

HB 475 INTRODUCED BY STANG, ET AL.
GASOLINE DEALER BILL OF RIGHTS

1/26 INTRODUCED
1/26 REFERRED TO BUSINESS & LABOR
2/09 HEARING
2/14 REREFERRED TO JUDICIARY
2/18 HEARING
2/21 TABLED IN COMMITTEE

1 House BILL NO. 475
2 INTRODUCED BY Frank Miller Randy Libby Camille
3 Smith Nicole Meyer
4 A BILL FOR AN ACT ENTITLED: "THE GASOLINE DEALER BILL OF
5 RIGHTS ACT; CLARIFYING RELATIONSHIPS BETWEEN
6 REFINERS-SUPPLIERS OR RESELLERS OF MOTOR FUELS AND
7 RETAILERS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND
8 PROVIDING FOR APPLICABILITY."
9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11 Section 1. Short title. [This act] may be cited as the
12 "Gasoline Dealer Bill of Rights Act".
13 Section 2. Definitions. As used in [this act], unless
14 the context clearly requires otherwise, the following
15 definitions apply:
16 (1) "Affiliate" means any person, firm, or corporation
17 who controls or is controlled by any motor fuel
18 refiner-supplier and includes any subsidiary or affiliated
19 corporation in which the motor fuel refiner-supplier or its
20 shareholders, officers, agents, or employees hold or control
21 more than 25% of the voting shares.
22 (2) "Motor fuel" means gasoline or diesel fuel of a
23 type distributed for use in self-propelled motor vehicles
24 and includes gasohol.
25 (3) "Motor fuel franchise" means:

1 (a) an oral or written contract, either express or
2 implied, between a motor fuel refiner-supplier or a motor
3 fuel reseller and a motor fuel retailer under which the
4 motor fuel retailer is supplied motor fuel for:
5 (i) resale to the public under a trademark owned or
6 controlled by the motor fuel refiner-supplier; or
7 (ii) sale on commission or for a fee to the public; or
8 (b) an agreement between a motor fuel refiner-supplier
9 and motor fuel retailer under which the retailer is
10 permitted to occupy premises owned, leased, or controlled by
11 the refiner-supplier for the purpose of engaging in the
12 retail sale of motor fuel under a trademark owned or
13 controlled by the motor fuel refiner-supplier supplied by
14 the motor fuel refiner-supplier.
15 (4) "Motor fuel refiner-supplier" means a person,
16 firm, or corporation, including any affiliate, engaged in
17 the refining of crude oil into petroleum or who supplies
18 motor fuel for sale, consignment, or distribution through
19 retail outlets.
20 (5) "Motor fuel reseller" means a person, firm, or
21 corporation or any seller, other than a motor fuel
22 refiner-supplier, who sells motor fuel to a motor fuel
23 retailer for the purpose of sale.
24 (6) "Motor fuel retailer" means a person, firm, or
25 corporation that sells motor fuel at a retail motor fuel

1 outlet pursuant to a motor fuel franchise entered into with
2 a refiner-supplier or with a motor fuel reseller.

3 (7) "Offer" or "offer to sell" includes the
4 solicitation of an offer to buy or an attempt or offer to
5 dispose of a franchise or an interest in a franchise.

6 (8) "Person" means a natural person, corporation,
7 partnership, trust, or other entity. In the case of an
8 entity, it includes any other entity that has a majority
9 interest in or effectively controls such entity as well as
10 the individual officers, directors, and other persons in
11 control of each entity.

12 (9) "Price" means the net purchase price, after
13 adjustment for commission, brokerage, rebate, discount,
14 services or facilities furnished, or other adjustment.

15 (10) "Sale" or "sell" includes any contract of sale,
16 contract to sell, or disposition of a franchise.

17 (11) "Trademark" means any trademark, trade name,
18 service mark, or other identifying symbol or name.

19 Section 3. Fair compensation required for prohibition
20 of sale of franchise -- franchise transfer fee limited. (1)
21 Notwithstanding the terms of any motor fuel franchise, a
22 motor fuel refiner-supplier or a motor fuel reseller may not
23 prohibit or unreasonably withhold its consent to any sale,
24 assignment, or other transfer of the motor fuel franchise by
25 a motor fuel retailer to a third party without fairly

1 compensating the motor fuel retailer for:

2 (a) the fair market value, at the time of expiration
3 of the franchise, of the motor fuel retailer's inventory,
4 supplies, equipment, and furnishings purchased from the
5 motor fuel refiner-supplier or motor fuel reseller;

6 (b) good will, exclusive of personalized materials
7 that have no value to the motor fuel refiner-supplier or to
8 the motor fuel reseller; and

9 (c) inventory, supplies, equipment, and furnishings
10 not reasonably required in the conduct of the franchise
11 business.

12 (2) A motor fuel refiner-supplier or a motor fuel
13 reseller may offset against amounts owed to a motor fuel
14 retailer under this section any amounts owed by the motor
15 fuel retailer to the motor fuel refiner-supplier or the
16 motor fuel reseller.

17 (3) A motor fuel refiner-supplier or a motor fuel
18 reseller may not charge a fee in excess of 5% of the sale
19 price of a motor fuel franchise at the time of a transfer of
20 a motor fuel franchise by a motor fuel retailer to a third
21 party or a motor fuel reseller.

22 Section 4. Incorporation of motor fuel retailer not
23 prohibited -- fee prohibited. Notwithstanding the terms of a
24 motor fuel franchise, no motor fuel refiner-supplier or
25 motor fuel reseller may prohibit or prevent the sale,

1 assignment, or other transfer of the motor fuel franchise to
 2 a corporation in which the motor fuel retailer has and
 3 maintains a controlling interest if the motor fuel retailer
 4 offers in writing to guarantee the performance of the
 5 obligations under the motor fuel franchise. A motor fuel
 6 refiner-supplier or a motor fuel reseller may not charge a
 7 fee under this section.

8 Section 5. Designation of successor in interest. (1)
 9 Notwithstanding the terms of a motor fuel franchise, the
 10 interest of a motor fuel retailer under the franchise is
 11 considered personal property and devolves on the death of
 12 the motor fuel retailer to a designated successor in
 13 interest of the retailer, limited to the retailer's spouse,
 14 adult child, or adult stepchild or, if no successor in
 15 interest is designated, to the retailer's spouse, if any.
 16 The designation must be made, witnessed in writing by at
 17 least two persons, and delivered to the motor fuel
 18 refiner-supplier during the term of the franchise. The
 19 designation may be revised at any time by the motor fuel
 20 retailer or motor fuel reseller and must be substantially in
 21 the following form:

22 "I (motor fuel retailer name) at the service
 23 station located at, in the city of,
 24 county of, state of Montana, designate
 25 as my successor in interest under [section 5,

1 MCA,] and as my alternate successor if the
 2 originally designated successor is unable or unwilling so to
 3 act.

4 I so specify this day of, 19..."

5 (2) The motor fuel refiner-supplier or the motor fuel
 6 reseller shall assist the designated successor in interest
 7 temporarily in the day-to-day operation of the service
 8 station to ensure continued operation of the service
 9 station.

10 Section 6. Right of first refusal. Notwithstanding the
 11 terms of any motor fuel franchise, the motor fuel retailer
 12 has the right of first refusal to purchase the real estate
 13 or improvements, or both, owned by the motor fuel
 14 refiner-supplier or the motor fuel reseller at the franchise
 15 location and at least 30 days within which to exercise this
 16 right, prior to sale thereof to any other buyer.

17 Section 7. Motor fuel retailer's rights.
 18 Notwithstanding the terms of a motor fuel franchise, no
 19 motor fuel refiner-supplier or motor fuel reseller may:

20 (1) require a motor fuel retailer to meet mandatory
 21 minimum sales volume requirements for fuel or other products
 22 unless the motor fuel refiner-supplier or motor fuel
 23 reseller proves that its price to the motor fuel retailer
 24 has been sufficiently low to enable the motor fuel retailer
 25 reasonably to meet the mandatory minimum;

(2) alter or require the motor fuel retailer to consent to the alteration of any provision of the motor fuel franchise during its effective term without mutual consent of the motor fuel retailer;

(3) interfere with a motor fuel retailer's right to assistance of counsel on any matter or his right to join or be active in a trade association; or

(4) set or compel, directly or indirectly, the retail price at which the motor fuel retailer sells motor fuel or other products to the public.

Section 8. Truth required in motor fuel franchise sale. It is unlawful for any person involved in the offer, sale, or purchase of a motor fuel franchise directly or indirectly to:

(1) sell or offer to sell a motor fuel franchise by means of any written or oral communication that includes an untrue statement of a material fact or fails to state a material fact;

(2) employ any device, scheme, or artifice to defraud; or

(3) engage in any act, practice, or course of business that operates or would operate as a fraud or deceit.

Section 9. Relationship between motor fuel refiner-supplier or motor fuel reseller and motor fuel dealer. Without limiting the other provisions of [this act],

the following specific rights and prohibitions govern the relationship between a motor fuel refiner-supplier or a motor fuel reseller and a motor fuel retailer:

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

(2) For the purposes of [this act] and without limiting its general application, it is an unfair or deceptive act or practice or an unfair method of competition and a violation of [this act] for any person to:

(a) require a motor fuel retailer to purchase or lease goods or services of the motor fuel refiner-supplier or a motor fuel reseller or from approved sources of supply unless the motor fuel refiner-supplier or motor fuel reseller proves that such restrictive purchasing agreements are reasonably necessary for a lawful purpose justified on business grounds and do not substantially affect competition; however, this provision does not apply to the initial inventory of the motor fuel franchise. In determining whether a requirement to purchase or lease goods or services constitutes an unfair or deceptive act or practice or an unfair method of competition, the antitrust laws of the United States apply.

(b) discriminate between motor fuel retailers in the charges offered or made for royalties, goods, services, equipment, rentals, advertising services, or in any other

business dealing unless the motor fuel refiner-supplier or motor fuel reseller proves that such discrimination between motor fuel retailers is:

(i) reasonable;

(ii) based on motor fuel franchises granted at materially different times;

(iii) reasonably related to such difference in time or on other proper and justifiable distinctions considering the purposes of [this act]; and

(iv) not arbitrary;

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

(d) require a motor fuel retailer to assent to a release, assignment, novation, or waiver that would relieve a person from liability imposed by [this act].

Section 10. Remedies available to motor fuel retailer.

(1) A person who sells or offers to sell a motor fuel franchise in violation of [this act] is liable to the motor fuel retailer, who may sue for damages caused thereby for rescission or other relief as the court considers appropriate. In the case of a violation of [section 7], rescission is not available to the plaintiff if the defendant proves that:

(a) the plaintiff knew the facts concerning the

untruth or omission; or

(b) the defendant did not know or would not have known, by the exercise of reasonable care, of the untruth or omission.

(2) The suit authorized under subsection (1) may be brought to recover threefold the actual damages sustained by the plaintiff, except that the prevailing party may in the discretion of the court recover the costs of the suit, including reasonable attorney fees.

(3) A person who becomes liable to make payments under this section may recover contributions as in cases of contracts from another person who, if sued separately, would have been liable to make the same payment.

(4) A final judgment, order, or decree rendered against a person in any civil, criminal, or administrative proceeding under the United States antitrust laws, the Federal Trade Commission Act, or [this act] is regarded as evidence against such person in an action brought under subsection (1) as to all matters to which the judgment or decree would be an estoppel between the parties.

Section 11. Pendency of action tolls limitations. The pendency of any civil, criminal, or administrative proceeding against a person brought by the federal or state government or any of their agencies under the antitrust laws, the Federal Trade Commission Act, any federal or state

1 act related to antitrust laws or to franchising, or [this
2 act] tolls the limitation of an action under [section 10] if
3 the action is instituted within 1 year after the final
4 judgment or order in such proceedings. However, the
5 limitation of actions under this section tolls the law so
6 long as there is actual concealment on the part of the
7 person.

8 Section 12. Right of motor fuel retailer to sue. A
9 motor fuel retailer who is injured in his business by the
10 commission of an act prohibited by [this act], or a motor
11 fuel retailer injured because of his refusal to accede to a
12 proposal for an arrangement which, if consummated, would be
13 in violation of [this act] may bring a civil action in
14 district court to enjoin further violations or to recover
15 threefold the actual damages sustained by him, or both,
16 together with the costs of the suit, including reasonable
17 attorney fees.

18 Section 13. Action by county attorney. (1) A county
19 attorney may bring an action in the name of the state
20 against any person to restrain the commission of any act
21 prohibited or declared to be unlawful by [this act]. The
22 prevailing party may in the discretion of the court recover
23 the costs of such action, including reasonable attorney
24 fees.

25 (2) Nothing in [this act] limits the power of the

1 state to punish a person for conduct that constitutes a
2 crime.

3 Section 14. Burden of proof. In a proceeding under
4 [this act], the burden of proving an exception or an
5 exemption from definition is upon the person claiming it.
6 Any condition, stipulation, or provision purporting to bind
7 a person acquiring a motor fuel franchise at the time of
8 entering into a motor fuel franchise or other agreement to
9 waive compliance with a provision of [this act] or an order
10 under [this act] is void.

11 Section 15. Saving clause. This act does not affect
12 rights and duties that matured, penalties that were
13 incurred, or proceedings that were begun before the
14 effective date of this act.

15 Section 16. Severability. If a part of this act is
16 invalid, all valid parts that are severable from the invalid
17 part remain in effect. If a part of this act is invalid in
18 one or more of its applications, the part remains in effect
19 in all valid applications that are severable from the
20 invalid applications.

21 Section 17. Effective date -- applicability. This act
22 is effective on passage and approval, and the provisions of
23 this act apply to any motor fuel franchise or contract
24 between a motor fuel refiner-supplier or a motor fuel
25 reseller and a motor fuel retailer entered into or renewed

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1 on or after the effective date of this act.

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