

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

1 (3) "Motor fuel" means gasoline, diesel fuel, gasohol,
2 and all other fuels used as motor fuel in self-propelled
3 vehicles on public streets, roads, and highways.

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.

11 (7) "Sale" means a gift, sale, offer for sale, or
12 advertisement for sale in any manner or by any means of
13 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.

17 Section 3. Sale below cost and certain other sales
18 prohibited. (1) The sale of motor fuel by any person
19 engaged in commerce in this state at less than cost as
20 defined in [section 2], when the intent or effect is to
21 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

1 competition, is a violation of [this act].

2 Section 4. Sale by refiner at price lower than price
3 charged other persons on same marketing level prohibited.
4 The sale by a refiner engaged in commerce in this state of
5 motor fuel to itself or to an affiliate for resale in this
6 state at another marketing level of distribution at a price
7 lower than the price it charges a person who purchases for
8 resale at the same time and at the same level of
9 distribution is a violation of [this act].

10 Section 5. Certain sales not prohibited. (1) It is not
11 a violation of [section 3(2)] or [section 4] if a difference
12 exists in sales price or between sales prices at the same
13 marketing level if the difference exists because of a good
14 faith effort to meet an equally low price of a competitor or
15 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.

20 Section 6. Civil actions authorized -- jurisdiction of
21 district courts -- venue. (1) If the department finds that
22 a person has violated or is about to violate a provision of
23 [section 3] or [section 4], the department may request the
24 attorney general or a county attorney to commence a civil
25 action to enjoin such acts or practices, and upon a proper

1 showing the district court shall issue a temporary
 2 restraining order, preliminary injunction, or permanent
 3 injunction without the necessity of a bond. A person
 4 convicted of violating a provision of [section 3] or
 5 [section 4] in an action under this subsection (1) is liable
 6 to the state for a civil penalty not to exceed \$5,000 for
 7 each violation.

8 (2) A person injured as a result of an act or practice
 9 that violates a provision of [section 3] or [section 4] may
 10 bring a civil action for appropriate relief, including
 11 exemplary damages. Any actual damages found to have resulted
 12 from a violation of [section 3] or [section 4] must be
 13 tripled by the court in making its award. An action under
 14 this subsection (2) must be brought within 2 years after the
 15 alleged violation occurred.

16 (3) In making an award under subsections (1) or (2),
 17 the court may award costs and a reasonable attorney fee to
 18 the prevailing party, but no award of an attorney fee may be
 19 made against the state of Montana.

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.

24 Section 7. Burden of proof. In any action brought
 25 under [section 6], the burden of proof, after a prima facie

1 showing of a violation, is on the defendant to show
 2 justification. Unless justification is shown, the court
 3 shall award judgment for the plaintiff.

4 Section 8. Right of purchaser to obtain price and cost
 5 information from marketer. A person who purchases motor fuel
 6 for resale who has cause to believe that a person marketing
 7 motor fuel has violated [section 3] or [section 4] may, upon
 8 motion to the court and a proper showing of cause, obtain an
 9 order 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.

22 Section 9. Severability. If a part of this act is
 23 invalid, all valid parts that are severable from the invalid
 24 part remain in effect. If a part of this act is invalid in
 25 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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