HB 594 INTRODUCED BY HARRINGTON, ET AL. MONTANA MOTOR FUEL MARKETING ACT

- 2/04 INTRODUCED
- 2/04 REFERRED TO BUSINESS & LABOR
- 2/16 HEARING
- 2/16 TABLED IN COMMITTEE

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operations; and

1 2 INTRODUCED BY A BILL FOR AN ACT ENTITLED: 5 MOTOR FUEL IN MONTANA." 6 7 WHEREAS. Legislature believes that unfair 8 competition in the marketing of motor fuels occurs whenever 9 costs associated with the marketing of motor fuels are recovered from other operations allowing the refined motor 10 fuel products to be sold at subsidized prices; and 11 12 WHEREAS, those subsidies most commonly occur when refiners use profits from refining of crude oil to cover 13 below normal or negative returns earned from motor fuel 14 15 marketing operations, when a marketer with more than one 16 location uses profits from one location to cover losses from 17 below-cost selling of motor fuel at another location, or 18 when a business uses profits from nonmotor fuels sales to 19 cover losses from below-cost selling of motor fuel; and 20 WHEREAS, independent oil marketers, including dealers, 21 distributors, jobbers, and wholesalers, are unable to 22 survive predatory subsidized pricing at the marketing level 23 when all of an indpendent's income comes from marketing

WHEREAS, subsidized pricing is inherently predatory, is



reducing competition in the petroleum industry, and threatens the consuming public.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

5 Section 1. Short title. [Sections 1 through 9] may be 6 cited as the "Montana Motor Fuel Marketing Act".

Section 2. Definitions. As used in [this act]:

- (1) "Affiliate" of a person means an entity that owns or controls or is owned or controlled by that person whether through stock ownership or otherwise.
- (2) "Cost" means:

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- (a) the average of the published terminal prices closest to the point of an alleged violation of [this act], as compiled by generally accepted petroleum industry related companies that publish such prices, including Oil Price Information Service and Computer Petroleum Information, that was in effect on the day of the alleged violation; plus
- (b) a reasonable cost of doing business as determined pursuant to generally accepted accounting principles (with respect to retail sales, in the absence of proof of a lesser cost, a margin of 6% of the posted retail price is prima facie evidence of reasonable cost); plus
- 23 (c) freight charges and all applicable federal, state,
 24 and local taxes not already included in the invoice cost or
 25 transfer price.

_₋₂₋ INTRODUCED BILL #8-594 (3) "Motor fuel" means gasoline, diesel fuel, gasohol, and all other fuels used as motor fuel in self-propelled vehicles on public streets, roads, and highways.

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- 4 (4) "Person" means an individual, partnership,
 5 corporation, or legal entity.
- 6 (5) "Refiner" means a person who owns, operates, or
 7 controls the operation of a refinery that produces motor
 8 fuel or who imports motor fuel.
- 9 (6) "Retail sale" means a sale of motor fuel to the 10 public for consumption.
 - (7) "Sale" means a gift, sale, offer for sale, or advertisement for sale in any manner or by any means of motor fuel to a person, to itself, or to an affiliate.
- 14 (8) "Terminal price" means the price charged by a 15 refiner for motor fuel made available at the closest supply 16 point.
 - Section 3. Sale below cost and certain other sales prohibited. (1) The sale of motor fuel by any person engaged in commerce in this state at less than cost as defined in [section 2], when the intent or effect is to injure competition, is a violation of [this act].
- 22 (2) The sale of motor fuel by any person engaged in 23 commerce in this state at a price lower than the seller 24 charges other persons at the same time and on the same level 25 of distribution, when the intent or effect is to injure

- competition, is a violation of [this act].
- Section 4. Sale by refiner at price lower than price charged other persons on same marketing level prohibited.

 The sale by a refiner engaged in commerce in this state of motor fuel to itself or to an affiliate for resale in this state at another marketing level of distribution at a price lower than the price it charges a person who purchases for resale at the same time and at the same level of distribution is a violation of [this act].
- Section 5. Certain sales not prohibited. (1) It is not a violation of [section 3(2)] or [section 4] if a difference exists in sales price or between sales prices at the same marketing level if the difference exists because of a good faith effort to meet an equally low price of a competitor or is exempt under 30-14-213.
- 16 (2) It is not a violation of [section 3(1)] if the 17 sale at less than cost is the result of a good faith effort 18 to meet an equally low price of a competitor or is exempt 19 under 30-14-213.
- Section 6. Civil actions authorized -- jurisdiction of district courts -- venue. (1) If the department finds that a person has violated or is about to violate a provision of [section 3] or [section 4], the department may request the attorney general or a county attorney to commence a civil action to enjoin such acts or practices, and upon a proper

- showing the district court shall issue a temporary restraining order, preliminary injunction, or permanent injunction without the necessity of a bond. A person convicted of violating a provision of [section 3] or [section 4] in an action under this subsection (1) is liable to the state for a civil penalty not to exceed \$5,000 for each violation.
- (2) A person injured as a result of an act or practice 8 9 that violates a provision of (section 3) or [section 4] may 10 bring a civil action for appropriate relief, including exemplary damages. Any actual damages found to have resulted 11 12 from a violation of [section 3] or [section 4] must be 13 tripled by the court in making its award. An action under this subsection (2) must be brought within 2 years after the 14 15 alleged violation occurred.
 - (3) In making an award under subsections (1) or (2), the court may award costs and a reasonable attorney fee to the prevailing party, but no award of an attorney fee may be made against the state of Montana.

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- 20 (4) The district court shall hear and determine all
 21 cases brought under this section. Venue lies in any county
 22 where the defendant is doing business or in the county where
 23 the plaintiff resides.
- Section 7. Burden of proof. In any action brought under (section 6), the burden of proof, after a prima facie

showing of a violation, is on the defendant to show justification. Unless justification is shown, the court

shall award judgment for the plaintiff.

- Section 8. Right of purchaser to obtain price and cost information from marketer. A person who purchases motor fuel for resale who has cause to believe that a person marketing motor fuel has violated (section 3) or [section 4] may, upon
- motion to the court and a proper showing of cause, obtain anorder requiring the marketer to provide the following
- 10 information:
- 11 (1) the price or transfer price at which each grade of
 12 motor fuel is transferred to each level of distribution in
 13 the marketing of motor fuels together with information
 14 relevant to the market area that serves as the basis for the
 15 order; and
- 16 (2) the cost of, amount of, and the nature of all
 17 discounts, rebates, allowances, services, or facilities
 18 connected with the handling, sale, or offering for sale of
 19 any motor fuel provided to each level of such person's
 20 marketing operations and to the local market area of the
 21 complainant.
- Section 9. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect

- 1 in all valid applications that are severable from the
- 2 invalid applications.
- 3 Section 10. Codification instruction. Sections 1
- 4 through 8 are intended to be codified as an integral part of
- 5 Title 30, chapter 14, and the provisions of Title 30,
- 6 chapter 14, apply to sections 1 through 8.

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