 restrict, or condition the sale at retail of ~~MOTOR~~
~~FUELS~~ stored at the retail outlet in 100-gallon or

17 larger containers to another retailer at the same or lower
18 price as offered, advertised, or sold to the public if the

19 ~~MOTOR FUELS~~ are offered, advertised, or sold to
20 the public at less than the cost to retailer. The burden of

21 proving an exemption from the provisions of this subsection
22 is upon the retailer claiming his sales are exempt.

23 (3) A vertically integrated producer or wholesaler may
24 not sell or transfer a ~~MOTOR FUEL~~
~~PETROLEUM PRODUCT~~ to its own

1 retail outlet at a price lower than the price at which that
2 ~~PETROLEUM PRODUCT~~ is offered for sale by the vertically
3 integrated producer or wholesaler to a retailer operating in
4 the same competitive area served by the retail outlet of the
5 vertically integrated producer or wholesaler. Retail sales
6 under this provision by a vertically integrated producer or
7 wholesaler must comply with all provisions of [this act].

8 (4) For retail sales by a vertically integrated
9 producer or by a supplier-operated retailer who obtains fuel
10 products from other producers or suppliers, the minimum
11 allowable cost to the vertically integrated producer or the
12 supplier-owned retailer is the price at which the other
13 producers' or suppliers' wholesalers sell to their retailers
14 or to other retailers whom they supply plus ^{9%} of that price
15 as the cost of doing business.

16 NEW SECTION. Section 5. Discrimination prohibited.

17 (1) (a) A supplier or wholesaler of motor fuel may not enter
18 into an agreement or arrangement in which, directly or
19 indirectly, discrimination is made in the price at which the
20 supplier or wholesaler sells motor fuel to wholesalers or
21 retailers if the discrimination substantially lessens
22 competition or tends to create a monopoly or to injure,
23 destroy, or prevent competition with a person in the
24 marketing of motor fuel in the community where the supplier
25 or wholesaler is selling at a lower price.

1 (b) A discrimination in price is justified if the
 2 difference in the cost to wholesaler or retailer to whom the
 3 supplier or wholesaler sells at a lower figure is only
 4 commensurate with an actual difference in the quality or
 5 quantity of motor fuel sold to the wholesaler or retailer or
 6 in the transportation charges or other expenses of marketing
 7 involved in the sale to the wholesaler or retailer. A
 8 supplier or wholesaler is not prevented from showing that
 9 his lower price was made in good faith to meet an equally
 10 low price of a competitor.

11 (2) A person whose business or any part of which is
 12 the sale of motor fuel to wholesalers may not sell motor
 13 fuel for ultimate consumption or use at a price lower than
 14 that at which he sells to a wholesaler unless the lower
 15 price is justified as provided in subsection (1)(b).

16 NEW SECTION. Section 6. Coercion prohibited. A
 17 supplier or wholesaler of motor fuel may not threaten a
 18 customer with price discrimination or use any form of
 19 coercion in order to change or maintain the customer's
 20 resale price.

21 NEW SECTION. Section 7. Penalty. (1) A violation of
 22 [section 4] is an unfair trade practice and upon conviction
 23 a retailer or wholesaler is subject to a civil penalty of
 24 not more than \$1,000 a day for each day that the act or
 25 omission occurs.

1 (2) The department of commerce or a county attorney
 2 may bring an action for a violation of [section 4].

3 NEW SECTION. Section 8. Civil remedies. (1) The
 4 department of commerce may issue a cease and desist order
 5 requiring a wholesaler or retailer to cease violating the
 6 provisions of [section 4]. The department or a county
 7 attorney may commence an action on behalf of the state for
 8 failure to comply with an order. A civil penalty of not less
 9 than \$200 or more than \$5,000 may be recovered in the
 10 action.

11 (2) The department or a county attorney may bring an
 12 action to enjoin a violation of [section 4].

13 (3) An action under this section must be commenced in
 14 the county where the motor fuel is sold.

15 NEW SECTION. Section 9. Exemption. (1) [This act] does
 16 not apply to a sale at wholesale or retail when the motor
 17 fuel selling price is set in good faith to meet an existing
 18 price of a competitor and is based on evidence in the
 19 possession of the retailer or wholesaler in the form of an
 20 advertisement, proof of sale, or receipted purchase.

21 NEW SECTION. Section 10. Saving clause. [This act]
 22 does not affect rights and duties that matured, penalties
 23 that were incurred, or proceedings that were begun before
 24 [the effective date of this act].

25 NEW SECTION. Section 11. Severability. If a part of

(2) [This Act] does NOT apply to ANY BULK SALE
 of motor fuels at either the wholesale or retail
 levels to persons, partnerships or corporations
 engaged in interstate commerce.

LC 1122/01

- 1 [this act] is invalid, all valid parts that are severable
- 2 from the invalid part remain in effect. If a part of [this
- 3 act] is invalid in one or more of its applications, the part
- 4 remains in effect in all valid applications that are
- 5 severable from the invalid applications.

-End-

* Effective date — UPON PASSAGE.

RECOMMENDED AMENDMENTS TO HB 464

Page 2, Lines 11 and 12:

strike; ALL COPY
insert; "(a) less customary discounts for cash except trade discounts; and"

Page 2, Lines 16 and 17:

strike; ALL COPY

Page 3, Lines 4 and 5:

strike; ALL COPY
insert; "(a) less customary discounts for cash except trade discounts; and"

Page 3, Lines 9 and 10:

strike; ALL COPY

Page 5, after Line 3:

insert; " "Transportation costs" mean actual cost or in absence of proof means established common carrier freight rates as set by the Public Service Commission of Montana for the immediate market area in question."

Page 5, Lines 16 and 17:

after; "retail of"
strike; "petroleum distillates"
insert; "motor fuels"

Page 5, Line 20:

strike; "petroleum distillates"
insert; "motor fuels"

Page 5, Line 25:

after; "transfer a"
strike; "petroleum distillate"
insert; "motor fuel"

Page 6, Line 2:

strike; "petroleum distillate"
insert; "motor fuel"

Page 6, Line 14:

after; "plus"
strike; "8%"
insert; "9%"

Page 8, after Line 15:

after; "Exemption."
insert; "(1)"

Page 8, after Line 20:

insert; "(2) <This act> does not apply to any bulk sales of motor fuels at either the wholesale or retail levels to persons, partnerships or corporations engaged in agriculture where the ultimate use of the fuel will be for agricultural purposes."

Page 9, after Line 5:

insert; EFFECTIVE DATE UPON PASSAGE.

RECOMMENDED AMENDMENTS TO HJR 12

Page 1, Line 14:

after; "subsidized"
strike; ", below cost pricing"
insert; "pricing and predatory motor fuel franchise
practices"

Page 1, Lines 16 and 17:

after; "subsidized"
strike " , below cost pricing is a predatory practice that
is"

insert: "pricing and predatory motor fuel franchise
practices are"

Page 1, Line 18:

after; "prohibiting"
strike; "below cost pricing"
insert; "these practices"

Page 1, Lines 20 and 21:

after; "jurisdictions"
strike; "from subsidized pricing; and"
insert; ";

Page 1, Lines 22 through 25:

strike ALL COPY
insert; "WHEREAS, a decision on whether laws prohibiting
these practices are needed in Montana depends upon
a problem of subsidized pricing and predatory
motor fuel franchise agreements in the motor fuels
industry does exist in Montana and upon the"

Page 2, Line 8:

after; "pricing"
insert; "and/or motor fuel franchise agreements"

Page 2, Line 13:

after; "predatory"
strike; "pricing is"
insert; "practices are"

Page 2, Lines 15 and 16:

after; "from"
strike; "below-cost pricing,"
insert; "these practices,"

Page 2, Lines 17 and 18:

after; "caused by"
strike; "below-cost pricing."
insert; "these practices."

SPECIAL NOTE: We also recommend that subpoena powers be granted the interim committee, and that the appropriate amendment be inserted to accomplish this objective.

ATOM

Automotive Trades of Montana
P.O. Box 1238, Helena, MT 59624 • Phone: 442-6409

#4
HB 46
HJR 12
2/6/94

NAME: RON LELAND

OCCUPATION: SINCLAIR DEALER
FRIENDLY'S EAST
HELENA, MONTANA

SUPPORT: HB464 FOR BELOW COST SELLING OF MOTOR FUELS IN MONTANA

REASONS: 1: TO SUPPORT THE CLAYTON ACT TITLE 15, SUBSECTION 13
(a) IN ORDER TO HELP DEFINE COST OF MOTOR FUELS

A: THE CLAYTON ACT STATES IT IS UNLAWFUL
TO DISCRIMINATE IN PRICING TO LESSEN
COMPETITION IN ORDER TO CREATE A MONOPOLY

2: TO HELP INSURE COMPETITION IN THE MARKET PLACE

A: ON JANUARY 31, 1989 THE STREET PRICE WAS
\$.849 AND MY COST WAS \$.840.

B: IT TAKES \$.006/GALLON TO PAY ELECTIC BILL
IT TAKES \$.036/GALLON TO PAY WAGES
IT TAKES \$.003/GALLON TO PAY WORKMANS COMP
IT TAKES \$.020/GALLON TO PAY RENT
AND ETC

IT TAKES A TOTAL OF \$.075/GALLON PLUS ALL
OTHER RELATED SALES TO BREAK EVEN

3: TO PRESERVE THE INDEPENDENT MONTANA STATION OWNER
AND HELP CREATE A MORE STABLE MARKET - MONTANA IS
LOSING APPROXIMATELY 100 STATIONS PER YEAR NOW.

A: LOSS OF STATIONS MEANS A LOSS OF JOBS
IF 5 JOBS PER STATION ARE LOST THAT MEANS
500 JOBS PER YEAR AND AT \$5.00 PER HOUR
WAGE RATE WOULD MEAN A LOSS OF \$5,200,000.00
USING A TURNOVER RATE OF 5 TIME - MONTANA
LOSES \$26,000,000.00 A YEAR.

B: ON THE OTHER HAND, THERE ARE ABOUT 1800
STATIONS IN MONTANA OF WHICH ABOUT 1300 ARE
INDEPENDENTS. USING THE SAME RATIO AS ABOVE
THE INDEPENDENTS PRODUCE \$13,500,000.00 IN
WAGES ROTATING 5 TIMES OR \$67,500,000.00 IN
THE MONTANA ECONOMY.

4: TO HELP PRESERVE THAT THE AFTER TAX PROFITS REMAIN
IN THE LOCAL COMMUNITIES

- 5: THE INDEPENDENT DEALER CANNOT SUBSIDIZED MOTOR FUEL PROFITS FROM OTHER SOURCES BECAUSE HE DOES NOT HAVE THE FINANICAL MEANS.
- 6: ULTIMATELY THE ONE THAT WILL SUFFER WILL BE THE CONSUMER. WITH NO COMPETITION THE PRICES WILL BE HIGHER

ORIGINAL INVOICE
CUSTOMER

#5
2/6/89
HB 4
HJR

REMIT TO:

ALLEN OIL

P.O. BOX 5990 • HELENA, MT 59604

Date 1/31/89
DELIVERY TICKET

103257

Your purchase was made at:

ALLEN OIL BULK PLANT
Montana Ave. & Phoenix St., Helena
442-9290 or 442-4410
If No Answer Call 442-7703

CUST. NO.
SOLD TO
ADDRESS

FRIENDLYS EAST
1831 11TH AVE.
HELENA MONTANA 59601

| DESCRIPTION | UNITS | PACKAGE | | Price Unit | AMOUNT |
|--|-------|---------|------|------------------|----------------|
| | | No. | Size | | |
| REGULAR GASOLINE AMMABLE LIQUID - UN 1203 | 3900 | | | .84 | 3276 00 |
| LEAD GASOLINE AMMABLE LIQUID - UN 1203 | 3911 | | | .83 | 3246 13 |
| SUPER NO-LEAD GASOLINE AMMABLE LIQUID - UN 1203 | 2160 | | | .895 | 1933 20 |
| SEL NO. 1 COMBUSTIBLE LIQUID - NA 1993 | | | | | |
| SEL NO. 2 COMBUSTIBLE LIQUID - NA 1993 | | | | | |
| <i>Ford</i> | | | | State Tax @ | Gal. |
| | | | | Federal Tax @ 9¢ | Gal. |
| | | | | TOTAL | 8455 33 |

Invoice Due 2-7-89
BL# 411413

THE NUMBER OF GALLONS OF TAXABLE PRODUCT MUST BE WRITTEN IN WORDS ON ABOVE LINE

DELIVERED BY

Stede

RECEIVED BY

Ed Rubin

RECEIVED

PAYMENT BY

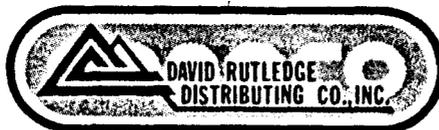
Charge

Price on gasoline includes state excise tax, which obligation seller assumes and agrees to pay. In the event seller is required to bring legal action for collection of any amounts owed to seller the purchaser agrees to pay reasonable attorney fees and all court costs incurred by seller.

Past due accounts are subject to 1 1/2% PER MONTH SERVICE CHARGE. Service Charge Indicated is equal to ANNUAL INTEREST RATE of 18%.

RETAIL Price in
Helena, MT on 1/31/89

Regular 84 9
No Lead 84 9
Super No Lead 93 9



318 W. GRIFFIN DR. • BOZEMAN, MT. 59715 • (406) 586-2992

#6
HB 464
HJR 12
2/6/89

ACCOUNT NO.

DATE

June 17/88

S
O
F
T
O

Pump-N-Pak

| Sold By | Cash | Charge | On Acct. | P.O. |
|-------------|-------------|-------------------------------------|----------|---------|
| Stear | | <input checked="" type="checkbox"/> | | |
| QTY. | DESCRIPTION | | PRICE | AMOUNT |
| 4602 | regular | | 91.3 | 4201 63 |
| 3600 | unleaded | | 90.8 | 3268 80 |
| 1000 | Super UL | | 97.3 | 973 00 |
| | | STREET PRICE | 97.9 | |
| | | | TAX | |
| Received By | | | TOTAL | 8443 43 |

69509

ACCOUNTS ARE DUE AND PAYABLE ON OR BEFORE 10TH OF MONTH FOLLOWING PURCHASE. A FINANCE CHARGE OF 1 1/2% PER MONTH (18% PER ANNUM) WILL BE CHARGED ON ACCOUNTS PAST DUE 30 DAYS AND OVER. MINIMUM FINANCE CHARGE \$1.00.

CUSTOMER COPY

Please support HB 464 & HJR 12

Alan C. Williams
Nancy Williams
Williams Pump-N-Pak
2020 N. 7th
Bozeman, MT

ATOM

Automotive Trades of Montana
P.O. Box 1238, Helena, MT 59624 • Phone: 442-6409

#7
HB 464
HJR 12
2/6/89

they will not allow anyone except themselves to profit from the sale of gasoline.

Could the Refiners convince a study group they do not have Anti-competitive motives in view of all the secret documents that surfaced last year detailing the breaking of the Dealers and raising prices; I think not.

We are Montana Merchants and we need help from you to recommend legislation as a result of a study of these and other problems in our industry. The consumer will benefit from Service Station Dealers receiving fair and reasonable treatment.

A few horror stories involving our Montana Merchants:

Rocker, Montana ----- Sale of Station -- Violation of Federal Petroleum Marketing Practices Act---PMPA

Whitehall, Montana--- Breach of the Covenant of Good Faith and Fair Dealing ---Branding of Station

Miles City, Montana---Predatory Pricing

Billings, Montana---- Economic Eviction --- Sale of Station

Bozeman, Montana -----Captive Dealers -- Credit Card Trap

Helena, Montana, -----Below Cost Selling

If Big Oil is allowed to slam the door in the face of these Montana Merchants, then the American Dream is DEAD!!!!

Thank you
John Taggart

from California Service Station Dealers publication
We wish our Attorney General would help us! #8
2/6/85
HB 46
HJR 1

dealer's viewpoint

continued from page 11

5-state western region as of November 1987. Of that total, 229 were operated by the company (39.7%) and 347 were operated by dealers (60.3%).

Of the 95 new am/pm units that were brought on line in the 5-state region during the 12-month period November 1986-1987, sixty are operated by the company — accounting for 63.1 percent of the new-unit total.

When, on a region-wide basis, am/pm outlets are grouped with Arco's conventional service stations and its MP&G units, 456 are run by company operation.

Obviously, these realities are in direct contradiction to the assurances of Arco executive James Kowal, who has repeatedly told the California Legislature and other legislative bodies that the number of company-operated stations is not trending upward.

Ironically, wholesale marketing VP Kowal and other Arco executives have stressed the importance of "efficiency" in their decisions to eliminate dealers. But Arco's own internal documents show that dealers are more efficient than company operations.

For example, during the 12-month period November 1986-87, am/pm dealers in the 5-state western region averaged gasoline sales of 187,500 gallons per month. Company operations, by contrast, averaged 161,400 gal/mo.

Expressed as a percentage, dealers sold 16% more motor fuel than company-run outlets.

When grocery sales at am/pm stores are compared by dollar volume during the same period, dealers sold 15% more than company-operated stations.

Since this pattern is typical of the industry, why would an oil company eliminate dealers and replace them with a company-operated network? The answer has to be based in their desire to control the marketplace. There is no other reasonable answer.

Lundberg organization agrees. The majors company-operated a total of 6975 outlets nationally in 1985, according to a July 1985 report by the Lundberg organization — a private-sector group that specializes in oil industry analysis.

Nine months later, on April 11, 1986, Lundberg noted, "The number of major-

"some combination of retail and wholesale margins" to "make a go of it," Lundberg prophesied: "New stations oil companies build are more likely to open as company ops. . . . If you really stretch your imagination down the road that present station operation is pointing, you see jobber-operated and refiner-operated stations abounding. . . with a smattering of more-or-less conventional service stations reminding us of days gone by."

The Attorney General's case. Alleged collusion and price fixing in the '50s, '60s, and '70s are the focal points of MDL-150, an antitrust lawsuit that has been brought against the major oil companies by the attorneys general of California, Oregon, Washington, Arizona, and Florida.

Ten years of discovery in the case has produced reams of information about oil company marketing. Included among the depositions and internal documents are repeated references to **the use of company-operated stations as devices for controlling retail prices within the dealer network**.

Attorney Michael Spiegel, lead counsel in the case for over a decade, writes in the pre-trial brief: "The posting of retail prices at company operated service stations facilitated the conspirators' understanding of the retail price desired by the market leader and provided a means of visually signaling commitment to the agreed-upon retail prices, and verification of price moves."

"One of the ways C.R. Jones of Mobil determined whether or not competitors were supporting a particular retail price was by noting what the company-operated stations had as pump prices," Spiegel points out.

Spiegel then notes, "The retail price that Mobil wanted its dealers to charge was the retail price in effect at Mobil company-operated stations. This price was considered a 'normal retail price' by Mobil."

"When Socal (Standard Oil of California) put its company-operated stations at a certain retail price, Union Oil adjusted its price to its dealers to a price 'equivalent' to that retail price."

Then, based on testimony by Socal executives, Spiegel says, "During the period 1965 to 1976. . . when a dealer

Using exhibit 20159 as an example, Spiegel says, "One of the means by which Shell Oil Company determined the amount of assistance that it would provide to its dealers was by observation of the retail postings of the salary operated units of competitors."

BP and others. The use of company-operated stations to facilitate market control can be seen in other well-known examples. Thirteen years ago, British Petroleum (BP) eliminated some 200 dealers in the Maryland-Washington D.C. marketplace and replaced them with 60 company-operated stations.

Here in California, Gulf Oil was able to eliminate its retailers in the early 1970s by opening company-operated stations that sold gasoline cheaper than dealers could buy it wholesale.

"At the same time," writes attorney James R. Carroll, who has studied the subject at length, "Gulf made another grade of gasoline available to the public at its salary-operated stations, but its own independent dealers had no opportunity to market the same grade."

Based on the Gulf example and fifteen years of legal experience in this industry, Carroll concludes: "Refiner-operated stations eliminate the independent dealer."

The Nevada divorcement law. A top-secret document, drafted by Arco's upper management in 1982 and made public in May 1987, clearly shows that the oil company deliberately planned to eliminate competition from the independent sector.

In the process, Arco was prepared to raise dealer rents by 300 and 400 percent and convert half its dealer stations to company operation — without warning and without compensation to the affected dealers for the value of the business.

A well-kept secret until it was released to the Nevada Legislature in connection with hearings on a proposal to ban company operation, the marketing blueprint anticipated dealer resistance. But the authors reasoned that lower prices to consumers should "prevail over dealer resistance."

Nevada legislators, however — concerned about the elimination of "the dealer apparatus," aware that the company had subsidized the predatory pricing practices of its 30 Las Vegas company-



#9
2/68
HB 464 +
#JR 12

Background Paper on

PETROLEUM MARKETING PRACTICES ACT

In the early 70's, Professor Harold Brown, the nation's leading scholar in the field of franchise law, wrote:

"In the nation's second largest industry, the major oil firms have the gasoline station dealers in virtual bondage, hinged on the constant threat that their short-term contracts will not be renewed unless they submit to burdensome franchisor-imposed practices ... It is generally conceded that the gasoline station situation is almost hopeless and offers a prime example of the worst abuses in franchising ... The major oil companies have proven almost impervious to attack." 49 Texas Law Review 650, 657.

In response to these abuses, in 1978 Congress, under the leadership of Representative John Dingell, passed the Petroleum Marketing Practices Act or PMPA. 15 USC 2801 et seq.

PMPA made it illegal to terminate a franchise or non-renew a franchise relationship unless the franchisor could show that the termination or non-renewal was for a reason specified in the Act.

The Act uses two terms that have become terms of art, franchise and franchise relationship.

A franchise means the existing set of contracts (i.e., lease of station, supply contract, etc.) that a service station dealer is operating under. A typical petroleum industry franchise runs for only three (3) years, compared to the 15-20 year agreements typical in other fields of franchising.

A franchise relationship, or on-going business relationship, refers to the entire history of the business relationship between the dealer and the oil company, past, present and, most importantly, future dealings.

As explained in the Senate report:

"In connection with the non-renewal provisions of the title, the term franchise relationship is utilized. The term is defined to cover the broad relationship which exists between a franchisor and franchise ... In the renewal context, the contract(s) which constitutes the franchise may no longer exist and the term franchise relationship is utilized to avoid any contention that because the 'franchise' does not exist there is nothing to renew."

Thus, PMPA specifies the grounds for which a franchise may be legally terminated during the course of its term and when a franchise relationship may be legally non-renewed.

PMPA also provides unique procedural protection for service station dealers by providing relaxed standards for obtaining an injunction against termination or non-renewal and by shifting the burden of proof to the franchisor once the franchisee shows termination or non-renewal.

The real measure of PMPA's effectiveness would not be measured until after decontrol of petroleum prices and allocations in 1981. However prior to that, scholarly legal commentators identified a potential Achilles heel in the Act: the fact that if at renewal time a dealer failed to agree to changes in the franchise proposed "in good faith", the franchise relationship could be non-renewed. Commentators argued that the text should be whether the proposed changes were fair and reasonable, as opposed to "in good faith".

By comparison, once a franchise term has been agreed upon and the dealer/franchisee breaches the term, a court must determine whether that term is both reasonable and of material significance to the franchise relationship. Thus, PMPA already incorporated a reasonableness requirement.

In the American Bar Association's Business Lawyer publication the commentator stated: "the most significant of grounds for non-renewal is the failure of the parties to agree to changes in provisions of the franchise contracts. To base non-renewal on this ground the franchisor must establish that its proposals were the result of determinations made by the franchisor in good faith and in the normal course of business, that its insistence upon the proposals was not 'for the purpose of preventing the renewal of the franchise relationship.' Paragraph (3) does not require that proposals be reasonable, and this omission has proven significant ... Omission of the reasonableness requirement from such aspects of the franchise relationship as contract negotiations has had a dramatic effect. (For example) Within recent years many of the major oil refiners have reviewed their service station rental policies and have sharply increased the amount of rent charged to their franchisees-lessees. The good faith negotiation requirement of the Act has proven ineffective in challenging these increases." 37 Business Lawyer 146, 148.

Every other review of PMPA by legal scholars has concluded that the "good faith changes" provision has allowed franchisors to impose virtually any change in the franchise agreements they wish, even where the effect of the proposal would be to economically evict the franchisee from the premises, such as in the case of massive rent increases.

In an article "Judicial Interpretation of PMPA: Conflict and Diversity" 32 Emory L.J. 273 (1984), the commentator explains:

"Enormous rent hikes are reasonably certain to cause non-renewal because they frequently make it unprofitable for the franchisee to continue the franchise relationship. Just as a landlord who seeks to evict a tenant may raise the rent to induce the tenant to leave, a franchisor may raise the rent of a franchisee." 32 Emory L.J. at 315.

The commentator concluded, "An analysis of the case law regarding PMPA reveals that conflicting judicial interpretations of the Act have frustrated Congressional intent and have permitted major oil companies to terminate their franchisee relationships arbitrarily."

Another scholar, writing in *Duquesne Law Review*, wrote:

"Given this narrow interpretation of good faith, together with the court's reticence to expand protection beyond the specific language of the Act, it becomes evident that there is very little protection afforded the franchisee from the risk of non-renewal." Establishing a Balance of Power: The Petroleum Marketing Practices Act and the Franchisor as Landlord," 22 *Duquesne Law Review* 707, 718.

As the scholars correctly note, the PMPA has proven to afford dealers little protection against the threat of non-renewal of the franchise relationship, primarily because of the virtually unlimited discretion given franchisors to impose any franchise terms they choose due to judicial interpretation of the good faith test. The good faith test has become derisively known as the "equal shaft rule", meaning any term, no matter how onerous, will withstand judicial scrutiny if consistently applied.

As a result, provisions which hike rentals 200-300% and more, require a dealer to allow a thriving full service facility to be bulldozed and converted to a gas-only locations, outrageous minimum gallonages, hours of operation, etc., all have been imposed on a take-it-or-leave-it basis without negotiation.

Congress' express intent in passing PMPA was to equalize the bargaining power between franchisors and franchisees. Clearly, Congressional intent has not been fulfilled when franchisors are still imposing franchise terms on a take-it-or-leave-it basis.

Accordingly, the major focus of legislative efforts to amend the PMPA in the 100th Congress will be on efforts to amend the good faith test to one that requires proposed changes to a contract to be fair and reasonable.

This change would make the PMPA internally consistent, would bring PMPA in line with many state laws currently pre-empted by PMPA, and would make PMPA consistent with other federal trade regulation statutes such as the antitrust laws which center around a reasonableness test.

A second area that requires amending is the definition of franchise.

As passed, certain ancillary agreements such as those related to tire, battery and accessory purchases, as well as credit card arrangements, are not part of a PMPA franchise. Thus by cancelling certain contracts, such as the credit card contract, an oil company can rid itself of a dealer and avoid the reach of PMPA entirely.

In a recent Iowa case, a dealer's right to accept a major branded credit card was cancelled, even though 70% of the dealer's sales were on the card! When a consumer pulls into a major branded station, he or she expects to be able to use that credit card, yet under PMPA, as presently interpreted, the dealer might not be able to afford the customer this right.

Typically, a dealer will not have one master franchise agreement,

rather his franchise will consist of several individual contracts including a motor fuel sales contract, a real estate lease, credit card agreement, signage agreement, etc.

The amendment would prevent oil companies from cancelling contracts such as credit card agreements, where the effect may be to economically evict the dealer. This change would bring PMPA into compliance with the real world and insure that economic reality is the touchstone of analysis under the Act.

One argument that would be raised against this amendment is that it would create PMPA franchises between dealers and other parties such as TBA suppliers. This argument only clouds the issues. A PMPA franchise must include a gasoline marketing agreement between the parties. If there is no gasoline marketing agreement, there is no franchise; therefore no need to inquire if a given contract is part of the franchise.

The final portion of the Amendments deal with issues relating to sale, transfer and assignment of a dealer's business.

Chairman John Dingell stated during hearings on the original PMPA that such issues had been left to state law, and that he specifically did that because of oil company efforts to preclude assignability permitted by state law.

Once again, judicial interpretation of the Act inconsistent with its legislative history, has frustrated Congressional intent.

A service station dealer who retires, dies, or otherwise leaves a business, often wishes to transfer the business and the goodwill he or she has created to his or her family. Often family members were an integral part of running the business.

Rather than allow this to happen, many oil companies attempt to take over the business for themselves. Thus we have instances of widows literally being chased through graveyards by company reps, and other absurd scenarios.

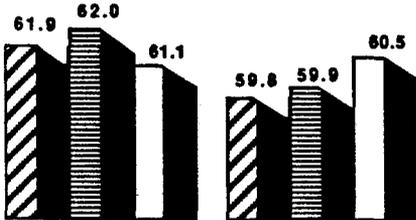
The amendments would preserve existing state laws on the issue, while insuring that a dealer will be able to transfer his or her business without fear of unreasonable and arbitrary oil company actions.

GASOLINE RETAIL REPORT

Average Nationwide DTW

(in cts/gal)

Regular gasoline Unleaded gasoline



Source: Oil Price Information Service



Jobber-Dealer Spreads

| Location | DTW | Rack | Spread |
|-----------------------|-------|-------|--------|
| ATLANTA, GA | 53.19 | 50.37 | 2.82 |
| BALTIMORE, MD | 62.35 | 52.65 | 9.70 |
| BOSTON, MA | 68.60 | 54.03 | 14.57 |
| CHARLOTTE, NC | 56.17 | 50.81 | 5.36 |
| FAIRFAX, VA | 63.40 | 51.97 | 11.43 |
| HARRISBURG, PA | 60.08 | 52.74 | 7.34 |
| HARTFORD/ROCKY HIL CT | 69.16 | 54.73 | 14.43 |
| JACKSONVILLE, FL | 59.05 | 52.55 | 6.50 |
| LONG ISLAND, NY | 64.40 | 60.98 | 3.42 |
| MIAMI, FL | 62.35 | 52.10 | 10.25 |
| NEW HAVEN, CT | 69.34 | 54.17 | 15.17 |
| NEW YORK, NY | 70.46 | 65.08 | 5.38 |
| NEWARK, NJ | 64.75 | 52.61 | 12.14 |
| PHILADELPHIA, PA | 59.48 | 52.56 | 6.92 |
| PITTSBURGH, PA | 60.22 | 52.12 | 8.10 |
| PROVIDENCE, RI | 65.87 | 54.33 | 11.54 |
| CHICAGO, IL | 57.72 | 50.84 | 6.88 |
| CINCINNATI, OH | 57.13 | 52.31 | 4.82 |
| CLEVELAND, OH | 56.65 | 52.83 | 3.82 |
| COLUMBUS, OH | 58.31 | 52.81 | 5.50 |
| DETROIT, MI | 58.90 | 52.19 | 6.71 |
| INDIANAPOLIS, IN | 54.06 | 51.72 | 2.34 |
| LOUISVILLE, KY | 58.85 | 53.07 | 5.78 |
| MILWAUKEE, WI | 53.50 | 50.61 | 2.89 |
| ST. LOUIS, MO | 55.32 | 50.33 | 4.99 |
| BIRMINGHAM, AL | 52.96 | 50.46 | 2.50 |
| DALLAS/FT. WORTH, TX | 57.37 | 49.38 | 7.99 |
| HOUSTON, TX | 57.26 | 50.10 | 7.16 |
| NEW ORLEANS, LA | 57.13 | 49.45 | 7.68 |
| DENVER, CO | 52.58 | 48.77 | 3.81 |
| LOS ANGELES, CA | 55.66 | 48.31 | 7.35 |
| PHOENIX, AZ | 52.40 | 52.43 | -.03 |
| PORTLAND, OR | 60.16 | 51.25 | 8.91 |
| SAN FRANCISCO, CA | 59.04 | 46.39 | 12.65 |
| SEATTLE, WA | 51.14 | 49.82 | 1.32 |

coupon bucks are good for gasoline and repairs as well Funny money promo helps dealer move No. 2

Sun dealer Jon LaChappelle is banking that a new "funny money" promotion will help him bag accounts for his new heating oil business and beef-up repair and gasoline sales at his Rhode Island station.

His "West Kingston Service Dollars" are each worth one dollar, and customers can redeem the monopoly-like bucks for discounts off fuel, repairs or C-store goods.

Customers get three WKS dollars for every 150 gallons of heating oil they have delivered to their homes, one dollar for every \$25 they spend on auto repairs and one dollar for every 50 gallons of diesel or gasoline they buy (motorists must save receipts).

"Customers can redeem the coupons immediately, but, in most cases they save them until they amount to a significant sum," says LaChappelle. Once they start saving that means they'll be back for more, LaChappelle says.

Since customers get WKS dollars for every service LaChappelle offers, he expects his steady gasoline and service customers will buy heating oil from him as well.

What's the promo cost? About 2% of gross profits, since the dollars can only be redeemed at LaChappelle's station. Design and printing cost for the dollars, which are three-color, 6.5" x 2.5" and modeled after U.S. tender with a pump in the center instead of a president, is \$500 for 5,000. Printing more dollars will be cheaper since he no longer needs to pay for design.

To advertise the deal, LaChappelle uses local newspaper and radio ads. If customers show the ad when they come in for service, they get double coupons.

biggest win yet for retailers, says SSDA

Dealer beats Mobil on hours appeal

In a landmark decision, a U.S. Appeals Court has ruled that suppliers must be "objectively reasonable" when terminating dealers.

The new standard, which directly affects retailers in New York, Connecticut and Vermont and will likely influence court decisions in other states, gives dealers much more power in challenging lease terminations, says dealer lawyer Jim Daskal, who helped argue the appeal.

Bottom line: If not overturned, the ruling means majors must take all of a dealer's individual circumstances into account when negotiating leases, and can no longer justify terminations by claiming to implement the same lease policies for all dealers.

Here's the story. After two months of losing money at his Connecticut station by opening 24 hrs/day, Mobil

DEPARTMENT OF COMMERCE
DIVISION OF BUSINESS REGULATION

#11
HB 464
2/6/89

TED SCHWINDEN, GOVERNOR

1424 9TH AVENUE

STATE OF MONTANA

(406) 444-3737

HELENA, MONTANA 59620-0407



Mr. Ron Leland
Automotive Trades of Montana
2127 Euclid
Helena, Montana 59601

10/8/87

Dear Mr. Leland,

As Chief of the Weights and Measures Bureau in the Department of Commerce, which licenses all petroleum dealers in Montana, allow me to respond to the problems which were presented to Commerce staff in a number of meetings with your group.

It appears that ATOM (Automotive Trades of Montana) fears that Independent dealers and some small "branded" dealers are losing their ability to compete in the marketing of gasoline at the retail level because of "unfair, deceptive" business practices of the large oil companies in Montana. Even though apparent legal infractions are not manifest, the Association presents certain cases and instances which reflects, at least from their perspective, "strongarm tactics".

You speak of your attempt during the last legislature to restrict motor fuel refiner-suppliers from operating in the State as a company owned and operated outlet by introducing and lobbying for "Divorcement" Legislation. The effect of this legislation would establish a three tier pricing policy in the gasoline industry as is currently found in the marketing of beer and cigarettes. This concept would allow the local service station (retailer) to be more competitive in the marketing of gasoline.

You add further in our discussions that perhaps the major companies are "plotting" to eliminate their own franchise dealers by increasing rents and controlling gas prices.

In summation of my impressions of your concerns, even though there appears to be no obvious violations of State or Federal law pertaining to marketing or pricing of gasoline, your organization feels that there are violations of "Good Faith and Fair Dealing Laws". To this conclusion, I lend my concern as well.

The Department of Commerce is sensitive to the entire business climate of the State. If an organization such as yours feels that there is an injustice in the marketplace or business climate, then I feel that the events leading to your concerns must be scrutinized.

12

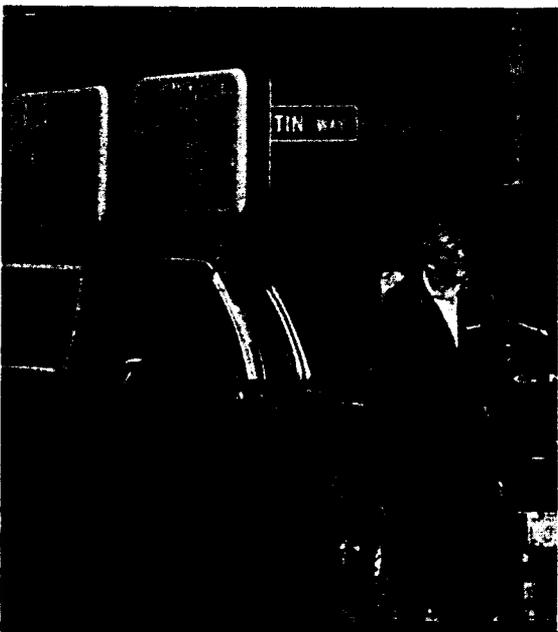
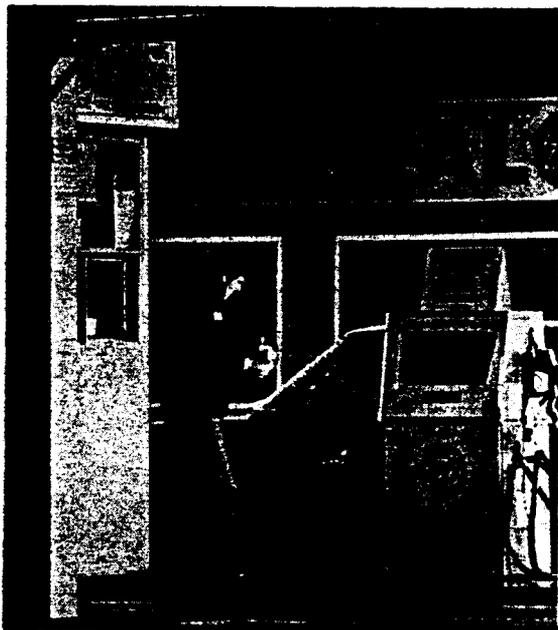
HB 464
HJR 12
2/6/89

1986 Report to the Legislature on the Retail Gasoline Market

WASHINGTON STATE SENATE
SELECT COMMITTEE ON
PETROLEUM MARKETING PRACTICES

437 John A Cherberg Building, Olympia, WA 98504
786-7638 or 786-7300

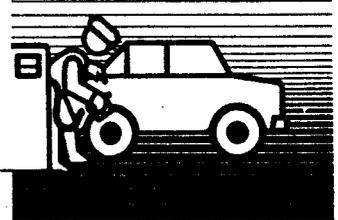
Senator Stuart Halsan, Chairman



January 1986

#12
HB 464 HJR12
2/6/89

**WASHINGTON STATE SENATE
SELECT COMMITTEE ON
PETROLEUM MARKETING PRACTICES**



437 John A Cherberg Building, Olympia, WA 98504 ■ 786-7638 or 786-7300

COMMITTEE MEMBERS

Chairman,
Senator Stu Halsan

Rick S. Bender
Emilio Cantu
Alex Deccio
Stan Johnson
Lowell Peterson
Phil Talmadge
Larry Vognild

Transcript of 4th Public Hearing on
Petroleum Marketing Practices

December 5, 1985
7:00 p.m.
Hearing Room "A"
House Office Building
Olympia, Washington

Statement Submitted on Behalf of
CHEVRON U.S.A.
IN OPPOSITION TO House Bill 464
51st Montana Legislature

#13
HB 464 ✓
HJR 12
2/6/89

Mr Chairman and Members of the Committee on Business and Economic Development:

For the Record my name is Ward Shanahan, I am the registered lobbyist for CHEVRON. Chevron U.S.A. the marketing arm of the company is not one of the major marketers in Montana. However, it is compelled to respond to HB 464 which is a protectionist bill, in substantially the same form as SB 271 and HB 594 which were killed in the 1987 Montana legislative session.

HB 464 is a protectionist bill which will deter a marketer from meeting competition by a system of penalties and injunctions. It will result, very likely in higher fuel prices. Although purporting to create a "fair price" structure it regulates and tends to "fix" prices of motor fuels in a manner detrimental to the consumer, and predictably beneficial to its sponsors.

Price Regulation is a complex subject. When a commodity traded in inter-state commerce is involved, the regulation should be left to the agencies and laws established for that purpose, most importantly the Federal Trade Commission and the Robinson Patman Act. The bill attempts to mimic the Robinson - Patman Act, but creates serious conflicts. For example, on page Seven at lines 4 and 5 the words "commensurate with an actual difference in quality or quantity" appear to conflict with Section 3 of the federal Act (15 USC § 13(a)) by providing a different standard.

It attempts to duplicate, and likely complicate the enforcement of one other federal law (The Petroleum Marketing Practices Act 15 USC 2801 et seq) and The Montana Trade Practices Act(30-14 201 et seq).

We concur with the statements made by the other opponents, and also suggest that because increases in gasoline and other fuel prices are now beginning to result from OPEC production restraints, and may also result from a new federal import tax on petroleum, this may not be the time to complicate Montana prices with this type of regulation on what Montana consumers will pay.

Respectfully,



Ward Shanahan
301 First Bank Bldg(P.O. Box 1715)
Helena, Montana 59624-1715
406-442-8560

trust restrictions. *Partec v San Diego Chargers Football Co.* (1983) 34 Cal 3d 378, 194 Cal Rptr 367, 668 P2d 674, 1983-2 CCH Trade Cases ¶ 65388, cert den (US) 80 L Ed 2d 153, 104 S Ct 1678.

12. "Territory"

Word "territory" in 15 USCS § 12 is used in narrow political sense. *David Cabrera, Inc. v Union De Choferes y Dueños De Camiones Hermandos* (1966, DC Puerto Rico) 256 F Supp 839.

13. "Persons"

Under 15 USCS § 12, association within definition of "persons" may be proceeded against by its common name to enforce liability under Clayton Act; judgment may be rendered against such association and satisfied by execution out of its assets. *Brown v United States* (1928) 276 US 134, 72 L Ed 500, 48 S Ct 288.

State is "person" entitled to bring suit under federal antitrust laws for treble damages. *Geor-*

gia v Evans (1942) 316 US 159, 86 L Ed 1346, 62 S Ct 972.

Under provisions of Sherman Act (15 USCS § 7) and Clayton Act (15 USCS § 12) definition of "person" is inclusive rather than exclusive, and does not by itself imply that foreign government, any more than natural person, falls within its bounds. *Pfizer, Inc. v Government of India* (1978) 434 US 308, 54 L Ed 2d 363, 98 S Ct 584, 1978-1 CCH Trade Cases ¶ 61812, reh den 435 US 910, 55 L Ed 2d 502, 98 S Ct 1462. Tennessee Valley Authority is person entitled to sue within meaning of 15 USCS § 15. U.S. v General Electric Co. (1962, ED Pa) 209 F Supp 197.

Term "person" as defined by 15 USCS § 12 applies to individuals as well as corporations, and officer or employee of corporation may be sued as individual for acts done on behalf of his corporate employer in violation of antitrust laws. *Allen Organ Co. v North American Rockwell Corp.* (1973, ED Pa) 363 F Supp 1117; CCH Fed Secur L Rep ¶ 94156, 1973-2 CCH Trade Cases ¶ 74713, 17 FR Serv 2d 1114.

§ 13. Discrimination in price, services, or facilities

(a) Price; selection of customers. It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: Provided, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: Provided, however, That the Federal Trade Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits, and revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce; and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so fixed and established: And provided further, That nothing herein contained shall prevent persons

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engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: And provided further, That nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) Burden of rebutting prima-facie case of discrimination. Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima-facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: Provided, however, That nothing herein contained shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

(c) Payment or acceptance of commission, brokerage or other compensation. It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(d) Payment for services or facilities for processing or sale. It shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(e) Furnishing services or facilities for processing, handling, etc. It shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contrib-

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Part 2

Unfair Trade Practices Generally

14-201. Purpose. The legislature declares that the purpose of this is to safeguard the public against the creation or perpetuation of policies and foster and encourage competition by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or hindered. This part shall be literally construed so that its beneficial purposes be subserved.

History: En. Sec. 14, Ch. 80, L. 1937; Sec. 51-117, R.C.M. 1947; amd. and redes. 51-501 by Ch. 518, L. 1977; R.C.M. 1947, 51-501.

14-202. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

"Article of commerce" includes but is not limited to any commodity, article, service or output of a service trade, or any product of the soil. A product or service of a public utility is not included within the term "article of commerce".

"Business" includes any person, as defined in (8), domestic or foreign, engaged in the production, manufacture, distribution, purchasing, or sale of an article of commerce within the state of Montana.

"Cost", as applied to production, includes the cost of raw materials, and all overhead expenses of the producer.

"Cost", as applied to distribution, means either the invoice price of the article or product sold or the cost to the dealer or vendor for replacing the article or product in the quantity last purchased within 90 days prior to the purchase of the article or product, whichever is lesser, less all trade discounts and customary cash discounts plus the cost of doing business by the producer.

"Cost of doing business" or "overhead expense" includes all costs of business incurred in the conduct of a business and includes, without limitation, the following items of expense:

- labor (including salaries of executives and officers);
- rent;
- interest on borrowed capital;
- depreciation;
- selling cost;
- maintenance of equipment;
- delivery costs;
- credit losses;
- all types of licenses;
- taxes;
- insurance and advertising.

"Customary cash discount" means any allowance not exceeding 2%, whether a part of a larger discount or not, made to a wholesaler or retailer when such vendor pays for merchandise within a limited or specified period.

"Department" means the department of commerce provided for in

(8) "Person" includes any person, partnership, firm, corporation, joint-stock company, or other association engaged in business within this state.

(9) "Vendor" includes not only any person acting as one known generally and legally as a vendor but also any person who performs work upon, renovates, alters, or improves any personal property belonging to another person.

History: En. 51-502 by Sec. 2, Ch. 518, L. 1977; R.C.M. 1947, 51-502; amd. Sec. 2, Ch. 274, L. 1981.

30-14-203. Persons responsible. Any person who, either as director, officer, or agent of any business or as agent of any person, assists or aids, directly or indirectly, in a violation of this part is responsible therefor equally with the person or business for whom or which he acts.

History: En. Sec. 2, Ch. 80, L. 1937; Sec. 51-102, R.C.M. 1947; amd. and redes. 51-503 by Sec. 3, Ch. 518, L. 1977; R.C.M. 1947, 51-503; amd. Sec. 135, Ch. 575, L. 1981.

Cross-References

Accountability for conduct of corporation, 45-2-312.

30-14-204. Proof of intent. In an injunction proceeding or in the prosecution of a person acting as an officer, director, or agent, it is sufficient to allege and prove the unlawful intent of the person or business for whom or which he acts.

History: En. 51-504 by Sec. 4, Ch. 518, L. 1977; R.C.M. 1947, 51-504; amd. Sec. 136, Ch. 575, L. 1981.

Cross-References

Terms denoting state of mind, 1-1-204.

Definitions and state of mind, 45-2-101.

30-14-205. Unlawful restraint of trade. It is unlawful for a person or group of persons, directly or indirectly:

- (1) to enter an agreement for the purpose of fixing the price or regulating the production of an article of commerce;
- (2) for the purpose of creating or carrying out any restriction in trade, to:
 - (a) limit productions;
 - (b) increase or reduce the price of merchandise or commodities;
 - (c) prevent competition in the distribution or sale of merchandise or commodities;
 - (d) fix a standard or figure whereby the price of an article of commerce intended for sale, use, or consumption will be in any way controlled;
 - (e) agree to add to a bid for any contract an amount, fixed by percentage or otherwise, for the purpose of making a refund or sharing costs of bidding with any other bidder;
 - (f) return a part of any amount added to a bid by collusive agreement among bidders to any person;
 - (g) create a monopoly in the manufacture, sale, or transportation of an article of commerce;
 - (h) enter into an agreement which binds any person not to manufacture,

by which the price of such article is settled so as to preclude unrestricted competition.

History: En. 51-505 by Sec. 5, Ch. 518, L. 1977; R.C.M. 1947, 51-505.

Cross-References

Unlawful practices, 30-14-103.

30-14-206. Labor excepted. The provisions of 30-14-205 do not apply to any arrangements, agreement, or combination between laborers made with the object of lessening the number of hours of labor or increasing wages.

History: En. Sec. 2, Ch. 97, L. 1909; re-en. Sec. 10902, R.C.M. 1921; re-en. Sec. 10902, R.C.M. 1935; Sec. 94-1105, R.C.M. 1947; re-des. 51-402 by Sec. 29, Ch. 513, L. 1973; amd. and re-des. 51-506 by Sec. 6, Ch. 518, L. 1977; R.C.M. 1947, 51-506.

30-14-207. Unfair competition in sales. (1) It is unlawful for any business, with the intent to destroy the competition of any regular established dealer of any article of commerce or to prevent the competition of any person who in good faith intends or attempts to become such dealer, to discriminate between different localities in this state by selling or furnishing such article at a lower rate in one locality than in another, after making allowance for difference, if any, in the grade, quality, quantity, and actual cost of transportation from the point of production or manufacture of the article.

(2) This section does not prohibit the meeting in good faith of a competitive rate or prevent a reasonable classification of service by public utilities for the purpose of establishing rates.

(3) The prohibition against locality discrimination includes any scheme of special rebates, collateral contracts, or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of this section.

(4) Willfully and knowingly advertising, offering for sale, or selling any commodity at less than the price stipulated in a contract entered into under this section, whether or not the person so advertising, offering for sale, or selling is a party to such contract, is unfair competition, and a person damaged thereby may bring an action.

History: En. 51-507 by Sec. 7, Ch. 518, L. 1977; R.C.M. 1947, 51-507.

Cross-References

Sales below cost — evidence of unlawful competition, 16-10-301.
Unlawful practices, 30-14-103.

30-14-208. Unfair competition in purchasing. (1) Any business which, for the purpose of creating a monopoly or destroying the business of a regularly established dealer or preventing the competition of any person who in good faith intends or attempts to become such dealer, discriminates between different persons or localities of this state by purchasing any article of commerce at a higher rate or price in one locality than in another, after making due allowance for the difference in the actual cost of transportation from the point of purchase to the point of manufacture, sale, storage, or distribution and for the difference in the grade and quality of such article, is

the grade and quality of such article, shall be prima facie evidence of a violation of this section.

(3) The payment of a higher rate or price in one locality than in another, after making such allowance provided above, is not unfair discrimination provided such higher rate or price is paid for the purpose of meeting the rate or price set by a competitor in such locality. The burden of proof of such fact is upon the person charged with unfair discrimination.

History: En. 51-508 by Sec. 8, Ch. 518, L. 1977; R.C.M. 1947, 51-508.

Cross-References

Montana product preference provisions, Title 18, ch. 5, part 3.
18-1-112.

Montana Small Business Purchasing Act

30-14-209. Sales at less than cost forbidden. It is unlawful for a vendor to sell, offer for sale, or advertise for sale any article of commerce at less than the cost thereof to the vendor or to give, offer to give, or advertise the intent to give away any article of commerce for the purpose of injuring competitors and destroying competition.

History: En. 51-509 by Sec. 9, Ch. 518, L. 1977; R.C.M. 1947, 51-509.

Cross-References

Unlawful practices, 30-14-103.

30-14-210. Cost survey as evidence of cost. Whenever a particular trade or industry, of which the person complained against is a member, has an established cost survey for the locality in which the offense is committed, such cost survey is competent evidence to be used in proving the costs of the person complained against.

History: En. 51-510 by Sec. 10, Ch. 518, L. 1977; R.C.M. 1947, 51-510.

30-14-211. Establishing cost survey. (1) The department shall, whenever application has been made by 10 or more persons within a particular trade or business, establish the cost survey provided for in 30-14-210. Where petition for a cost survey has been so presented to the department, the department shall, as soon as possible, fix a time for a public hearing upon the question of whether the cost survey should be established and, if so, upon the matter of establishing such cost survey. The hearing shall be held at the office of the department and upon that notice which the department may require by rule. However, notice of the hearing shall be published for at least 2 successive weeks in the daily newspaper or newspapers as the department may designate as most commonly circulated in the counties to be affected by the cost survey. The notice shall further state the locality or area in respect to which the cost survey is proposed to be established and the particular trade or business to be affected by it.

(2) At the time fixed in the notice any person may appear and be heard by the department upon all questions to be determined by it as provided in this section. If the department determines that a cost survey should be established, it shall at the same hearing proceed to classify and define the particular

trade or business or parts thereof to be affected, determine and delimit

#14
P.02 HB 464
HJR 12
2/6/89

Statement of
Exxon Company, U.S.A.
Before The
Business and Industry Committee
of the
Montana House of Representatives
on House Bill 464
February 3, 1989

This statement is submitted by Exxon Company, U.S.A. for the hearing record on House Bill 464 which would place a floor under prices paid by both motorists and commercial customers when they buy gasoline from any source, whether from a retailer, wholesaler, or an integrated refiner. Exxon is opposed to this bill because it represents an attempt to guarantee the profits of a small group of marketers at the expense of higher motor fuel prices for the motoring public and the rest of the business community. Further, the dealers and distributors who support this legislation are not likely to benefit from these higher prices for very long. Finally, the bill is unnecessary to protect the legitimate interests of Montana dealers and distributors and it would be operationally unwieldy for all the marketers to whom it might be applied.

Attempt to Guarantee Profits

The major premise behind these amendments appears to be the assumption that there is something wrong with the way motor gasoline is priced in Montana. Exxon believes that the Montana motor fuel market is highly competitive and that this competition benefits the consumer. In a competitive marketplace, there will be winners as well as losers, those who operate efficiently earning a reasonable profit and those who operate inefficiently, eventually falling by the wayside. This is the basic nature of competition and its results have, over time, provided our citizens with the highest quality products and services at the lowest possible cost.

This bill intrudes upon the efficient working of the marketplace by placing a floor under the prices that retailers, wholesalers, and integrated refiners may charge their customers. In essence, retailers would be required to mark up the motor fuel they sell by at least 6% and wholesalers by at least 3%. Wholesalers who also operate retail outlets could be effectively required to mark up their fuel by as much as 9% above their purchase price. Prices of integrated refiners would also be limited in two ways. First, refiners with retail operations would have to mark up 8% above "the price at which the other producers' or suppliers' wholesalers sell to their retailers ..." Second, any supplier who sells to a wholesaler could not sell to an ultimate consumer at a price less than that offered to the wholesaler. Clearly, the bill's intent is to replace the give-and-take of competition in the motor fuel marketplace with a rigid set of regulations that guarantee a minimum margin for most marketers.

Raise Motor Fuel Prices

As a result, the likely outcome of enactment of this bill will be higher motor fuel prices for consumers and small businesses. A 1985 study by the U.S. Department of Energy concluded that such laws cost the consumer over \$600 million in 1982 alone.

A more recent study of the impacts of state below cost selling laws in Alabama, Georgia, and Florida was completed by the American Petroleum Institute in December, 1987. Briefly, in a before and after comparison of retail gasoline prices in these states with neighboring states without below cost selling prohibitions, the study concluded that such laws raised the retail price of gasoline sold by refiners between 1.4¢ and 2.1¢ per gallon. Prices charged by distributors rose between 1.9¢ and 5.7¢ per gallon in the

twelve months following enactment of each state's below cost selling prohibition. Should similar increases occur in Montana, this bill could cost the state's motorist as much as \$24 million dollars annually.

Won't Provide Any Benefits

In our view, this legislation will not provide any additional long term benefits to those who support it. According to a DOE study of deregulated gasoline marketing, the higher prices resulting from below cost selling laws would not benefit the existing dealers and distributors in the long run because higher than competitive prices would attract more competition which would reduce the volume sold by existing marketers. While higher consumer prices and higher unit margins for dealers and distributors would likely remain, any increase in profits for marketers would quickly vanish due to lower volumes.

Unnecessary

This bill is clearly unnecessary to protect the legitimate business interests of independent motor fuel marketers. These merchants are already protected against unfair pricing or other unfair marketing practices of their suppliers by a large body of law including the Montana Unfair Trade Practices Act, the Sherman Act, Clayton Act, Robinson-Patman Act, and the Federal Trade Commission Act which prohibit actions to control prices and supply.

Some marketers have maintained that these existing laws do not work. This is simply not the case. When government agencies believe that anticompetitive actions are taking place, they have not been reluctant in the past to initiate litigation. Using present laws, the Federal Trade Commission, various state

attorneys general, and individual dealers have worked within the administrative and court systems to seek redress. With all of these laws already on the books, there is no need for additional legislation.

Operational Problems

The bill has the potential to create operational problems for all petroleum marketers in the state, without providing them any significant benefit. Under the proposed amendments, any retailer can allege another outlet is "selling below cost" and demand to purchase at, or below, the retail price offered. Operationally, this would allow any retailer to drive a tank truck up to the pump island of any retail outlet, obstructing the outlet's facilities, and inconveniencing the retail customers, simply based upon the suspicion of a violation of the law. Failure to honor such demands, if a below cost sale is later proven, would be an additional violation of the law.

Thus, any dealer or distributor who sells at retail can create substantial mischief merely by claiming that another party is selling below cost. The retailer's action requires no court order and he need not show why he believes a below cost sale is taking place. Further, there is no requirement for the claimant to be in competition with the alleged violator or that any notice be given or prior claim be made. This amendment could cause serious operational problems to any marketer regardless of that marketer's pricing practices.

Summary

In summary, Exxon believes these amendments are misguided, unnecessary, and almost certain to result in higher motor fuel prices to motorists and small businesses without any long term benefit to those who support it. We urge the Committee to reject House Bill 464.

DMS1072.doc
2/1/89

MAX BAUCUS
MONTANA

15
HB 464
2/6/89
WASHINGTON, DC
(202) 224-2651
MONTANA TOLL FREE NUMBER
1-800-332-6108

United States Senate
WASHINGTON, DC 20510

May 11, 1987

Mr. John D. Taggart
Box 1238
Helena, Montana 59624

Dear Mr. Taggart:

Thank you for sharing your support for legislation concerning retail divorcement in the oil industry.

One of the original goals of the Petroleum Marketing Practice Act of 1978 was to establish some ground rules for negotiations between the big oil companies and the service stations that sell their products under a franchise agreement. However, under present law the producers retain the right to make changes in franchise agreements, or even abandon any agreements they decide are no longer serving their interests. I share your concern that this arrangement can leave the gas station operator little, if any, recourse but to go out of business.

To clarify the terms of renewal for franchise in the petroleum industry, Representative Walgren introduced H.R. 1842, the "Gas Station Dealers Bill." This legislation strengthens the dealer's negotiating position by requiring that all franchise agreements be "fair and reasonable." H.R. 1842 is pending in the House Energy Committee. There is no Senate version of the bill, but you may be certain I will keep your concerns in mind should this issue arise in the Senate.

Again, thank you for expressing your support for retail divorcement. Be assured of my efforts to create a fair balance between large oil companies and independent neighborhood service stations.

With best personal regards, I am

Sincerely,

Max Baucus

MAX BAUCUS
MONTANA

17
#B464
2/6/89
WASHINGTON, DC
(202) 224-2651
MONTANA TOLL FREE NUMBER
1-800-332-6106

United States Senate

WASHINGTON, DC 20510

December 22, 1987

DATE RECEIVED

DEC 29 1987

John D. Taggart, President
Automotive Trades of Montana
P.O. Box 1238
Helena, MT 59624

Dear John:

Thank you for your letter urging me to support S. 1111, the Motor Fuel Sales Competition Improvement Act of 1987.

You raise some important points in your letter. We need to carefully guard against actions that may jeopardize our free enterprise system.

The Motor Fuel Sales Competition Improvement Act of 1987 would amend the Antitrust laws to promote wholesale and retail competition in the gasoline market. It prohibits an oil refiner from requiring any gasoline dealer to purchase more than a specified percentage of its fuel from a particular refiner. S. 1111 currently is awaiting consideration by the Senate Subcommittee on Antitrust, Monopolies and Business. Please be assured that I will keep your views in mind if this legislation comes before the full Senate for a vote.

Again, thanks for writing. As always, I appreciate knowing your organization's concerns.

With best personal regards, I am

Sincerely,



16
HB 464
2/6/89

United States Senate

December 22, 1987

DATE RECEIVED

DEC 29 1987

John Taggart
President
Automotive Trades of Montana (ATOM)
P. O. Box 1238
Helena, Montana 59601

Dear John:

Thanks for getting in touch with me through my office in Bozeman in support of S. 1111.

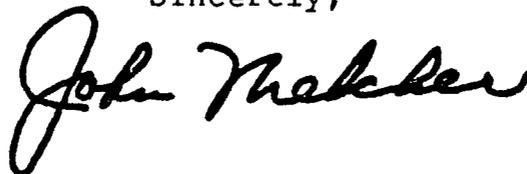
This bill, the Motor Fuels Sales Competition Improvement Act of 1987, was introduced by Senator Metzenbaum on April 29, 1987. Since I'm not a member of the Judiciary Committee, my first review of the bill will come if it reaches the Senate floor. So far, no hearing on the bill has been scheduled.

I have reviewed briefly a copy of the bill and will watch its progress carefully.

I appreciate knowing of your interest in this legislation.

Best wishes for the holidays!

Sincerely,





#17
H3 46
HJR 12
2/6/89

ASHLAND OIL, INC. • 1240 W. 98th Street • Bloomington, Minnesota • 55431 • (612) 887-6100

JAMES R. BUTLER
Public Affairs Manager

December 13, 1988

Honorable Dorothy Bradley
919 West Lamme
Bozeman, MT 59715

Dear Representative Bradley:

Last month when we met in Bozeman, Mr. Taggart of the gasoline dealers group argued that SuperAmerica should be prevented from continued direct operation of its stores in Montana through enactment of divorce legislation. His justification for this action was the fact that SuperAmerica's parent company operates oil refineries that allow SuperAmerica to complete unfairly with other Montana retailers. We totally reject that charge because each business segment within Ashland Oil, the parent company, operates as an independent business and because all gasoline sold by SuperAmerica in Montana is purchased on the open market--just like Mr. Taggart and other retailers.

To illustrate the competitive nature of the wholesale gasoline market in Montana, I am attaching the December 12 edition of the "Price Monitor" section for the Rocky Mountain States of U.S. OIL WEEK, an oil industry publication. The newsletter shows the three Montana reporting points are about the middle of the range for prices in the western states and indicate a healthy gross profit margin at current retail levels in the state.

Since this publication shows prices, exclusive of all taxes and transportation, an example can best show the correct market conditions:

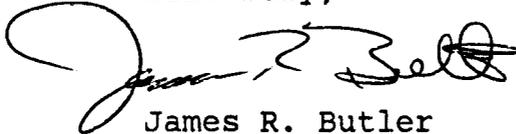
| | |
|--|--------------------|
| Current Average Retail Price On Regular Unleaded Self-Service Gasoline..... | \$.959 |
| Average Wholesale Gasoline Price In Montana..... | .510 |
| Montana Motor Fuel Tax..... | .200 |
| Federal Motor Fuel Tax..... | .091 |
| Transportation (Truck Transport Bulk Terminal To Retail Outlet)..... | <u>.020</u> |
| Total Wholesale Price..... | <u>.821</u> |
| Gross Margin..... | \$ <u>.138</u> |

We recognize that at times gasoline margins do fluctuate, but that is due to local competitive factors and not any plan to eliminate competition. I would be happy to further discuss the dynamics of gasoline marketing if you wish.

I am also attaching a copy of the 1988 Annual Report of Ashland Oil to show how Ashland separates its business segments. You will note SuperAmerica is discussed on pages 12 and 13.

Thank you for your willingness to hear SuperAmerica's side of this question.

Sincerely,

A handwritten signature in black ink, appearing to read "James R. Butler", with a large, stylized initial "J" and a circular flourish at the end.

James R. Butler

JRB:kl

Enclosures

cc: Bob Cichosz
(Bozeman SuperAmerica Store Manager)

VISITORS' REGISTER

Business

COMMITTEE

BILL NO. 464 + HJR 12

DATE 2/6/89

SPONSOR Bradley

| NAME (please print) | RESIDENCE | SUPPORT | OPPOSE |
|-------------------------|--------------------------------------|-------------|---------------|
| JOHN TAGGART | 611 S 14TH BOZEMAN | X | |
| BETTIE TAGGART | 611 S 14TH BOZEMAN | X | |
| HOWIE G. VAN SICK BARTH | 1420 NTH BOZEMAN | X | |
| RILEY JOHNSON | Automotive Trades of ATOM Montana | X | |
| WARD STONAHAN | PO Box 1715 Helena Chevron USA | X HJR 12 | OPPOSE 464 |
| Harold Ude | 149 Briarwood CENEY | X HJR 12 | X 464 |
| Janelle Fallon | Helena | HJR 12 | HB 464 |
| Charles R. Brooks | Helena, MT | | X HB 464 |
| Don Ingels | MT Chamber of Commerce | | X 464 |
| Steve Visocan | Montana WPMA | X | |
| Ray Leland | Helena MT | X | |
| Bonnie Tapp | Super America | HJR 12 X | HB 464 X |
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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

REVISED VERSION
2/7/89

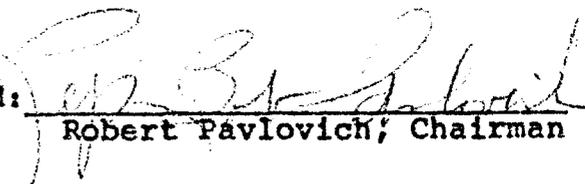
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2/7/89
jcw

STANDING COMMITTEE REPORT

February 7, 1989

Page 1 of 3

Mr. Speaker: We, the committee on Business and Economic Development report that HOUSE BILL 247 (first reading copy -- white), as amended to include a statement of intent, do pass..

Signed: 
Robert Pavlovich, Chairman

And, that such amendments read:

1. Title, line 9.

Following: "SERVICES;"

Insert: "AMENDING SECTION 33-16-103, MCA;"

2. Page 1, line 10.

Following: "DATE." on page 1, line 9

Insert: the following material beginning at page 1, line 10

"STATEMENT OF INTENT"

"A statement of intent is required for this bill because it authorizes the commissioner of insurance to make and amend reasonable rules relating to regional ratemaking. The problem that gave rise to this bill is the obstetrics crisis. Both obstetricians and family practitioners with an obstetric practice have seen liability insurance premiums skyrocket. This has resulted in many rural physicians ceasing to handle this type of practice. It is simply not cost effective to continue to practice obstetrics when the premium almost doubles for obstetrics coverage. Several rural western states have felt that it is not their experience driving up the cost of coverage, but rather that of high-tech, urban medical centers. In response, this bill was drafted to allow the commissioner of insurance to determine, in areas that are noncompetitive or volatile, which states' experience will be used to supplement Montana's experience. The commissioner is authorized to adopt reasonable regulations designating certain lines of insurance as covered lines because they are noncompetitive or volatile for ratemaking purposes, requiring insurers transacting business in the covered lines to file rating data with the commissioner, and allowing the commissioner to develop reasonable trend adjustments and development factors to be used in assessing the reported data."

3. Page 1, line 12.

Following: line 11

Insert: "Section 1. Section 33-16-103, MCA, is amended to read:

"33-16-103. Application. This chapter applies to all insurers and all kinds of insurance, except that nothing contained in this chapter ~~shall apply~~ applies to:

(1) life insurance;

(2) disability insurance;

(3) reinsurance, except joint reinsurance as provided in 33-16-307;

(4) insurance against loss of or damage to aircraft, their hulls, accessories, and equipment, or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of aircraft;

(5) insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies; or

(6) surplus lines insurance as defined in 33-2-301."

Renumber: subsequent sections

4. Page 1, line 12.

Strike: "[This act]"

Insert: "[Sections 2 through 12]"

5. Page 1, line 14.

Strike: "[This act] is"

Insert: "[Sections 2 through 12] are"

6. Page 1, line 25, and page 2, line 1.

Following: "in" on line 25

Strike: "[this act]"

Insert: "[sections 2 through 12]"

7. Page 2, line 7.

Strike: "5"

Insert: "6"

Strike: "6"

Insert: "7"

8. Page 2, line 11.

Strike: "3"

Insert: "4"

9. Page 4, line 21.

Strike: "4"

Insert: "5"

10. Page 5, line 19.

Strike: "1"

Insert: "2"

Strike: "6"

Insert: "7"

11. Page 5, line 21.

Strike: "1"

Insert: "2"

Strike: "6"

Insert: "7"

12. Page 5, line 22.

Strike: "7"

Insert: "8"

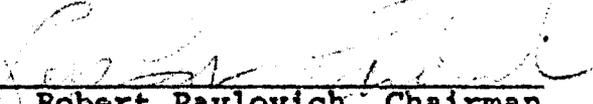
12:58 pm
2/7/89
ja

STANDING COMMITTEE REPORT

February 7, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that HOUSE BILL 341 (first reading copy -- white) do pass .

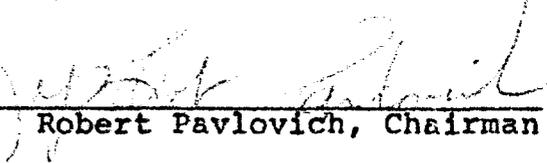
Signed: 
Robert Pavlovich, Chairman

STANDING COMMITTEE REPORT

February 7, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that HOUSE BILL 306 (first reading copy -- white) do pass .

Signed: 
Robert Pavlovich, Chairman

12:50 pm
2/09/89
jw

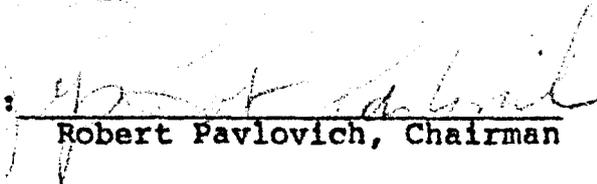
STANDING COMMITTEE REPORT

February 7, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that HOUSE BILL 429 (first reading copy -- white) do pass .

Signed:


Robert Pavlovich, Chairman

12:50pm
2/10/89
js

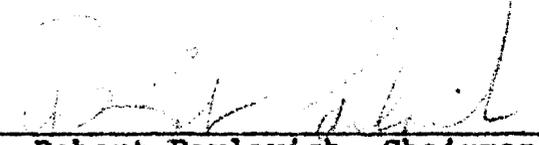
STANDING COMMITTEE REPORT

February 7, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that HOUSE BILL 430 (first reading copy -- white) do pass .

Signed:


Robert Pavlovich, Chairman

STANDING COMMITTEE REPORT

February 7, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that HOUSE BILL 431 (first reading copy -- white) do pass .

Signed: 
Robert Pavlovich, Chairman

#1
NB 521
2/7/89

A Bill for an Act to expand the Definition of Broker; amending Sections 37-51-102 and 37-51-103.

37-51-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

- (1) "Account" means the real estate recovery account established in 37-51-501.
- (2) "Board" means the board of realty regulation provided in 2-15-1867.
- (3) "Broker" includes an individual who for another or for ~~a fee, commission, or other~~ valuable consideration or who with the intent or expectation of receiving the same negotiates or attempts to negotiate the advertising, listing, sale, purchase rental, exchange, or lease of real estate or of the improvements thereon or collects rents or attempts to collect rents or obtains and organizes information from a potential seller of real estate or refers the name of a potential buyer of real estate or advertises or holds himself out as engaged in any of the foregoing activities. The term "broker" also includes an individual employed by or on behalf of the owner or lessor of real estate to conduct the advertising, sale, leasing, subleasing, or other disposition thereof ~~at a salary or for a fee, commission, or any other~~ consideration. The term "broker" also includes an individual who engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which he undertakes primarily to promote the advertisement, sale, lease, or other disposition of

real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers, or makes that information available by public display to potential buyers, -or-both; and any person who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for sale, purchase or lease.

(4) "Broker associate" means a broker who associates with a broker owner and does not own an interest in a real estate firm.

Etc.

37-51-103. Exemptions. ~~A single~~ Any act performed for ~~a~~ ~~commission or compensation~~ of any kind in the buying, selling, exchanging, leasing, or renting of real estate or in negotiating therefor for others, except as hereinafter specified, shall constitute the person performing any of such acts a real estate broker or real estate salesman. The provisions of this chapter, however, shall not:

Etc.