MINUTES OF THE MEETING
BUSINESS & INDUSTRY COMMITTEE
MONTANA STATE SENATE

February 5, 1987

The fifteenth meeting of the Business and Industry Committee was called to order by Chairman Allen Kolstad on Thursday, February 5, 1987 in Room 410 of the Capitol at 10 a.m.

ROLL CALL: All committee members were present. Vice-Chairman Ted Neuman assumed the chair in order that Chairman Kolstad could present his bill.

CONSIDERATION OF SENATE BILL NO. 245: Sen. Allen C. Kolstad, Senate District 7, chief sponsor of SB 245, said the bill requires the computation of finance charges on retail charge account agreements to be based on the average balance of the account rather than on the ending balance. Sen. Kolstad explained that in the credit card industry, the most common method of calculating interest is on the average daily balance, because it is the most equitable for both the consumer and the creditor. Under this method, the interest is calculated by applying the rate of interest to the average balance outstanding during that period after deducting any purchases made by the card user during the previous 30 days. Therefore, the consumer pays for the use of the funds for the period they were used and the creditor receives payment for the funds for the period they were used. However, under the present credit card law in Montana, the interest must be computed by applying the interest rate to the ending balance of the period after deducting that balance and any charges made by the card user during the previous 30 days. Currently, there is only one Montana company that issues Mastercard and that is the Bank of Montana System. This bill puts the Bank of Montana System on a par with the other bank card issuers. Since the Montana Bank System is the only bank card company that is required to compute this interest on the ending balance, we are asking that it be possible for them to be on equal footing with the other card companies. (EXHIBIT 1)

PROPONENTS:

Ed Lamb, Executive Vice-President, Bank of Montana System, Great Falls, spoke in favor of SB 245. (EXHIBIT 2)

George Allen, representing the Montana Retail Association, Helena, urged the committee's support of SB 245 and asked to have the words "daily balance" added on page 4, line 2, as it actually does not change the meaning of the bill. (EXHIBIT 3)

John Cadby, Helena, representing the Montana Bankers' Association, the Independent Bankers and the Minnesota Twins urged passage of SB 245. They feel that it will send a positive signal to all of the major retailers throughout the land that they can once again use the average daily balance method of computing interest charges in Montana. Businesses will no longer have to reset their computers to use a different method or have to put out on all their statements the notice that in all states except Montana, they use the average daily balance method. He cited several companies such as AMOCO, CONOCO, J.C. Penney, Union Oil and The Bon in Seattle. He also asked that the word "daily" be added where needed throughout the bill.

OPPONENTS: There were no opponents.

DISCUSSION OF SENATE BILL NO. 245: Questions were called for from the committee members.

Sen. Thayer asked who introduced the bill in 1981. George Allen said that this was part of a credit bill that lifted the usurery limits and this particular part of the bill was amended on the Senate floor.

Sen. Hager asked why we are limiting this to only one bank. Mr. Cadby answered that in the 1979 statutes there were three alternatives listed and the bank could use any one that they chose. This was changed in the 1981 session which restricted it to one; you could go back to the 1979 session and reinsert all three methods.

Sen. Neuman asked Mr. Cadby what the average rates are being charged by these various firms today. Mr. Lamb replied with the following rates: Norwest Bank Cards, 19.8%; 1st Bank System, 19.8%; 1st Bank Card System, Omaha, 19.8% and 1st Bank of Delaware 19.8%. The lowest on his list was Chase Manhattan, through Delaware which was 17.5%. The one through Columbus, Ohio is 18.0% and the average is 19.8%. Mr. Lamb continued by stating that his bank has to charge 22% because of the way they are required to compute the charge. He stated they are trying to move toward 21% but right now are in a holding pattern because they are required to go through two billing cycles in order to change the rate. They would like to be lower and calculated that if they can get this legislation changed, they could be priced somewhere between 16-17% which would be below the figures stated here and they could still be profitable. Mr. Cadby said the average daily posting throughout the country is 18%. There is increased pressure and competition with some banking institutions going as low as 15%. Therefore, the rates fluctuate all the way from 15-21% and annual fees also vary.

Sen. Thayer asked if Sen. Kolstad wanted an effective date on SB 245 and Sen. Kolstad answered that it would be good to have the effective date on passage and approval but he hadn't discussed this with the people who asked him to introduce the bill. He said that he will probably suggest this as a possible amendment.

There being no further questions from the committee, Sen. Kolstad closed his presentation of SB 245 by stating that this is strictly a fairness issue and it is because of the competitive disadvantage caused by this Montana law that the companies are finding it very difficult to compete here. He feels that ultimately, the bank card company must either discontinue its credit card division in this state, or move somewhere else if the law isn't changed.

CONSIDERATION OF HOUSE BILL NO. 177: Rep. Tom Jones, House District 4, Kalispell, chief sponsor of the bill, said the bill does one simple thing; on line 19 it deletes the words "insurance or abstract company" and replaces it with the more popular language, "insurer or title insurance agents or agency".

PROPONENTS:

Gene Phillips, Kalispell, representing the Montana Land Title Association, stated they support the bill as it brings the language into conformity with the bill passed two years ago with respect to title insurance companies operating in the state of Montana and urged the committee's support of HB 177.

OPPONENTS: There were no opponents.

DISCUSSION OF HOUSE BILL NO. 177: Questions were then called from the committee members. There were none.

DISPOSITION OF HOUSE BILL NO. 177: Sen. Thayer MOVED HB 177 BE CONCURRED IN. The Motion was seconded by Sen. Meyer and CARRIED UNANIMOUSLY.

CONSIDERATION OF HOUSE BILL NO. 218: Rep. Ray Brandewie, House District 49, Bigfork, chief sponsor of the bill, stated that it amends present law. At the present time, it is unlawful to carry or have in your possession more than five Christmas trees without being able to show proof of ownership. First of all, Rep. Brandewie told the committee that he is in the tree business and does have a vested interest in the bill; but he was carrying this bill at the request of the Flathead County Attorney's office. He explained that he grows plantation Christmas trees, and the primary problem is the loss of wild Christmas trees and boughs off State and National Forest land as well as from private land. It is a large problem in Flathead, Lake and Lincoln Counties and probably other areas where public land exists or plantation trees are grown. Under the existing law, even though it is illegal to have more than five trees without a permit, and this is known to be so, they cannot be legally stopped. Rep. Brandewie felt this bill would cure a basic problem faced by law enforcement in their attempt to limit the amount of tree theft from public and private lands and enforcement of the statute which would be amended by HB 218. Tree theft in Montana is not a small issue and there is a concensus among the groups involved that there is a need for more law enforcement.

PROPONENTS:

Rep. Brandewie stated that Don Allen had planned to testify but could not be present.

OPPONENTS: There were none.

DISCUSSION OF HOUSE BILL NO. 218: Questions were then called for from the members.

Sen. Weeding said in his community it is a custom for church groups to go out and cut Christmas trees which are distributed to various people. They cut about 25-30 trees and he wondered if they were going to get caught up in this bill. Rep. Brandewie did not think so, however, if they are cutting on State or Federal land right now, this law applies to them; and, without a permit they cannot have more than five trees in their possession. This would not be applied to eastern Montana as permission could probably be obtained from the landowner or the BLM. All you need is a bill of sale to show the Highway Patrol.

Sen. Hager asked if anyone knew if the Bureau of Land Management (BLM) has a procedure for giving out permits. Rep. Brandewie stated he did not know as they do not have BLM in western Montana but the Forest Service does and it was his understanding that you are not allowed to get trees everywhere.

There being no further discussion, the hearing on HB 218 was closed.

EXECUTIVE ACTION ON HOUSE BILL NO. 218: Sen. Walker MOVED that HB 218 BE CONCURRED IN, seconded by Sen. McLane. The MOTION PASSED with Sens. Hager and Weeding voting "no".

CONSIDERATION OF SENATE BILL NO. 239: Sen. Les Hirsch, Miles City, District 13, the chief sponsor of the bill, said the bill provides a three-tier marketing for motor fuels in Montana and is patterned after the beer industry in which there is the brewer, the distributor and the retailer. This bill provides for the refiner, the wholesaler and the retailer. There are people operating under that three-tier in this system and folks operating under a two-tier system in which the refiners have the ability to retail the product. That gives rise to the problem with those that are operating under the three-tier system who can't compete effectively with the others. This system brings price wars and considerable stress to the industry. Other states have addressed this issue, some have turned it down, but Maryland has enacted it and it seems to be working well in that state. Some say the price of gasoline may go up, others say that it actually may go down.

PROPONENTS:

Ron Leland, Sinclair dealer in Helena and also a member of Automotive Trades of Montana, a newly formed group for the retail service station dealers, appeared in favor of the bill. (EXHIBIT 4)

John Taggert, owner and operator of a Conoco service station in the Bozeman area was also in favor of SB 239. (EXHIBIT 5)

Bruce Metcalf, Butte, representing Associated Trades of Montana was in favor of the bill. He has been in the service station business for 14 years and is sure that everyone knows of closed service stations now doing business in a different manner. He stated reasons for the demise of these businesses - they closed because they could not make a profit. The retail divorcement bill before the committee gives the operator a chance, he said, and they cannot compete against a wholesale gas operation at cost.

Bill Wolfe, Miles City, representing Interstate Sinclair, said he has been in business for 16 years and felt this bill would help to secure the present dealers. He was marketing 1¢ above cost and was still 2-3¢ below Super America, Flying J and Cenex. He said people are price conscious and will go where they get the cheapest gas. This is adversely affecting the people who are unable to fill their own gasoline tanks and this is happening all over the state, not just in Miles City.

Dick Skewis, Billings, representing A.T.O.M. was in support of SB 239. (EXHIBIT 6)

OPPONENTS:

James R. Butler, Regional Manager of Public Affairs, Ashland Oil, Inc., based in Bloomington, Minnesota, appeared in opposition to Sen. Bill 239. EXHIBIT 7)

John Augustine, registered lobbyist with Conoco in Montana, opposed the bill. He stated his situation is a little different as Conoco has salaried operations in the state. This is not a new issue, according to Mr. Augustine, having been around since the 1940's and has gotten some momentum since the 1970's. Florida passed the law but repealed it in 1985. After the Maryland bill went into effect, a comprehensive study of the effect on prices was done. Researchers from the University of Purdue estimated that retail divorcement has cost Maryland consumers over $15 million a year in higher gasoline prices. This study was done on 600 retail outlets over a period from January 1977-1982. Prices went up on an average of 3¢ per gallon on self-service to 6¢ a gallon on full-service. It removes competition and competition is healthy. (EXHIBIT 8

Harold Ude, Laurel, representing Cenex, was opposed to SB 239. He said any form of retail divorce will eliminate the competition as to the various levels at which it is aimed and with any elimination of competition it is ultimately the consumer that pays the price. For any refinery to stay healthy it must have a ready stable market for its products. A stable market in the case of Cenex is through the cooperatives. In the case of Cenex, whose basic market is agriculture, the market has drastically decreased over the past few years and therefore, a stable market for Cenex is a direct retail operation. The stability of the direct operation market allows the Cenex refinery to operate and continue to serve Montana agriculture.

George Allen, Montana Retail Association and Mini-Mart, Helena, was opposed to the bill. He said the free enterprise system is a good system and the merchandising of gasoline and other products tries to give the public what they want. He felt it was obvious that they want this type of store.

Janelle K. Fallan, Executive Director of the Montana Petroleum Association was opposed to SB 239. (EXHIBIT 9)

Doug Alexander, President of the Petroleum Marketers Association opposed the bill and said the PMA exists in most of the towns in the state and said they are referred to in the dealers concept as tier two. They are the distributors. On page 2, lines 4-8, the definition of a motor fuel supplier means a person's firm, association or supplier including an affiliate. This means a distributor and if you have a contract with a major oil company that means you are an affiliate. He also referred to page 3, lines 20-23, setting a cost price within the trade area of a retailer, however, trade area is not defined in the bill, it is an ambiguous area, harder to define and almost impossible to enforce. He said they do realize the dealers have a problem, however, they do feel there are some measures introduced this session that can help their problems somewhat. The industry feels it is improper to legislate who can and cannot do business and it is against the principle of free enterprise. They urged the defeat of the bill.

Steve Visocan, stated he is an affiliate and has a contract to provide products to Conoco and Exxon to provide their products to other persons. There were two points he commented on; the fact that there are fewer service stations in this state. He said that he operated several full service stations and he did not believe that ther e are fewer full service stations because the refiners have gas stations. He believed it is a different trend in the way people buy gas. People are more interested in convenience and location of the pumps. He thought the dealers would be concerned with some of the tactics of the Town Pump.

Ken McElroy, manager of Super America, appeared as a citizen and not as a representative of Super America. He said a bill that would force S.A. out of the state would be a big mistake. He said that with the legislature looking for ways to attract business into the state he would urge the committee to kill the bill.

The following list of names also requested, by phone, that they be entered in the record in opposition to SB 239:

Mike Bukett	Bob Heimer, Billings
Ray Snyder, Missoula	Marcus Hartse, Miles City
Jodi Monahan, Missoula	John Monahan, Missoula
Rose Monahan, Missoula	Mark Mathiowetz, Billings
Diane Hayden, Laurel	Arlan Hayden
Peggy Beach	

DISCUSSION OF SENATE BILL NO. 239: Chairman Neuman asked for questions from the committee.

Sen. Williams, directing his question to Mr. Wolf, asked what he meant when he said he would be out of business. Mr. Wolf said he had gone to the bank for operating money and was denied and he has cut down from 12 to 6 employees. Sen. Williams asked if the situation has changed so much in Miles City that it has caused this financial problem. Mr. Wolfe said Miles City has been in a gas war since May of last year and it puts him out of the competitive market.

Chairman Neuman asked Sen. Hirsch to define a "trade area". Sen. Hirsch replied that was section 3 of the bill but it was ambiguous.

Sen. Williams asked Sen. Hirsch if, in the case of the bulk supplier having the keys for the gas, would this bill put him out of business. Sen. Hirsch said that there was some concern that they might be aff ected and the proponents would have no problem with removing the word "affiliate" so they would not be affected.

Sen. Weeding asked how Super America would fare under this bill, to which Sen. Hirsch replied they would no longer be able to operate in the state. Ron Leland said Cenex goes from the refinery to the retailer omitting the three-tier system. Town Pump does not refine; they buy on the open market and are not a company-owned station. They compete effectively in this state and are not going to be affected by this bill.

Sen. Williams stated, with that testimony, how would that affect Mr. Riskin. Mr. Riskin said he was an affiliate, that he had a contract with Conoco and Exxon that says he will market their by-product under their trademark in whatever area he desires. Town Pump does not have a contract with a major oil company and they market under their own brand name. At one time, Town Pump was dealer-owned or dealer-operated but that is not true anymore. Last year they had over 30 locations that were directly owned and operated by Town Pump so they would be affected by this bill.

Sen. Kolstad asked Mr. Leland about the conflicting testimony about Maryland. It was pointed out in a survey that the self-service sales were the second lowest in the nation. In other testimony, it was brought out that the consumers paid an additional $15 million after this legislation. Mr. Leland said he could not respond to the additional price but as far as margins or what the dealers made, he didn't know that the dealers made an additional $15 million from the profit of the legislation. The United States Judiciary had concluded that divorcement laws have benefited consumers by producing a more stable retail environment.

Sen. Kolstad asked Mr. Augustine to respond to that statement. Mr. Augustine stated that he had distributed a paper that addresses that on page 3, third paragraph. It is a study that was conducted for a number of years on pricing and competition.

There being no further questions from the committee, Sen. Hirsch closed his presentation of SB 239. He felt that the subject had been well covered although it is confusing with the different structures. He said they do not want to close stations in Montana or lose jobs for Montanans. He realized the day of the full-service gas station is going to be a thing of the past. The bill's purpose is to provide for an equitable pricing structure that both the independents and those affiliates of refineries can operate and compete with a good, viable business.

RECONSIDERATION OF HOUSE BILL NO. 68: Ms. McCue, staff researcher explained the amendments and said it had been brought back for reconsideration to consider the amendments. Sen. Kolstad asked the committee what their feelings were on the bill and the proposed amendments.

Mr. Allen stated his reasons for wanting the amendments. He said they felt they were infringing on an area in which these people made their living and they were competing with the government agencies. They felt the amendments really gutted the bill and as a compromise he had talked with Sen. Thayer to express his concern about the full-time employee that works for one company doing many jobs for security. He also said there are very few retail employers large enough in Montana that can afford to have a full-time security person that does nothing but security. He said the intent of the amendment is to exclude anyone working for a single employer who does no moonlighting. He stated that the training is an important part of the program, whether in-house or by the sheriff or police.

Sen. Walker asked if they wanted to omit anyone on line 22, page 6. Ms. McCue said she did not think they wanted to drop that because that covers a different situation. Mr. Allen said that the stores with which he was acquainted had good, if not better, security training than what the state provides, and they are only talking about a handful of stores that can provide a full-time security in-house program.

<u>EXECUTIVE ACTION ON HOUSE BILL NO. 68</u>: Sen. Thayer MOVED ADOPTION OF THE AMENDMENT, seconded by Sen. Boylan. There being no further discussion on the motion, the MOTION PASSED UNANIMOUSLY.

Sen. Thayer MOVED that HB 68 BE CONCURRED IN AS AMENDED, the MOTION PASSED UNANIMOUSLY.

<u>DISPOSITION OF SENATE BILL NO. 115</u>: Sen. Thayer MOVED ADOPTION OF THE AMENDMENTS to SB 115, seconded by Sen. Boylan. The MOTION CARRIED UNANIMOUSLY.

Sen. Neuman asked how many agents would be affected by this to which Bonnie Tippy replied there are a lot of different numbers in the insurance commissioner's office; they say there are around 8,000 agents in Montana and 1500 appointments but they do not have the specifics on exactly how many. Their educated assumption is there are 4,000 agents and at $20 per head that is $80,000. They want the fees to be exactly what it costs to run the program and not to be another source of revenue.

Sen. Thayer MOVED SB 115 DO PASS, seconded by Sen. Boylan. The MOTION PASSED UNANIMOUSLY.

The next meeting of the Business & Industry Committee will be on Friday, February 6, 1987. Chairman Neuman adjourned the meeting at 11:47 a.m.

Neuman

SEN. TED NEUMAN, VICE-CHAIRMAN

ADDENDUM TO THE MINUTES: Due to continued problems with this bill (HOUSE BILL 68), amendments and the necessity of adding a statement of intent, it was once again pulled back into the committee for further consideration. Therefore, no committee report on HB 68 is included with this set of minutes.

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ROLL CALL

Business & Industry COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date 2/5/87

NAME	PRESENT	ABSENT	EXCUSED
ALLEN C. KOLSTAD, CHAIRMAN	✓		
TED NEUMAN, VICE CHAIRMAN	✓		
PAUL BOYLAN	✓		
TOM HAGER	✓		
HARRY H. McLANE	✓		
DARRYL MEYER	✓		
GENE THAYER	✓		
MIKE WALKER	✓		
CECIL WEEDING	✓		
BOB WILLIAMS	✓		

Each day attach to minutes.

DATE 2/5/87

COMMITTEE ON Business & Industry

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One Support	Oppose
James R. Butler	Ashland Oil, SuperAmerica	239		✓
Arlan J. Hayden	Ashland Oil, Superamerica	239		✓
Kenneth R McElroy	Ashland SA-Helena	239		✓
Harold Ude	CENEX	239		✓
Ken Syndergaard	Ken's Interstate Serv	239	✓	
Bill Graf	Interstate Sinclair	239	✓	
Ron Leland	ATOM	239	✓	
Dick Skewis	ATOM	239	✓	
John D Taggart	A.T.O.M.	239		
Kurt Krueger	Mont Petro Dist Assoc	239		✓
Doug Alexander	Mont Petroleum Dist Assn			✓
[illegible] Alexander	Mt. Petroleum Marketers			✓
Cheryl Syndergaard	Ken's Int. Ser.	239	✓	
R. L. Robinson	Mtn View Chevron	239	✓	
BRUCE METCALF	A.T.O.M.	239	✓	
Billie Taggart	ATOM	239	✓	
John Cadby	Mt Bankers Ass	S 245	✓	
George Allen	Mt. Retail Assn	S 245	✓	
Charlotte Gray	Bank of Mt System	S 245	✓	
Ed Lamb	Bank of Mt. System	SB 245	✓	
Deb Hart	Bank of Montana-Helena	SB 245	✓	
Janelle Fallan	Mt Petroleum	SB 239		X
Larry Crispin	Conoco Inc	SB 239		X
Steve Visocan	Visocan Petroleum	SB 239		✓
GENE PHILLIPS	MLTA	HB 177	X	
Gene Landers	Lewistown			

(Please leave prepared statement with Secretary)

DATE 2/5/87

COMMITTEE ON Business & Industry

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
John Augustine	Conoco Inc	239		X

(Please leave prepared statement with

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 1
DATE 2/5/87
BILL NO. SB245

In the credit card industry the most common method of calculating interest is on the average daily balance because it is the most equitable for both the consumer and the creditor. Under this method, the interest is calculated by applying the rate of interest to the average balance outstanding during the period (after deducting any purchases made by the card user during the previous 30 days). Thus, the consumer pays for the use of funds for the period they were used and the creditor receives payment for the funds for the period they were used.

However, under the present law in Montana, interest must be computed by applying the interest rate to the ending balance of the period (after deducting from that balance, any charges made by the card user during the previous 30 days).

Using the ending balance method of computation required under current Montana law, reduces the yield to the credit grantor by 3% on the average, therefore, to equal the yield of an out of state card issuer, a Montana company issuing a credit card must state an interest rate of 3% more than an out of state company. This puts the Montana company at a competitive disadvantage because the consumer perceives that the cost of the Montana company's card is more than the cost of the out of state card.

Currently, there is only one company in Montana that issues credit cards (VISA and Master Card) and because of the competitive disadvantage caused by the Montana law, the company is finding it increasingly difficult to compete. Ultimately, the company must either discontinue its credit card division, or move its credit card division to a state that permits calculating the interest on the average daily balance. In either case, the state of Montana will lose employment, income and tax revenues.

The following examples will illustrate the difference between using the average daily balance to calculate the interest and the ending balance method.

EXAMPLE #1

Assumption:

(a) Balance on billing cycle date to 8-30-86 is (-0-)

(b) Two thousand dollars ($2,000.00) of purchases are charged to the account during September, so the balance on billing cycle date 9-30-86 is $2,000.00.

(c) A one hundred dollar ($100.00) payment is posted to the account on 10-28-86.

(d) The balance on the billing cycle date 10-30-86 is $1,900.00

(e) The billing cycle contains 30 days.

Interest Calculation Based on Average the Average Daily Balance

$2,000.00 X 28 days ÷ 30 days in billing cycle = 1,866.66

$1,900.00 X 2 days ÷ 30 days in billing cycle = 126.66

Average daily balance 1,993.32

$1,993.32 Average daily balance X 1.5% (18% per year) = $29.90 interest for the month.

Interest Calculation Based on Ending Balance

$1,900 X 1.574% (18.89% per year) = $29.90 interest for the month.

Thus, using the ending balance method of computing interest, the card issuer must charge 18.89% per year to equal the same yield as those charging 18% on the average balance method in this example.

EXAMPLE #2

Assumptions:

(a) Balance on billing cycle date 8-30-86 is zero (-0-)

(b) Two thousand dollars ($2,000.00) of purchases are charged to the account during September so the balance on the billing cycle date 9-30-86 is $2,000.00

(c) Purchases of $1,000.00 are charged to the card in Oct.

(d) $2,000.00 payment is posted to the account on 10-28-86

(e) The balance on the 10-30-86 billing cycle is $1,000.00

(f) The billing cycle contains 30 days

Intest Calculations Based on Average Daily Balance Computations

Deduct the $1,000.00 purchases in October. No interest is charged on this amount in October.

$2,000.00 X 28 days ÷ 30 days in billing cycle = $1,866.66 average balance.

$1,866.66 average daily balance X 1.5% (18% per year) = $28.00 interest per billing cycle.

Interest Calculation Based on Ending Balance Computations

Deduct the $1,000.00 purchases in October. No interest is charged on this amount in October.

Therefore, the effective ending balance is (-0-) X 1.50% (18% per year) = -0- interest for billing cycle.

Using the Ending Balance computation method results in collecting no interest at all on an account which had an average daily balance of $1,866.66 for the month.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 1
DATE 2-5-87
BILL NO. S.B. 245

EFFECT OF METHOD CHANGE
ON BANCARD EARNINGS
PERIOD 7/80 - 6/81 (12 mo)

	M/C & VISA
AVG. OUTSTANDINGS (CURRENT METHOD)	$2858200
LESS: F.C. BILLED (AVG)	34900
PMTS. APPLIED (AVG.)	796300
REFUNDS APPLIED (AVG)	13100
AVG. MONTH END BALANCE SUBJECT TO FINANCE CHARGE	$2013900
MULTIPLIED BY 18%	$362500
ACTUAL F.C. EARNED AVG. DAILY BAL.	$418400
NET LOSS DUE TO METHOD CHANGE	$55900
R.O.A. USING AVG. DAILY BAL METHOD	20.8%
R.O.A. USING MO. END BAL. METHOD	18.0%
% LOSS DUE TO CHANGE	2.8%

George Allen

Ted Newmann - Charlie Anderson

7 people employed

Lose market in independent banks - not competitive

Mr. Chairman members of committee I am

8:30 P.M.

SENATE BUSINESS & INDUST[illegible]
EXHIBIT NO. 1
DATE 2-5-8[illegible]
BILL NO. S.B. 245

EFFECT OF METHOD CHANGE ON BANCARD EARNINGS

(APR.)

	M/C	VISA	TOTAL APR.
O/S AS OF 3/31/81	$2089228	$737193	$282642[illegible]
LESS: F.C. BILLED IN MARCH	26503	8639	35142
PAYMENTS APPLIED IN APR.	592569	245709	83827[illegible]
REFUNDS APPLIED IN APR.	9903	2588	1249[illegible]
APRIL MONTH END BALANCE SUBJECT TO FINANCE CHARGE	$1460253	$480257	$194051[illegible]
MULTIPLIED BY 1.5% /MO. =	$21903	$7203	$29106
APRIL ACTUAL F.C. EARNED ON THE "AVG. DAILY BAL." METHOD =	$25633	$8639	$34272
NET LOSS DUE TO METHOD CHANGE	$3730	$1436	$516[illegible]
MULTIPLIED BY 12 MO. =	$44760	$17232	$61992
DIVIDED BY MO. END O/S OF	$1460253	$480257	$194[illegible]
EQUALS EFFECTIVE RATE OF LOSS	3.1%	3.6%	3.2%
R.O.A. USING AVG DAILY BAL. METHOD	21.1%	21.6%	21.2%
R.O.A. USING MO. END BAL. METHOD	18.0%	18.0%	1[illegible]%

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 1
DATE 2-5-87
BILL NO. S.B. 245

We'll put our Visa or MasterCard up against anyone's!

	ANNUAL FEE	ANNUAL PERCENTAGE	GRACE PERIOD	CAR RENTAL DISCOUNTS	TRAVEL INSURANCE	MEMBER OF PLUS SYSTEM®
Rocky Mountain BankCard System	$12.00	19.8%	25 DAYS on purchases if balance paid in full.	YES Discounts from 5 major rental agencies: Hertz, Budget, Avis, Dollar and National.	$100,000 + travel/accident insurance.*	Automated Teller Machine Network Yes**
United Bank of Denver	$12.00	21.0%	25 DAYS on purchases if balance paid in full.	NO	NO	NO
Bank of America	$18.00	19.8%*	25 DAYS on purchases if balance paid in full.	NO	$100,000†	YES**
CitiBank	$20.00	19.8%	25 DAYS on purchases if balance paid in full.	NO	$100,000†	NO
Compare your present card and see how much more you get with Rocky Mountain BankCard System.						

[T]he annual fee is not the only basis for [ch]oosing a VISA and MasterCard credit [car]d.
[O]ur chart shows you all the facts. And [whe]n you put all the facts together, you'll [see] the best service and value is offered by [Roc]ky Mountain BankCard System.

Rocky Mountain BankCard System®

Plus System®

Look at our advantages • Low Annual Fee • Car rental discounts • 100,000 travel accident insurance at no extra cost • And immediate access to cash with the PLUS SYSTEM Network of Automated Teller Machines across the country.

Now that you've got the facts, get the only card that offers you all these unique benefits. Use the enclosed card to request your card today!

*Annual percentage rates are accurate as of January 5, 1984 under $500.
**The PLUS SYSTEM® Network at Bank of America Automated Teller Machines only operate from 6 am to 12 midnight.
†Travel Accident insurance is applicable when common carrier tickets are purchased with the issuer's credit card.
This information was verified as of 4/12/85.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 2
DATE 2/5/87
BILL NO. SB245

Mr. Chairman and Members of the Committee

Introduce Self: Ed Lamb, Executive Vice President
Bank of Montana System

a. First I would like to explain the difference between calculating interest on the ending balance method and the average daily balance.

$1,000 - balance
   500 - payment on the 15th

b. In a situation where we cannot retain our present accounts. Loosing accounts faster than we can put them on.

In 1981, we started calculating interest on the ending balance method and increased our interest rate to accomodate for lost inco

Since that time, have experienced steady decrease in accounts.

Our active accounts since 1981 have decreased 40.4%

c. We're faced with more competition than ever before. All of that competition is out of state.

d. in the last year or so, there have been at least ten different card issuers soliciting accounts in Montana - all quoting lower interest rates.

First Omni Bank in Deleware - 19.8%
First Bankcard Center in Omaha - 19.8%
Norwest Card Services 19.8%
First Bank System thru S.D. 19.8%
Citi Bank thru S.D. 19.8%
Chase Manhatten thru Delware 17.5%
Bank One through Columbus Ohio 18.0%
Rocky Mountain Bankcard just recently reduced their rate from 19.8% to 18.6%
Banc Ohio and Chemical bank have solicited too 19.8%
VISA triple A is at 18.8%

e. The average cardholder does not understand the affect of the different methods of calculating interest.

Look only at the annual percentage rate and naturally assume they are paying less if the interest rate quoted is lower.

We've participated in major credit card surveys and have surveyed the accounts we have lost, and in both cases are finding that cardholders are interested primarily in interest rates and annual fees. Simply need to be able to quote a lower rate of interest.

This legisltion may encourage other business to locate in Montna-f. Citicorp is one of the largest credit card issuers in the country They emply 2,000 employees and moved their entire credit card operation to S.D. because New York prohibited them from raising the interest rate and annual fees. First Bank Systems has also moved their operation.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 2
DATE 2-5-87
BILL NO. S.B. 245

Montana Retail Association

Executive Office
318 N. Last Chance Gulch
P.O. Box 440
Helena, MT 59624
Phone (406) 442-3388

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 3
DATE 2/5/87
BILL NO. SB245

TESTIMONY

SB 245

Mr. Chairman and Members of the Committee,

For the record, I am George Allen, representing the Montana Retail Association. I am here today in strong SUPPORT of SB 245.

With the passage of SB 245, it will allow the banks who deal in the credit card business the vehicle they need to keep jobs in Montana.

I'd like to call your attention to what the legislature did in South Dakota several years ago. By passing some attractive banking laws, they were able to attract several banking businesses to locate in South Dakota from Minnesota. By the actions of the legislators that created approximately two thousand jobs.

Montana has an unusual law that requires finance charge to be figured on a month end balance. For all other banking activities, the loans are made on an average daily balance. People who do business in several states that have a centralized billing system must recompute their billing for Montana.

Our present law is just another example of a anti-business law that makes it more difficult for business to be conducted in Montana.

We strongly support SB 245.

Respectfully,

George Allen
Executive Vice President
MRA

NAME: Ron Leland DATE: 2/5/87

ADDRESS: 2127 Euclid Ave P.O. Box 1238

SENATE BUSINESS & INDUSTRY
EXHIBIT NO 4-a
DATE 2/5/87
BILL NO. SB239

PHONE: 442-6409

REPRESENTING WHOM? ATOM

APPEARING ON WHICH PROPOSAL: SB Bill 239

DO YOU: SUPPORT? X AMEND? ______ OPPOSE? ______

COMMENTS: I would like to testify
SEE PREPARED
TESTIMONY

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

ATOM

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

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 4 -
DATE 2-5-87
BILL NO. S.B. 239

MR CHAIRMAN AND MEMBERS OF THE COMMITTEE. MY NAME IS RONALD LELAND AND I AM A SINCLAIR DEALER HERE IN HELENA AND I"M ALSO TREASURER OF ATOM WHICH IS AN AUTOMOTIVE TRADES ASSOCIATION OF MONTANA. I SUPPORT SENATE BILL 239 FOR THE FOLLOWING REASONS:

1. THIS IS A PRO BUSINESS AND CONSUMER BILL:
    A. ALLOWS SERVICE STATION DEALERS FAIR COMPETITION - WILL INVEST IS IMPROMENTS AND EQUIPMENT IF MORE SECURE IN BUSINESS
    B. PROVIDES JOBS FOR MONTANA WORKERS AS FULL SERVICE STATION HIRES MORE PEOPLE
    C. PROFITS OF DEALERS STAYS IN LOCAL COMMUNITIES AND AFTER TAX PROFITS BY REFINER-OPERATED STATIONS LEAVES THE STATE.

   THIS IS A PRO CONSUMER BILL:
    A. BY HAVING SUCCESSFUL DEALERS IN THE LOCAL COMMUNITY, COMPETITION WILL REMAIN KEEN WHICH KEEPS THE RETAIL PRICES IN LINE THAN IF COMPETITION IS LESS.
    B. THERE WILL BE MORE FULL SERVICE STATION TO SERVICE TOURIST INDUSTRY

2. THIS WILL INSTALL A THREE TIER LEVEL OF MARKETING IN THE STATE OF MONTANA THAT WILL BE CONSISTANT WITH THE BEER AND CIGARETTE INDUSTRY.
    A. BEER INDUSTRY   BREWER - DISTRIBUTOR - RETAILER
    B. GASOLINE INDUSTRY   REFINER - WHOLESALER - RETAILER

3. COPIES OF OTHER DIVORCEMENT BILLS
    A. MARYLANDS BILL ENACTED IN 1974. SURVEY SHOWS 2nd LOWEST RETAIL PRICE
    B. 99th CONGRESS H.R. BILL 3824 WHICH IS SAME AS SENATE BILL 1140
    C. COPIES OF ARTICLE FROM THE AMERICAN DEALER ABOUT DIVORCEMENT
    D. ARTICLE FROM LAS VEGAS REVIEW

BASED ON THE ABOVE REASONS, I SUPPORT THIS BILL WHICH WILL HELP THE SS DEALER IN MT.

SENATE BUSINESS & INDUS.

EXHIBIT NO. 4

DATE 2-5-87

BILL NO. S.B 239

MARYLAND DIVORCEMENT

§ 157E. Declaration or statement by wholesalers, refiners, manufacturers, jobbers and dealers; operation of service station by producer or refiner or management firm; uniform treatment of retail dealers.

(a) For the purpose of this law all gasoline and special fuels sold or offered or exposed for sale shall be subject to inspection and analysis as hereinafter provided. All motor fuel wholesalers, diesel fuel sellers, heating oil distributors, manufacturers, refiners, jobbers and retail service station dealer before selling or offering for sale any gasoline; other motor vehicle fuels, or special fuels under whatever name designated for power and heating purposes shall file with the Comptroller of the Treasury a declaration or statement that they desire to sell such products in this State and shall furnish the name, brand or trademark of the products which they desire to sell together with the name and address of the supplier thereof and that all such products are in conformity with the specifications established by the Comptroller of the Treasury, as purchased from the supplier and he will make no alteration to any such product received from the supplier.

(b) After July 1, 1974, no producer or refiner of petroleum products shall open a major brand, secondary brand or unbranded retail service station in the State of Maryland, and operate it with company personnel, a subsidiary company, commissioned agent, or under a contract with any person, firm, or corporation, managing a service station on a fee arrangement with the producer or refiner. The station must be operated by a retail service station dealer.

(c) After July 1, 1975, no producer or refiner of petroleum products shall operate a major brand, secondary brand, or unbranded retail service station in the State of Maryland, with company personnel, a subsidiary company, commissioned agent, or under a contract with any person, firm, or corporation managing a service station on a fee arrangement with the producer or refiner. The station must be operated by a retail service station dealer.

(d) Every producer, refiner, or wholesaler of petroleum products supplying gasoline and special fuels to retail service station dealers shall extend all voluntary allowances uniformly to all retail service station dealers supplied.

(e) Every producer, refiner, or wholesaler of petroleum products supplying gasoline and special fuels to retail service station dealers shall apply all equipment rentals uniformly to all retail service station dealers supplied.

(f) Every producer, refiner or wholesaler of petroleum products shall apportion uniformly all gasoline and special fuels to all retail service station dealers during periods of shortages on an equitable basis, and shall not discriminate among the dealers in their allotments.

(g) The Comptroller may adopt rules or regulations defining the circumstances in which a producer or refiner temporarily may operate a previously dealer-operated station.

(h) The Comptroller may permit reasonable exceptions to the divestiture dates specified by this section after considering all of the relevant facts and reaching reasonable conclusions based upon those facts. (1969, ch. 421; 1974, ch. 854; 1975, ch. 608.)

Purpose of this section is to preserve competition within the retail gasoline marketing industry in Maryland. Governor v. Exxon Corp., 279 Md. 410, 370 A.2d 1102 (1977).

Constitutionality of divestiture provisions. — The divestiture provisions of subsections (b) and (c) of this section are a valid exercise of the State's police power and not in violation of the due process clause of the Fourteenth Amendment, and article 23 of the Maryland Declaration of Rights. Governor v. Exxon Corp., 279 Md. 410, 370 A.2d 1102 (1977).

The restrictions imposed by the divestiture provisions of this section on the manner in which oil companies may continue to use their property for retail service station purposes, i.e., using retail dealers instead of employees, does not amount to a "taking" of private property in violation of the federal or State Constitutions. Governor v. Exxon Corp., 279 Md. 410, 370 A.2d 1102 (1977).

The divestiture provisions of this section — subsections (b) and (c) — do not violate the commerce clause of the federal Constitution.

SEE NOTE ON REVERSE

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 4
DATE 3-5-87
BILL NO. SB 2

Tim Hamilton Lights a Fire in Washington State

EXPERIENCE HAS SHOWN THAT EVEN A MOUSE WILL FIGHT IF YOU PUSH IT HARD ENOUGH. SOME MAJOR OIL COMPANIES FOUND THIS OUT IN REMOTE WASHINGTON STATE WHEN THEY PUSHED THEIR PREDATORY MARKETING STRATEGIES A LITTLE TOO HARD . . . . AND ALMOST GOT SLAPPED WITH A STATE RETAIL DIVORCEMENT LAW AS A RESULT.

The tidal wave that came within one teetering vote of crashing in with an oil company retail divorcement law, started when Union, a leading marketer in Washington State, began putting the squeeze on its' dealers. One of those dealers was Tim Hamilton, who had spent most of his three years with Union trying to survive.

Tim called SSDA executive Vic Rasheed in Washington, DC, in early 1984 to seek help and to detail the extent of the oil companies' predatory marketing practices in Washington State. It sounded suspiciously like a wholesale plan to eliminate dealers from all worthwhile locations and to replace them with either direct company-ops or gasoline pumpers run by managers or commissioned agents; something that SSDA had predicted would be the marketing strategy of some companies.

Texaco allegedly cut its dealers in Tacoma from 35 to 3 in a three-month period. It converted most of these into C-store-car wash combinations with managers or commissioned agents, neither of whom have any rights under PMPA. The Texaco company-ops distinguished themselves by selling gas as much as five cents a gallon below dealer tank wagon prices and not charging the three percent credit card fee which lessee dealers had to pay. Out of sheer frustration, Tim Hamilton began making plans to enact legislation to restore fair competition to the retail market.

Washington State dealer Tim Hamilton, electrifies the convention with his fiery speech on his near-successful effort to win divorcement in Washington State.

Dealers Complain to Governor

In May of 1984, 139 Washington State dealers signed a letter written by Hamilton to Governor John Spellman, voicing their concerns about the major oil companies' takeover of the retail market. The governor, in reply, told them that they must document all the details of their charges and be prepared to support them. Hamilton then sent out a survey to the dealers in the state to determine the effect of supply or marketing practices and problems that dealers encountered, including threats of being forced out of business, unfair competition, excessive rent increases, etc. Over 250 dealers answered his questionaire.

Hamilton then formed a group called Citizens for Fair Retail Marketing Practices. In September and October of 1984, this group held six major meetings throughout the state with a total of 350 dealers participating. Hamilton had decided that his strategy would be to try to get 400 dealers lobbying their local legislators in support of the divorcement legislation. He figured that all the dealers had to do was point to some of the marketing practices in their local areas. The hardest hit area for dealer-terminations and conversions to company operation incidentally was the state capitol of Olympia itself.

Tim also went the extra mile and got his dealers to become involved in the 1984 election either with financial support for their candidates or active efforts in support of their campaigns. These efforts paid off when 62% of the candidates supported were successful in being elected.

Divorcement: "Civil War Between Dealers and Oil Companies"

When the bill was introduced at the beginning of the 1985 session, it quickly became the dominant piece of legislation in the session. The Gannett New Service wrote, "A civil war is being fought at the State Capitol and like the American Civil war, it involves the Blues and the Greys."

"In this case it is the blue shirts against the grey suits—the states' independent gas station dealer's against their bosses, the oil company executives. Led by an unlikely general, Union 76 dealer, Tim Hamilton of Olympia, the dealers have managed to out-flank and out-maneuver the better financed and more politically savvy oil industry."

"Although opposition seems to be mounting, the dealers are close to pulling off a political miracle—getting through the Legislature a bill requiring oil companies to give up ownership in all gas stations in the state by mid-1988."

(continued on page 28)

(continued from page 23)

Dealers claimed the oil companies were selling gas wholesale to them at a higher price then they were selling it at the pump in company-operated stations. They alleged that they were being charged exorbitant rents and financially squeezed dry by the companies, in order to drive them out of business. The bill they said meant nothing less than their survival. The oil companies of course, denied that they engaged in predatory pricing and all other charges. Also that the bill was, "protectionist legislation" promoted by dealers, "who can't make it in the marketplace".

Dealers Pack Stormy Hearings

The hearings, as expected, were almost a riot, reminiscent of the stormy passage of the Maryland Divorcement Law, 11 years earlier.

The animosity between the two sides came out when one Texaco representative told the committee hearing, "We love our dealers."

The comment met with guffaws and snickers from the assembled dealers.

At another hearing, Senator Lowell Peterson listened silently to Union Oil Company representatives testify. Then he said, "I used to work for that company, until I got screwed by that outfit." The remark brought the house down. He got a similar response later when he challenged Chevron's claims by noting that his brother was a Chevron dealer and knew that their claims were not true.

Paul Mann, who runs an Arco station in Seattle, said he made $8,400 net profit in 1984, while paying out $84,000 in rent to Arco. He made $243.00 the previous month, he said.

Big Oil . . . . All Horror Stories Have Logical Explanations

Vern Lindskog, the most prominent oil company lobbyist, said, "All of the horror stories have logical explanations".

As expected, the divorcement experience in Maryland became a major issue. John Umbeck of Perdue University presented his many-times-discredited study to try to show that prices had risen in Maryland, even though, SSDA's independent study has since shown conclusively that Maryland prices have *decreased* since divorcement, not *increased.*

Arthur Price, an official of the Maryland Gasoline Tax Division responsible for regulating service stations and a former Citgo official, put it bluntly. He said, "Umbeck's claims are untrue." He said more neutral studies showed just the opposite happened. Price pointed out that Umbeck was *paid by the oil industry.*

However, no one really came up with an answer as to why, for example, Gordon Mandt's Arco in Tacoma paid $107.9 a gallon for a tank load of Arco regular from Arco on January 31, when a company-owned, Arco car-wash 12 blocks away was retailing Arco regular the same day for $105.9 per gallon.

FTC Got Into the Act by Lobbying in State

Legislation generated dozens of newspapers clipping and editorials including an editorial in the *New York Times* "planted" by the Federal Trade Commission which put out its "study" which allegedly showed that divorcement does not protect consumers.

Most on target, however, were comments in the *Olympia Herald* which pointed out the monopolistic overtones of the oil companies marketing practices. They pointed out how company-ops price gasoline at or below the price charged to their dealers and that these dealers were bound by contract to buy only from that oil company.

"It doesn't take a financial wiz to see that these dealers cannot compete", it said. After getting over the initial shock of having the bill approved by the Senate (34-11) the oil companies began a new tactic.

Oil Company Lobbyists Disappear

Suddenly one day, Hamilton noticed that all of the oil company lobbyists had simply abandoned the State House and he was at a loss to explain it. He wondered what new strategy they may have devised, He found out soon enough when his bill, after being voted out of the House Trade and Economic Development Committee (18-6) had one final hurdle to overcome before an easy vote on the House floor.

The Rules Committee which decides which bills will be presented to the entire body and when, consisted of 10 Democrats and 7 Republicans. The seven Republicans were solid against the bill. So, nine of the ten Democrats had to support it for it to come to a floor vote. However, only six of the ten supported it.

A Fight to the Finish

Tim Hamilton did not take it lying down. He agitated and won an unprecedented right to address the Democratic House Caucus and debate top oil company lobbyist, Vern Lindskog behind closed doors. After the fireworks were over the Caucus took a secret ballot and voted to instruct the Democratic members of the Rules Committee to vote the bill out of Rules to the floor.

Two of the Democrats with close oil company ties, still refused to go along with the Caucus vote and the bill still lost by one vote. Then the time ran out. So, the bill which had erupted like a volcano on the state political scene, and with a solid floor count of 70 votes, with only 50 needed for passage, and with a willing Governor waiting to sign the bill . . . . still lost.

Even in losing, the bill did accomplish a great deal. The Senate passed a resolution establishing a complete study of the entire gasoline marketing situation in Washington State. This study group made up of eight members, has been given subpoena powers. Also a staff and an attorney to make a detailed study of the industry, subpoening industry records where necessay and able to recommend legislation for the protection of dealers from predatory practices by refiners no later than December 1, 1985. It has already invited dealers to testify at two regional hearings.

Hamilton is confident that they will recommend retail divorcement. Dealers wishing to contribute to this effort can make out checks to Citizens for Fair Retailing c/o AUTO, (Automotive United Trades Organization) P.O. Box 4739, Vancouver, WA 98662.

SENATE BUSINESS & INDUST..Y

EXHIBIT NO. 4

How Much Does An Oil Company Make On a Gallon of Gas? . . . Mobil Finally Lets It Slip Out

OIL COMPANIES CLAIM THEY DO NOT SUBSIDIZE THEIR RETAIL OPERATIONS EVEN WHEN THEY UNDERCUT THEIR OWN DEALERS' COST PRICE. THAT COULD ONLY BE TRUE IF THE DEALERS' COST PRICE HAS BEEN SET ARTIFICIALLY HIGH . . .

SSDA testimony before Congress.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 4
DATE 2-5-87
BILL NO. S.B. 239

Mobil Documents Shows Some Wholesale Profits Over 20 Cents Per Gallon

Oil companies have always refused to reveal their wholesale profits on a gallon of gasoline . . . recent testimony before a Washington State Senate Committee, may explain why.

In its work sheets used to compute its projected profits in supplying a Canoga Park, (near Los Angeles) location in August, 1981, Mobil calculated terminal, unit margins of: Super Premium, 20.48 cents/gallon; Regular, 13.68 cents/gallon; Unleaded, 16.90 cents/gallon, for a pool margin of 13.99 cents/gallon.

Its proposal included a 2 cents/gallon competitive allowance (to get the account) and a delivery cost of .97 cents/gallon; for net margins of Super-Premium, 17.51 cents/gallon, Regular, 10.71 cents/gallon and Unleaded, 13.93 cents/gallon. From these were deducted a billing expense of .15 cents/gallon and fixed expenses totalling 2.51 cents/gallon. These were .45 cents/gallon for accounting, 1.7 cents for credit card costs, and .36 cents wholesale receivable.

This, plus a .07 cents/gallon for painting the location and signage (at a cost of $3,700), gave Mobil an annual, before-tax, net profit of 11.26 cents/gallon for the account or $247,800 per year on a volume of 2.2 million gallons.

This estimate was based on the 1980 margins at Mobil's Vernon terminal near Los Angeles. The proposal to acquire this "profitable high volume account" included bi-weekly credit terms and a three-year contract with 90-day termination from buyer to seller.

At the time the location was branded Arco and had received an offer of a two cents per gallon competitive allowance from Shell, which also wanted the account.

The location at that time had its bays leased to Insta-Tune but was to be rebuilt by the owner as a mini-mart.

It was already a fully computerized "walk-up" self-serve but was to be completely remodelled. Its owners, R & S Oil Company, already owned three successful, similar operations.

Ben Smith of Chevron at Gulf-Chevron brand-meeting in Orlando.

Doug Campbell of Sohio/Gulf, speaks to a crowded brand-meeting.

SENATE BUSINESS & INDUST.
EXHIBIT NO. 4
DATE 2-5-87
BILL NO. S.B. 239

Senators Told: Pass Divorcement Or Kill Retail Competition

Witnesses told the Senate Judiciary Committee hearing on divorcement, (S.1140) that oil companies were using exclusive dual distribution through company-operations and inflated dealer-cost prices to control retail marketing and would destroy all retail competition unless they were banned from retailing.

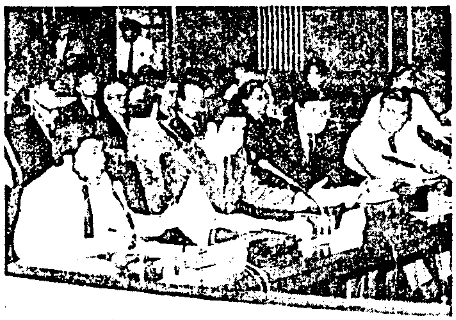
SSDA executive director, Vic Rasheed, said that the oil companies had already used their company-ops successfully to eliminate retail competition in neighboring Canada. There, he said, practically all retail pump prices are now set by the suppliers. Dealers, (even those who own their locations) have been forced to become commissioned agents because they cannot compete with company-operations which have retailed as much as 50 cents per gallon below the inflated dealer tank wagon prices. Similar attempts to eliminate dealers and convert some of them to commission agents and managers, have been made in the U.S. using the same tactics.

He said, "any industry which charges more for its product at wholesale than it does at retail, does not have lower prices for consumers as its long-range goal."

Rasheed said that the drastic restructuring of the oil industry which has included some of the largest mergers in history, market withdrawals, buyouts of competing independent refineries and marketers, has given the top four oil companies control of over 80% of marketing in West Virginia, Delaware, Vermont and Ohio, and 55–64% of volume in four other states. The remaining, enlarged oil companies now had unprecedented power to control retail marketing.

He said only the outbreak of war in 1940 prevented a determined legal effort by the Federal Trade Commission to implement retail divorcement, from succeeding. In contrast, the current FTC refuses to acknowledge that price discrimination exists and claims existing antitrust laws are adequate to protect dealers. At the same time, the current Justice Department has issued new antitrust guidelines which would strip dealers of any protection under existing antitrust laws.

Bogosian case attorney, David Berger testifies while Professor John Umbeck, center, and Maryland official Arthur Price wait their turn.



Dealer group has their turn.

Former New Orleans Exxon dealer, Stan Patrick, told how he had been forced out of his station by the company-ops, then watched Exxon set his pump prices below his cost, even before he had left the premises, as it began operating it.

Patrick gave statistics which showed there are 111 company-ops in New Orleans now selling 65% of the total retail volume. Texaco had 29 company-ops and 21 dealers with the company-ops selling 70% of total volume. Gulf; 38 company-ops, 23 dealers and 70% volume for the company-ops. Exxon; 30 company-ops, 30 dealers and 65% of sales through company-ops. Shell; 15 company-ops, 58 dealers and 30% volume through company-ops.

Maryland assistant comptroller, Arthur Price, confronted Professor John Umbeck, (the oil companies' star witness, next to the FTC and Justice Department) and disputed his contention that a dealer's margin of profit had nothing to do with pump prices. Price said the dealers' margins were the only true comparison of retail prices.

Umbeck, in response to a question by Senator Metzenbaum as to why Maryland prices were lower, denied that this had anything to do with divorcement. When confronted with an earlier statement by Arco VP, J.D. Kowal, (his employer) that discredited any price study done during price controls (as Umbeck's was), Umbeck replied, "Mr. Kowal is not an economist."

Umbeck spent most of his time attacking the SSDA price survey, (the first done since decontrol) which conclusively demonstrated that three of the lowest adjusted prices in the country were in four divorcement states, with Maryland the lowest. The consensus was that between Arthur Price and the SSDA survey, Umbeck was thoroughly discredited.

California Court to Hear the Case of the Missing Texaco Signs

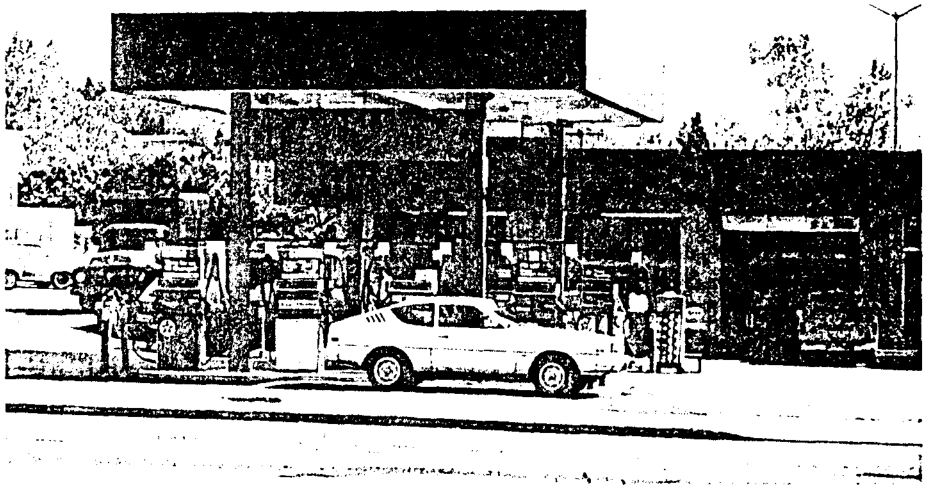
TEXACO DEALER GEORGE PERRY CHALLENGES "UNFAIR" COMPETITION FROM TEXACO COMPANY-OP.

George Perry was happy when Texaco decided to renovate his station in Vallejo, California until his Texaco signs disappeared for six months, during which time a neighboring Texaco company-op station complete with signs, opened nearby.

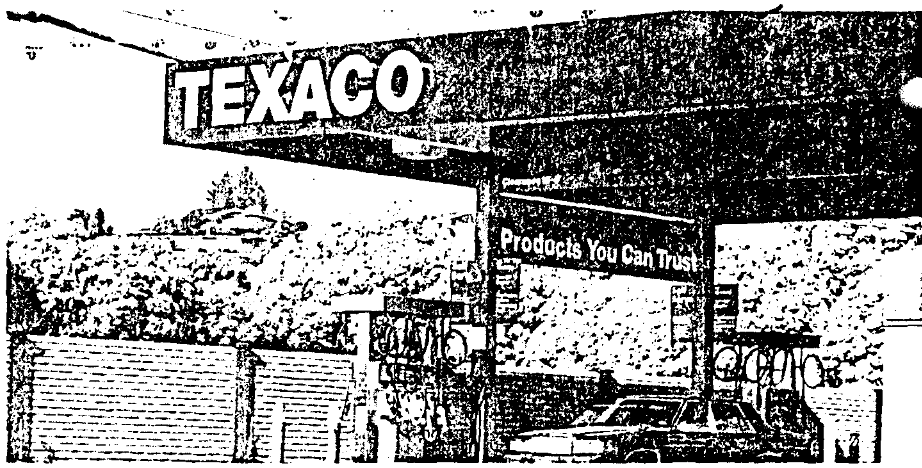
Shortly after signing his new lease and motor fuel supply contract with Texaco, Perry who owns his location, was advised that Texaco intended to open a company owned and operated service station within a half mile of his station. He was told that Texaco would do nothing to interfere with or damage his business.

George Perry became skeptical of that commitment shortly thereafter when Texaco removed his business identification and trademark signs allegedly in the process of renovating his station. What bothered him was that for six months, the signs were not returned and Texaco told him that they couldn't get them manufactured or installed any sooner. **But during that same period, Texaco opened up its competing company-op which was fully identified with new signs** and caused Perry's customers to believe that he was out of business. It got so bad that Perry said, "Some of my customers started taking bets on whether my station was really a Texaco station."

In a suit filed in the Superior Court of California last June, attorneys Peter Spinetta and Kim Bollinger alleged that Texaco had made false statements to Perry with the intent to deceive him and induce him to renew and enter into a three-year lease and supply contract with Texaco, and with the intent to deprive him of his signs and business identification, while they opened their own, fully identified, company-operation nearby.



George Perry's bare station which went without signage for six months. Texaco told Perry it couldn't replace the signs any faster, but it did manage to build and open the company-operated station (with signs) during that time.



The company-operated station in Vallejo which opened just ten blocks from dealer George Perry.

Co-Op Sold Below DTW . . . .

That was bad enough, but when the company operation opened, it bagan selling gasoline at retail, cheaper than Perry could buy it at wholesale. For example, on April 11, the company-op was selling self-serve regular for $1.08.9 cents per gallon. Perry's wholesale cost plus tax was $1.12.6 cents per gallon, which meant he began with a 3.7 cent per gallon higher price if he were to compete with the company-op.

Also he found that while the company-operated station was charging "the same low price" for cash or credit, he had to pay a three percent credit card processing fee on all gasoline sold to credit card customers. What really made it hard for George Perry to compete though was the fact that the Texaco company-op was offering a free car wash to any motorist who was inclined to buy eight or more gallons. That buried him just a little bit deeper.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 4

DATE 2-5-87

SB 139

A Question Of Image . . .

OIL COMPANIES NEED THEIR DEALERS TO HELP CONVINCE AMERICAN MOTORISTS THAT THE IMAGE OF "BIG BAD OIL" IS FADING.

The story goes that an oil company rep, a priest and a dealer were adrift in a boat when it neared an island surrounded by sharks. The three drew lots to decide who must brave the sharks to reach the island. The company-rep lost. While the priest prayed, the rep dived in and swam right through the sharks who opened up a neat pathway for him.

"It's a miracle", gasped the priest.

"That", said the unimpressed dealer, "is just professional courtesy."

Oil companies have been tagged with the image of "big bad oil" for years. The odds are that it will get even worse as their numbers decrease and control of our energy industry rests with a few, larger and more powerful oil companies. Oil companies, however, don't seem to care much about image.

Currently there is a smouldering question in the public mind. "Why in recent months have wholesale gasoline prices been four cents per gallon higher than a year ago, when the recent price of crude oil was two dollars per barrel less? According to traditional calculations, that should mean a price today of 4–5 cents per gallon less than in 1984, not 4–5 cents per gallon more!

Oil companies simply say that market competition set prices. Others say that the mega-mergers, market-withdrawals and restructuring of the industry of the industry have given them monoply powers to set refinery gasoline prices. Consumers and columnists complain, various congressional committees are contemplating holding hearings on pricing, cartoonists and comic strips make satirical jokes . . . but the rumblings grow . . . and oil companies ignore them.

Oil Companies' Knack for Bad Publicity

Meanwhile, oil companies continue their uncontroverted knack of garnering headlines for some of their more innovative marketing practices. The public loves them. A famous one in California accused Arco of, "chasing widows through the cemetery" when it sought to evict a widow from a station before the burial of her late dealer-husband.

Then there is a current case where dealer, George Perry, who after a signing a supply agreement with Texaco, had his Texaco signs removed for six months while a new company-op was built three blocks away. Arco was recently ordered to pay a $4.2 million judgement for fraud against a dealer whom it had convinced to convert to a C-store. Exxon is on the hook for $1.5 million for fraud against a South Carolina dealer who was persuaded to lease a station facility, found later to be defective. Mobil lost a $900,000 decision in the U.S. Supreme Court.

Shell lost a $5.15 million decision to a dealer after a 12-day trial on charges of bad faith and restraint of trade, following his attempts to sell his station. A juror said he counted 75 occasions during two hours of questioning, where the territory manager involved claimed, "I do not recall." The jurors who slapped Texaco with a staggering $11.1 billion judgement, (earning interest at $2,083 per minute) as the aftermath of its purchase of Getty, left no doubt what they thought of Texaco's business methods.

Any U.S. oil company that protects the image it projects to the American public and its representatives in Congress, is showing a good sense of values.

What is it worth to avoid new, restrictive legislation such as the Maryland divorcement law?

Companies Allow Minions to Ruin Image

Why do some of the world's largest corporations controlling billions of dollars in assets, allow a lower-level, hot-shot, unscrupulous sales rep, trying to build a record for promotion, sully the proud name of a great company like Exxon, Texaco or Mobil etc. Isn't it time that someone took the bull by the horns and said, "We don't need that."?

Service station dealers still have a loyalty to their suppliers, even though many have been disillusioned by efforts to treat them as numbers instead of names. They would have a lot more if they were treated fairly in the marketplace.

Dealers are the oil-companies' ambassadors to the motoring public-at-large. Today they are a newer, more efficient breed than those of a generation ago. Treating them as responsible business partners would be an investment that could be returned many-fold. Their opinion of their suppliers could be the key to either perpetuating or erasing the public image of "big bad oil." (The total of the awards listed above, could also pay for a top-flight public relations campaign.)

Some oil companies have already reaped a good return by adopting a new flexibility with their dealers. Sohio used this successfully with their new dealers in the southeast, where they took over 5,000 former Gulf stations. Sohio responded several times to SSDA objections to their new lease with top-level meetings to solve the problems raised. Hundreds of leases already sent out were amended accordingly. Other companies might find that it is the way to avoid costly, constant confrontations with their dealers. One thing for sure . . . there is a better way . . . and it can prove more profitable for both, companies and dealers. The successful, ongoing joint-industry effort on environmental issues including underground tanks, waste oil and vapor recovery, may point the way.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 4
DATE 2-5-87

NAME: John D. Taggart DATE: 2-5-87

ADDRESS: 611 S 14th Av.

PHONE: 586-9747

REPRESENTING WHOM? A. T. O. M.

APPEARING ON WHICH PROPOSAL: SENATE Bill 239

DO YOU: SUPPORT? X AMEND? ______ OPPOSE? ______

COMMENTS: I would like to testify
[illegible] WRITTEN
TESTIMONY and EXHIBITS.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Mr. Chairman;

Members of the Committe;

My name is John Taggart. My wife and I and my family own and operate a Conoco Service Station in the Bozeman area.

We are here toady as proponents of Senate Bill 239.

As we meet here today in behalf of this Retail Divorcement Bill, Service Station Dealers in Nevada are in Carson City, and Service Station Dealers in Washington state are in Olympia speaking on behalf of their divorcement bills. This is happening because we all have the Maryland experience to look forward to. As you know, Maryland has had a retail divorcement bill since 1974. Their experience has been more stability, more competition, and lowest prices in the country.

There will also be a national divorcement bill brought before the 100th Assembly of Congress of the United States this year. With regard to this issue, the Senate Judiciary Committe has issued a report which rebuts Oil Company claims that divorcement is anit-consumer. It also rebuts Oil Company claims that existing law is adequate to protect dealers, it also rebuts OIl Company claims that there is no evidence of predatory pricing.

I would also like to point out, that because of his feelings that the welfare of the motoring public is in jeapordy, due to the severe loss of service stations in Montana, Senator Max Baucus has contacted Vic Rasheed, the Executive Director of Service Station Dealers of America in Washington D.C., to find out what it might take to develop

SENATE BUSINESS &
EXHIBIT NO. 5
DATE 2-5-8
BILL NO. S 8

and pass a Montana Divorcemant Bill similar to Maryland's ----------------------This is that Bill!!!!!!!!!!

We ask you to remember that the Maryland bill which is the basis for ours, went all the way to the United States Supreme Court and was upheld there!!

Our group represents 1300 Service Station Dealers, their families, and their employees. They pay unemployment compensation, workmans compemsation, they pay state and federal taxes, they collect the gasoline taxes, and they provide a tax base for their communities.

We need this legislation to insure that there will always be independently owned and operated service stations on the main streets of every town in this state. We provide the care and service to the motoring public, and we will provide the competitive prices for gasoline of you will give us the tools to do it!

Predatory pricing in Montana-- Bill Wolf, Miles City, Montana.

Violation of P.M.P.A.---Darrell Kobelt, Billings, Montana.

Viloation of P.M.P.A.--- Walt Boggenela, Rocker, Montana.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 5
DATE 2-5-87
BILL NO. SB 239

MAX BAUCUS
MONTANA

WASHINGTON, DC
(202) 224-2651

MONTANA TOLL FREE NUMBER
1-800-332-6106

United States Senate

WASHINGTON, DC 20510

July 7, 1986

Mr. John Taggart
8192 Huffine Lane
Bozeman, Montana 59715

Dear Mr. Taggart:

Thank you for expressing your support for H.R. 3824, the Motor Fuel Sales Competition Improvement Act. I appreciate your taking the time to share your thoughts.

This legislation is pending in the House Judiciary and Small Business Committees. I will watch this measure closely as it moves through the legislative process and will keep your views firmly in mind when it comes before the Senate for a vote.

The information you have passed along will be very useful to me. Be assured that I will seriously consider your views, and if you have any additional comments, please do not hesitate to contact me.

Again, thanks for sharing your views.

With best personal regards, I am

Sincerely yours,

Max Baucus

SENATE BUSINESS & INDUST
EXHIBIT NO. 5
DATE 2-5-87
BILL NO. S.B. 239

NAME: Dick Skewis DATE: 2.5.87

ADDRESS: 2404 Green Valley Blvd Mont

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 6
DATE 2/5/87
BILL NO. SB 239

PHONE: 656 7293

REPRESENTING WHOM? ATOM

APPEARING ON WHICH PROPOSAL: #239

DO YOU: SUPPORT? X AMEND? ______ OPPOSE? ______

COMMENTS: See Attached Exhibits & Written Testimony

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 6
DATE 2-5-87
BILL NO. S.B. 239

Richard J. Skewis
Dick's 24th St. Conoco
Billings, MT 59102

Dear Sirs:

We are losing one of the most important small businesses in Montana, and for that matter, the nation, to companies that will not perform the same services that those in place now do.

That business is the Service Station. Let me tell you what a Service Station is since I have been around one for over 20 years now. It is as it's name implies a station to get service. Primarily it was for selling gas, oil, and tire repairs, also some minor maintenance was performed. Usually an individual either owned or leased the facility from a major oil refiner. They were placed normally in neighborhoods to be convenient, then at every intersection to be competitive. As competition grew so did the services offered at Service Stations. These included tune-ups, brake work, air cond. service, car washes, front end align, towing & road service, road maps, restrooms, free air hose, free water, advice, usually free but not always good, longer hours of operation, and all kinds of givaways.

Most dealers made a good living, but some dealers were not as lucky or did not have the training in management or business sense and went out of business. But some dealers gave the industry nothing but trouble, through overpricing and unethical business practices. Even though the majority of us are providing essential, reasonably priced services, we have to continually fight the stigma attached from a minority few.

But still we survived and the consumer was taken care of. He or she could come in when the weather was terrible and someone would go out in the rain or in the cold and take care of his or her needs. We would be there to fill a childs bike tire with air, we would be available to bring a can of gas, change a flat , or a number of other services.

But it appears that we are no longer going to be able to continue with the same levels of service because of certain marketing practices allowed by large companies in the state of Montana.

What I am refering to is letting an oil company with locations statewide dictate market pricing.

These companies will lower the price in one city to unreasonably low prices(sometimes below my cost) and then market normally in the other cities to maintain a profit level overall.

These companies are also either refiners of crude oil or deal in buying and selling crude. With that much involvement they can readily afford to control the market at their will.

It is said the consumer benifits from competition, but in this instance it is not all of the driving public, but only those in markets manipulated by those companies.

When a small dealer such as myself has to try and compete honestly it is an impossible task, my customers see this price difference and say "I have to save money wherever I can."

This marketer then gets my gas customer in Billings by charging more for his gas in Bozeman, Livingston, Hardin, etc. etc. This has been an ongoing problem for years and it just seems that no one cares.

I employ 5 to 6 people at my service station which represents an average station in Billings. The other companies employ half that.

Also, have you ever wondered what effect the sale of beer and wine at gasoline outlets has had on the problem of drunk driving and accidents in Montana.

I understand that beer and wine sales make up a very important part of sales in those types of businesses. Also do you suppose that they might be selling gas so cheaply to get people in to sell more beer and wine. Why do they advertise ice cold beer or chilled wine if you can't drink in a vehicle. Why does a company need a beer and wine license before they will even consider building a convenience store.

I think a solution to this dilema would be easily achieved by first permitting all gasoline purchasers equal buying price opportunity, also if a company makes or deals in crude oil they should not be allowed to market gasoline through retail outlets. Also if a multi-city/state outlet lowers it's price in any one city they should lower by the same percentage at all of their outlets.

I will compete fairly and honestly with anyone on like products and situations, but how do you compete on such vast resourse differences.

If you were invited to a gun fight would you like to show up with a single-action .44 and your opponent in a tank. Wouldn't be much of a fight.

Sincerely,

Dick Skewis

SSDA SERVICE STATION DEALERS OF AMERICA

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 6
DATE 2-5-87
BILL NO. S.B. 239

ACTION GRAM

EXECUTIVE OFFICES • 304 PENNSYLVANIA AVENUE, S.E. • WASHINGTON, DC 20003 • 202/546-6353

Bulletin No. 14 July 18, 1986

DEALERS WIN BIG IN BARNES v. GULF

Service station dealers received a tremendous shot in the arm when the Fourth Circuit Court of Appeals in Richmond, Va., ruled unanimously that Gulf violated PMPA when it sold dealer Evelyn Barnes' station to a jobber without first offering it to her.

This decision tracks a similar ruling in Felts v. Amoco last March in St. Louis. SSDA was represented in both cases by staff attorney Jim Daskal who filed influential briefs and appeared in both cases.

In the Barnes case, the Fourth Circuit explicitly disagreed with the decision handed down in Aldridge v. Amoco, (Iowa) and McGee v. Gulf, (Ala.) which allowed the oil companies to circumvent the dealers' right to purchase their stations.

IMPORTANCE OF THE BARNES DECISION

The Federal court expressly recognized the concept of "constructive termination" under PMPA in the Barnes case. Prior to Felts and Barnes, Federal courts had waffled on the issue of whether PMPA applied to "constructive termination." "Constructive termination" refers to franchisor practices that have the effect of economically evicting dealers.

This decision will make it possible to attack constructive termination under PMPA. Practices such as excessive rent increases that have the effect of depriving the dealer of the benefit of his lease, may now be attacked under PMPA.

The decision also helps plug assignment and sale loopholes. PMPA provides that if a franchisor wants to sell a station, it must first make a bona fide offer to purchase the station to the dealer. Some oil companies have tried to get around PMPA by assigning a dealer's station to a jobber or other third party, and then selling the station to that jobber or other third party. The oil company then claims that the dealer's franchise was never termination; therefore he never had the right to purchase the property.

The Fourth Circuit closed this loophole by holding that the assignment by the franchisor did indeed constitute a constructive termination under PMPA. The Court further held that even an assignment to a third party which was valid under state law, would be a constructive termination if the effect of allowing the assignment would be a circumvention of the substantive provisions of PMPA.

DIVORCEMENT HEARING SHOWS SUPPORT FOR S.1140

A packed committee mark-up on S.1140 appeared to be ready to give quick approval with as many as 11 of the 18 committee members supporting the bill, until Sen. Paul Simon, (D-Ill.) dropped an unexpected bombshell with an amendment to drop the important "open supply" provision of the bill.

During the ensuing debate, the committee lost its quorum and the bill and the amendment will come up again for a vote on Thursday, July 24.

The open supply section of the bill is extremely important to us and would put into law the terms agreed to by the refiners in the Bogosian settlements. We are trying to persuade Sen. Simon who has been heavily lobbied by refiners, to withdraw his amendment. However, we must also be prepared to fight the amendment in committee by preparing our supporters to oppose it.

This means that all committee members must hear from their constituents immediately by wire or telephone. States with members on the committee are urged to begin a phone-bank to dealers to call or wire their members at once in support of open supply. Please refer to the enclosed briefing paper for arguments.

TESTIMONY

BY

JAMES R. BUTLER
REGIONAL MANAGER, PUBLIC AFFAIRS
ASHLAND OIL, INC.

S.B. 239
Montana Senate

February 5, 1987

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 7
DATE 2/5/87
BILL NO. SB239

Good morning. My name is James R. Butler. I am Regional Manager of Public Affairs for Ashland Oil, Inc. I am here to testify in opposition to S.B. 239, a bill that would force the shutdown of 16 convenience stores operated by Ashland in Montana.

My company operates these combination gasoline/grocery stores under the SuperAmerica brand in Billings (3), Bozeman, Helena, Havre, Great Falls (2), Glendive, Glasgow, Kalispell, Livingston, Miles City, and Missoula (3). These stores employ 213 residents of the State of Montana. Included in this employee total is a management group, responsible for SuperAmerica stores in parts of Iowa, South Dakota, and Wyoming, as well as Montana. If S.B. 239 is enacted, all store employees would, by law, lose their jobs, many of whom have fifteen to twenty years' service. Efforts would be made to relocate these workers, but few would want to relocate. With the job loss would also go a valuable benefit plan that would be hard to replace.

SuperAmerica is not a newcomer to Montana. Most of our stores date back to the late 1960's when we saw a market for our unique marketing approach that ties gasoline sales with other frequently-purchased items such as milk, bread, and cigarettes. More recently, many others have entered this market, but Super-America remains an industry leader with over 400 stores in 17 states.

Proponents of divorcement legislation argue that marketers such as SuperAmerica compete unfairly because its parent company also operates oil refineries. In fact, that is not the case. SuperAmerica, like every Ashland division, must stand alone, as a profit center, paying the established wholesale price for any products purchased from the company's refining division. In Montana, even that link does not exist, since 100% of gasoline sold here is purchased from other companies at wholesale rack prices. SuperAmerica pays the same price as any other distributor or jobber in the state.

A question frequently asked when divorcement legislation is proposed is: "Why does your company choose to operate direct, with company employees, rather than jobbers or dealers like most larger companies?" The answer is we do what we do best. We have not been successful in oil exploration and production like our competition. Therefore, to survive, Ashland has had to become the most efficient refiner and marketer in the industry. In marketing we find direct operation is the only way we can maintain the quality necessary to compete with other companies in the business.

Incidentally, as a refiner, we do purchase crude oil from Montana producers. Currently we purchase about 1,100 barrels per day in Roosevelt and Sheridan Counties. The ability of our company to provide competition in crude oil purchasing would be impeded if S.B. 239 were to become law.

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I believe if you check with consumers throughout the state you will find that SuperAmerica has provided them with quality products at fair prices. We have done nothing to justify what would in effect be the "death penalty" for our company in Montana. I urge you to say "no" to those who seek to limit competition for their own financial gain.

Instead, say "yes" to SuperAmerica's 213 Montana employees who seek only to retain their jobs in Montana. They say, "The gasoline marketing system in Montana is not broken, so don't fix it."

IMPACT

A SERVICE OF THE CONSUMER AFFAIRS COMMITTEE

Mr. John Augustine

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 8
DATE 2/5/87
BILL NO. SB 239

CONSUMER IMPACT STATEMENT: RETAIL GASOLINE DIVORCEMENT LEGISLATION

WHAT'S AT ISSUE

Should state legislatures or the U.S. Congress enact legislation which prohibits gasoline refiners from selling directly to consumers through retail outlets (service stations) operated by their own employees? Who supports this legislation, who opposes it, and who would benefit if it is passed? What has been the consumer impact in those states where divorcement is law?

LEGISLATION VS. COMPETITION

The gasoline retail market in the U.S. is undergoing one of the most complex and painful periods of readjustment which has ever been faced by any American industry. All participants in this market—dealers, jobbers, oil companies, private brand marketers, and consumers—are reacting to changes brought about by the return to a vigorously competitive, free marketplace. According to a draft report by the Office of Competition of the U.S. Department of Energy, "For many competitors, these changes have brought severe dislocations. For the competitive process, these changes have brought welcome fresh air to the stagnating environment created by controls. For consumers, these changes brought substantial innovations and lower prices."

For many whose competitive position has not prospered after decontrol, legislative protection appears to be the desirable remedy. They maintain that it is necessary to protect dealers of major integrated oil companies from unfair and anticompetitive practices directed at them by their suppliers. They argue that it is unfair for refiners to operate retail gasoline outlets in competition with their gasoline dealers because the refiners "subsidize" their retail operations by providing gasoline to their own outlets at a price below that charged to independent dealers.

Legislation aimed at protecting dealers from alleged unfair competition from refiner/suppliers (and sometimes jobber/suppliers) continues to be introduced at the state level. One such legislative proposal is called retail gasoline divorcement.

WHAT IS PROPOSED IN RETAIL DIVORCEMENT BILLS?

While there have been many variations on the theme, retail gasoline divorcement proposals usually prohibit companies which refine petroleum products from marketing directly to consumers through outlets operated by their own employees or by contract management. The bills may also force the conversion or sale of existing refiner-operated stations in a state to dealer or franchise operations, as well as prohibit any future construction of such outlets. Other versions of the legislation may restrict a refiner to operating a specific percentage of its outlets directly.

American Petroleum Institute
1220 L Street, Northwest
Washington, D.C. 20005

BACKGROUND

Refiners directly supply two types of dealers — lessee dealers and contract dealers. Lessee dealers have a supply contract, and also lease the outlet from the supplier. Contract dealers usually own their outlet (or lease from a non-oil or third party), obtain products under a supply contract, and are more frequently found in rural areas.

Refiners also operate some of their retail outlets directly. For the major refiners, who depend on dealers or jobbers for the vast majority of the retail distribution of their products, company-operated stations provide an opportunity for testing new products and services, training new dealers, introducing new brands into new market areas, and keeping stations open in periods of transition. For some small refiners, direct marketing may be the only economically feasible method of gaining and holding market share against larger and better-known competitors.

Dealers may also purchase gasoline from jobbers (distributors or wholesalers) for resale to consumers. In addition to supplying dealers, many jobbers also own retail outlets or chains of service stations which they may operate themselves or lease to dealers. Both refiners and jobbers also supply product to independent chain marketers who traditionally operate high volume/self-serve retail outlets themselves. The stations which sell products under the trademark of the major oil companies are referred to as "branded" outlets. Stations which purchase gasoline in the open market from a variety of suppliers are sometimes referred to as "unbranded" or "private brand" stations.

WHO SUPPORTS SUCH LEGISLATION?

Dealer trade associations have advocated marketing divorcement legislation since the late 1940's. However, a more recent development is the support for such legislation by some jobbers who have seen dramatic drops in profitability as competitive market pressures have necessitated stronger cost-efficiency measures by suppliers. From the late 1940's to the end of the 1960's, governmental action on divorcement was limited.

However, in the emotionally charged atmosphere surrounding the Arab Embargo—and the public suspicion about oil companies in general—complaints by some dealers and independent jobbers that integrated oil refiners were using "company-operated" gasoline stations to engage in unfair competition had greater credibility with legislators.

Proponents of retail divorcement argue that:

- Company operations result in predatory pricing, which is unfair competition and threatens the destruction of small businesses.
- Conversion to direct company operations will result in reduced service to motorists and, in the long term, higher prices.
- Integrated companies are able to subsidize downstream (marketing) operations with upstream (exploration and production) profits and use these monies to price below dealer cost at company operated stations.

WHO OPPOSES THIS LEGISLATION?

Most petroleum refiner/suppliers, the American Petroleum Institute, the Petroleum Marketers Association of America, the Society of Independent Gasoline Marketers of America, the Office of Competition of the U.S. Department of Energy, the Bureaus of Competition, Consumer Protection, and Economics of the Federal Trade Commission, the U.S. Department of Justice, and the National Alliance for Senior Citizens—among others—oppose divorcement legislation. The governor of Georgia vetoed legislation of this type.

> "The Commission staff disagrees with the contention that gasoline marketing divorcement is necessary to protect against refiner abuses.... These bills are protectionist measures, designed to provide guaranteed profit margins for dealers as a buffer against the rigors of the free market."
>
> *Comments of the Bureaus of Competition, Consumer Protection, and Economics of the Federal Trade Commission; State of Washington, 49th Legislature, 1985 Regular Session.*

"It [divorcement] is selfish interest legislation which interferes with the free market system of supplying the needs of consumers at market rates due to competitive pricing... independent gasoline station dealers [want] to use governments to gain a competitive

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DATE 2-5-87 S.B. 239

edge they failed ~~to win in fair open market~~ competition .... Right now, any retailer who wishes to compete with another can do so. The more competitors, the more opportunity for success and the better deal for the consumer .... Tampering with this system which works so well for all of us so that a few might enrich themselves is simply not good lawmaking.

National Alliance of Senior Citizens, Inc.
C. C. Clinkscales, III, National Director,
Presentation before South Carolina House of Representatives; May 1985.

"There is no question in my mind that divorcement is not consumer protection legislation. To represent it to be protective of the consuming public would be an unjustified hoax."

Charles J. Irwin, Consumer Advocate,
Former Director of the New Jersey Division of Consumer Affairs.

WOULD DIVORCEMENT AFFECT MOTORING CONSUMERS?

…ice 1974, more than 40 states have considered divorcement legislation. Currently, just four states and the District of Columbia have some form of divorcement law: Maryland, Connecticut, Delaware, and Virginia. Florida repealed its divorcement law in 1985.

The Maryland statute (passed in 1974 but not implemented until July 1, 1979) is the original and best known of all the existing laws. It has also had the greatest impact on the structure of the gasoline market in terms of the number of refiner-operated stations which were divorced. There were seven petroleum companies—with a total of 170 direct-operated stations—that had to alter operations because of the legislation. Some of these stations were leased to dealers; some were closed or sold for non-petroleum uses. Consequently, the Maryland experience has been the focus for most of the research on the impact of refiner divorcement on retailers and retail prices.

Economic theory suggests that the elimination of a whole class of competitors from a retail market will tend to increase the level of prices in the market. A comprehensive study of the effect on prices of the Maryland statute has concluded that this result has indeed been observed in that state.

Researchers from Purdue University estimated that retail divorcement had cost Maryland consumers over $15 million per year in higher gasoline prices. This study was based on detailed price histories for about 600 retail outlets in Maryland covering the time period January 1977 through January 1982. The stations in the study included 85 percent of stations divorced, together with over 400 stations which competed directly against those stations.

After divorcement, the newly franchised stations (formerly company-operated) raised their prices on average 3.08 cents per gallon on self-serve and 6.26 cents per gallon on full-serve. During the same period, the local competitor stations increased their prices an average of .86 cents per gallon on self-serve and 3.14 cents per gallon on full-serve. In addition, 11 percent of the stations required to be divorced closed after the legal deadline of July, 1979. About half of these were still closed at the end of 1982.

The Purdue study also revealed that the stations which were divorced in Maryland significantly reduced the number of hours of operation each week when they were taken over by their new owners or operators. This reduction in hours amounted, on average, to about 8 hours per week. ("The Effects of Different Contractual Arrangements: The Case of Retail Gasoline Markets," John M. Barron and John R. Umbeck, Purdue University, Journal of Law & Economics, Vol. XXVII, October, 1984).

Intense and sometimes heated, service station competition is not only fair, but healthy. Consumers are NOT complaining about prices being too low, and they are NOT complaining about having too much competition or freedom of choice. The concern of legislatures and elected officials should be the protection of COMPETITION not the protection of a class of competitors seeking to insulate their businesses from the realities of the current competitive environment.

The investment required to purchase a prime service station location and construct a new facility can run as high as a million dollars. It is unlikely that prudent investors will build new service stations where they may later be denied the option of determining who operates the station. New investments in service stations are beneficial to the economy and provide the opportunity for additional employment to staff the stations being built.

The elimination of refiner operated stations produces another unfortunate impact. These facilities are operated by salaried employees. Many of these employees would face unemployment, or would lose their seniority benefits, if refiner operated facilities are legislated out of business. Even if an independent dealer should take over the divorced facility, there is no guarantee that the employees would be retained.

WHO WOULD BENEFIT FROM DIVORCEMENT LEGISLATION?

While divorcement legislation may protect lessee dealers from retail competition from refiners, this protection is likely to be short-lived. Dealers would continue to be subject to new competitive pressures, and other independent marketers—rather than refiner/suppliers—may introduce more efficient marketing methods and lower prices from which protection is sought. In fact, after divorcement in Connecticut, wholesalers began to increase their share of gasoline sales. This led to efforts to extend divorcement legislation to include these wholesalers, as well. These efforts failed.

In a marketplace where the less efficient are protected from the forces of normal competition, all participants in that marketplace ultimately suffer. Thus, while it is difficult to determine how long lived a dealer's benefit would be from divorcement, it is clear that consumers would bear the ultimate burden. And not just in higher retail prices alone—marketplace innovation, convenience and consumer choice would also be casualties of such ill-conceived legislation.

The draft study, "Deregulated Gasoline Marketing—Consequences for Competition, Competitors and Consumers," published by the U.S. Department of Energy in March, 1984 succinctly states the case:

> "The many legislative proposals [to regulate gasoline marketing] now circulating at both the federal and state levels are unwarranted efforts to block or undo the effects of ... market forces. At best, they are useless. At worst they are expensive counterproductive efforts to deny consumers the benefits of increased competition and efficiency. Ultimately, these legislative proposals hurt the very businessmen they ostensibly are intended to help, while they harm the competitive process, competitors, and consumers."

Compared to regulated systems, the free market system is enormously superior. It is more productive, more efficient, and more effective in providing the goods and services consumers need at the lowest possible prices. Accordingly, gasoline retail divorcement legislative proposals should be rejected.

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DATE 2-5-87
BILL NO. S.B. 239

MARYLAND DIVORCEMENT

§ 157E. Declaration or statement by wholesalers, refiners, manufacturers, jobbers and dealers; operation of service station by producer or refiner or management firm; uniform treatment of retail dealers.

(a) For the purpose of this law all gasoline and special fuels sold or offered or exposed for sale shall be subject to inspection and analysis as hereinafter provided. All motor fuel wholesalers, diesel fuel sellers, heating oil distributors, manufacturers, refiners, jobbers and retail service station dealer before selling or offering for sale any gasoline; other motor vehicle fuels, or special fuels under whatever name designated for power and heating purposes shall file with the Comptroller of the Treasury a declaration or statement that they desire to sell such products in this State and shall furnish the name, brand or trademark of the products which they desire to sell together with the name and address of the supplier thereof and that all such products are in conformity with the specifications established by the Comptroller of the Treasury, as purchased from the supplier and he will make no alteration to any such product received from the supplier.

(b) After July 1, 1974, no producer or refiner of petroleum products shall open a major brand, secondary brand or unbranded retail service station in the State of Maryland, and operate it with company personnel, a subsidiary company, commissioned agent, or under a contract with any person, firm, or corporation, managing a service station on a fee arrangement with the producer or refiner. The station must be operated by a retail service station dealer.

(c) After July 1, 1975, no producer or refiner of petroleum products shall operate a major brand, secondary brand, or unbranded retail service station in the State of Maryland, with company personnel, a subsidiary company, commissioned agent, or under a contract with any person, firm, or corporation managing a service station on a fee arrangement with the producer or refiner. The station must be operated by a retail service station dealer.

(d) Every producer, refiner, or wholesaler of petroleum products supplying gasoline and special fuels to retail service station dealers shall extend all voluntary allowances uniformly to all retail service station dealers supplied.

(e) Every producer, refiner, or wholesaler of petroleum products supplying gasoline and special fuels to retail service station dealers shall apply all equipment rentals uniformly to all retail service station dealers supplied.

(f) Every producer, refiner or wholesaler of petroleum products shall apportion uniformly all gasoline and special fuels to all retail service station dealers during periods of shortages on an equitable basis, and shall not discriminate among the dealers in their allotments.

(g) The Comptroller may adopt rules or regulations defining the circumstances in which a producer or refiner temporarily may operate a previously dealer-operated station.

(h) The Comptroller may permit reasonable exceptions to the divestiture dates specified by this section after considering all of the relevant facts and reaching reasonable conclusions based upon those facts. (1969, ch. 421; 1974, ch. 854; 1975, ch. 608.)

Purpose of this section is to preserve competition within the retail gasoline marketing industry in Maryland. Governor v. Exxon Corp., 279 Md. 410, 370 A.2d 1102 (1977).

Constitutionality of divestiture provisions. — The divestiture provisions of subsections (b) and (c) of this section are a valid exercise of the State's police power and not in violation of the due process clause of the Fourteenth Amendment, and article 23 of the Maryland Declaration of Rights. Governor v. Exxon Corp., 279 Md. 410, 370 A.2d 1102 (1977).

The restrictions imposed by the divestiture provisions of this section on the manner in which oil companies may continue to use their property for retail service station purposes, i.e., using retail dealers instead of employees, does not amount to a "taking" of private property in violation of the federal or State Constitutions. Governor v. Exxon Corp., 279 Md. 410, 370 A.2d 1102 (1977).

The divestiture provisions of this section — subsections (b) and (c) — do not violate the commerce clause of the federal Constitution.

SEE NOTE ON REVERSE

MONTANA PETROLEUM ASSOCIATION
A Division of the
Rocky Mountain Oil and Gas Association

Helena Office
2030 11th Avenue, Suite 23
Helena, Montana 59601
(406) 442-7582

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P.O. Box 1398
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Janelle K. Fallan
Executive Director

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 9
DATE 2/5/87
BILL NO. SB 239

Statement in Oppostion to SB 239
by Janelle Fallan
Executive Director, Montana Petroleum Association

Put most simply, SB 239, known to industry as "retail divorcement," represents confiscation of private property and is anti-free enterprise.

This legislation states who may own gasoline stations. There are few refiner-owned stations in Montana, but that is not the issue here. Such legislation is a protectionist measure, designed to provide guaranteed profit margins for dealers as a buffer against the rigors of the free market.

It would also result in higher prices to the consumer. There is good evidence that elimination of a whole class of competitors from a retail market will tend to increase the level of prices in the market. This was the result in Maryland, the first state to pass such legislation.

The concern of the legislature should be the protection of competition, not the protection of a class of competitors seeking to insulate their businesses from the realities of the current competitive environment.

Jobs should be considered an important part of the question in this state. At least one of the two or three refiners owning stations in Montana would consider this a confiscation of property. The company would close its stations and tell the state of Montana, "They're yours." Of course, the employees of those stations would be out of jobs.

This is anti-competitive legislation at a time when Montana desperately needs to improve its competitive posture.

STANDING COMMITTEE REPORT

February 5, 1987

MR. PRESIDENT

We, your committee on BUSINESS & INDUSTRY

having had under consideration HOUSE BILL No. 177

Third reading copy (blue)
color

JONES (KOLSTAD)

SMALL TRACT FINANCING ACT TRUSTEE QUALIFICATIONS REVISION

Respectfully report as follows: That HOUSE BILL No. 177

BE CONCURRED IN

~~DO PASS~~

~~DO NOT PASS~~

Kolstad

SENATOR KOLSTAD, Chairman.

STANDING COMMITTEE REPORT

February 5, 1987

MR. PRESIDENT

We, your committee on BUSINESS & INDUSTRY

having had under consideration HOUSE BILL No. 218

Third reading copy (blue)
color

BRANDEWIE (THAYER)

SHOWING PROOF OF OWNERSHIP OF FOREST PRODUCTS TO LAW ENFORCEMENT OFFICER

Respectfully report as follows: That HOUSE BILL No. 218

<u>BE CONCURRED IN</u>

~~DO PASS~~

~~DO NOT PASS~~

Kolstad

SENATOR KOLSTAD, Chairman.

STANDING COMMITTEE REPORT

February 5, 19 87

MR. PRESIDENT

We, your committee on BUSINESS & INDUSTRY

having had under consideration SENATE BILL No. 115

First reading copy (white)
color

REQUIRING CONTINUING EDUCATION FOR LIFE AND DISABILITY INSURANCE AGENTS

Respectfully report as follows: That SENATE BILL No. 115
be amended as follows:

1. Page 2, lines 17 and 18.
Following: "(2)" on line 17
Strike: remainder of lines 17 and 18 in their entirety
Insert: "A licensee as to life or disability insurance shall complete the minimum number of hours of continuing education and file with the"

2. Page 2, lines 23 through 25.
Following: "(1)" on line 23
Strike: remainder of lines 23 through 25 in their entirety
Insert: "The commissioner may discontinue the license of a life or disability insurance agent who has not completed the minimum number of hours of continuing"

3. Page 3, line 1.
Following: "months"
Insert: "as required by rule"

4. Page 3, line 13.
Following: "residence;"
Insert: "and"

5. Page 3, line 14.
Following: "privileges"
Strike: "; and"
Insert: "."

(CONTINUED)

DO PASS

DO NOT PASS

Kolstad

Chairman.

February 5, 1987

6. Page 3, line 15.
Strike: subsection (e) in its entirety
Insert: "(3) Each licensed life and disability agent shall pay to the commissioner an additional annual fee of $20 for administration of the continuing education requirement."

AND AS AMENDED,
DO PASS

STATEMENT OF INTENT ADOPTED AND ATTACHED

Kolstad

ALLEN C. KOLSTAD, Chairman

February 5, 1987

MR. PRESIDENT:

WE, YOUR COMMITTEE ON BUSINESS & INDUSTRY HAVING HAD UNDER CONSIDERATION SENATE BILL NO. 115, ATTACH THE FOLLOWING STATEMENT OF INTENT:

STATEMENT OF INTENT

SB Bill No. 115

A statement of intent is required for this bill because section 2 grants rulemaking authority to the commissioner of insurance.

It is the intent of the legislature that the commissioner of insurance adopt rules to ensure that life and disability insurance agents complete appropriate courses in life and health insurance as a condition of renewal of their licenses. The rules of the Washington insurance commissioner (Washington Administrative Code 284-17-200 through 284-17-320) express principles which, to the extent that they cover life and health insurance, are consistent with this legislative intent.

7002a/c:Jeanne/WP:jj