

SB 271 INTRODUCED BY HIRSCH, CORNE', BECK, ET AL.
MOTOR FUEL SALES REGULATION AND FAIR COMPETITION

2/02	INTRODUCED		
2/02	REFERRED TO HIGHWAYS & TRANSPORTATION		
2/10	HEARING		
2/17	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/19	2ND READING PASS MOTION FAILED	9	35
2/19	2ND READING INDEFINITELY POSTPONED	43	2

1 *Senate* BILL NO. *271*
 2 INTRODUCED BY *Heisch* *Cassini* *Brink*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE PRICE OF
 5 MOTOR FUEL AT WHOLESALE AND RETAIL LEVELS; PROVIDING FOR
 6 PENALTIES AND REMEDIES FOR SALES IN VIOLATION OF ESTABLISHED
 7 PRICES; AND PROHIBITING UNFAIR PRACTICES IN THE SALE OF
 8 MOTOR FUEL."
 9

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

11 Section 1. Policy. The practice of selling motor fuel
 12 below cost in order to attract patronage is generally a form
 13 of deceptive advertising and an unfair method of competition
 14 in commerce. This practice causes commercial dislocations,
 15 misleads the consumer, works against the farmer, directly
 16 burdens and obstructs commerce, and diverts business from
 17 dealers who maintain a fair price policy. Bankruptcies
 18 among merchants who fail because of the competition of those
 19 who use such methods result in unemployment, disruption of
 20 leases, and nonpayment of taxes and loans and contribute to
 21 an inevitable train of undesirable consequences, including
 22 economic depression.

23 Section 2. Definitions. As used in [this act], unless
 24 the context requires otherwise, the following definitions
 25 apply:

1 (1) "Cost to retailer" means the current invoice cost
 2 of motor fuel to the retailer within 30 days prior to the
 3 date of sale or the replacement cost of the motor fuel to
 4 the retailer, whichever is lower, less all trade discounts
 5 except customary discounts for cash, plus any excise taxes
 6 imposed on the motor fuel, any cost incurred for
 7 transportation, and any other charges not otherwise included
 8 in the invoice cost or the replacement cost of the motor
 9 fuel, to which shall be added a markup to cover a
 10 proportionate part of the cost of doing business, which
 11 markup, in the absence of proof of a lesser cost, must be 6%
 12 of the cost to the retailer as herein set forth.

13 (2) "Cost to wholesaler" means the current invoice
 14 cost of motor fuel to the wholesaler within 30 days prior to
 15 the date of sale or the replacement cost of the motor fuel
 16 to the wholesaler, whichever is lower, less all trade
 17 discounts except customary discounts for cash, plus any
 18 excise taxes imposed on the motor fuel prior to the sale at
 19 retail, any cost incurred for transportation, and any other
 20 charges not otherwise included in the invoice cost or the
 21 replacement cost of the motor fuel, to which shall be added,
 22 except for sales at wholesale between wholesalers, a markup
 23 to cover a proportionate part of the cost of doing business,
 24 which markup, in the absence of proof of a lesser cost, must
 25 be 3% of the cost to the wholesaler as herein set forth.

1 (3) "Motor fuel" means gasoline and gasahol as defined
2 in 15-70-201 and special fuel as defined in 15-70-301.

3 (4) "Person" means an individual, a sole
4 proprietorship, a partnership, a corporation, any other form
5 of business entity, or any individual acting on behalf of
6 any of them.

7 (5) "Replacement cost" means the cost computed as
8 specified in subsections (1) and (2) at which motor fuel
9 sold could have been bought by the retailer or wholesaler at
10 any time within 30 days prior to the date of sale if bought
11 in the same quantity as the retailer's or wholesaler's last
12 purchase of motor fuel.

13 (6) "Retailer" means a person engaged in the business
14 of making sales to the general public within this state or,
15 in the case of a person selling both at retail and at
16 wholesale, only the retail portion of the business.

17 (7) "Sale at retail" means a transfer of motor fuel
18 for valuable consideration, made in the ordinary course of
19 trade or in the usual course of the retailer's business, to
20 the purchaser for consumption or use other than resale or
21 further processing.

22 (8) "Sale at wholesale" means a transfer of motor fuel
23 for valuable consideration, made in the ordinary course of
24 trade or in the usual course of the wholesaler's business,
25 to a retailer or purchaser for resale or further processing.

1 (9) "Supplier" means a person who manufactures motor
2 fuel or who is a controlled subsidiary of a manufacturer of
3 motor fuel and who is engaged in the business of selling
4 motor fuel to wholesalers, retailers, and consumers.

5 (10) "Wholesaler" means a person engaged in the
6 business of making sales at wholesale or, in the case of a
7 person selling both at retail and at wholesale, only the
8 wholesale portion of the business.

9 Section 3. Sale below cost prohibited. Any sale of
10 motor fuel, either by a retailer or a wholesaler, at less
11 than cost to the retailer or wholesaler with the intent or
12 effect of inducing the purchase of motor fuel or of unfairly
13 diverting trade from a competitor impairs and prevents fair
14 competition, injures public welfare, and is unfair
15 competition and contrary to public policy and the policy of
16 this section. Sales at less than cost are prohibited.
17 Evidence of any sale of motor fuel by any retailer or
18 wholesaler at less than cost to the retailer or wholesaler
19 is prima facie evidence of intent or effect to induce the
20 purchase of motor fuel or to unfairly divert trade from a
21 competitor, or to otherwise injure a competitor.

22 Section 4. Discrimination prohibited. (1) No supplier
23 or wholesaler of motor fuel may enter into an agreement or
24 arrangement whereby, directly or indirectly, discrimination
25 is made in the price at which the supplier or wholesaler

1 sells motor fuel to wholesalers or retailers, if the effect
 2 of such discrimination is to substantially lessen
 3 competition or to tend to create a monopoly or to injure,
 4 destroy, or prevent competition with any person in the
 5 marketing of motor fuel in the community in which the
 6 supplier or wholesaler is selling at a lower price. It is a
 7 justification for a discrimination in price if the
 8 difference in the price to the wholesaler or retailer to
 9 whom the supplier or wholesaler sells at a lower figure is
 10 merely commensurate with an actual difference in the quality
 11 or quantity of motor fuel sold to the wholesaler or retailer
 12 or in the transportation charges or other expenses of
 13 marketing involved in the sale to the wholesaler or
 14 retailer. Nothing prevents a seller from showing that his
 15 lower price was made in good faith to meet an equally low
 16 price of a competitor.

17 (2) No person any part of whose business is the sale
 18 of motor fuel to wholesalers may sell motor fuel for
 19 ultimate consumption or use at a price lower than that at
 20 which he sells to a wholesaler unless the lower price is
 21 justified as provided in subsection (1).

22 Section 5. Coercion prohibited. A supplier or
 23 wholesaler of motor fuel may not threaten a customer with
 24 price discrimination or use any form of coercion with the
 25 purpose of changing or maintaining the resale price of the

1 customer.

2 Section 6. Penalty. (1) A violation of [section 3] is
 3 an unfair trade practice and upon conviction a retailer or
 4 wholesaler is subject to a fine of:

5 (a) not less than \$50 or more than \$500 for a first
 6 violation; and

7 (b) not less than \$200 or more than \$2,500 for each
 8 subsequent violation.

9 (2) The department of commerce or a county attorney
 10 may bring an action for a violation of [section 3].

11 Section 7. Civil remedies. (1) The department of
 12 commerce may issue a cease and desist order requiring a
 13 wholesaler or retailer to cease violating [section 3]. The
 14 department or a county attorney may commence an action on
 15 behalf of the state for failure to comply with an order. A
 16 civil penalty of not less than \$200 or more than \$5,000 may
 17 be recovered in such an action.

18 (2) The department or a county attorney may bring an
 19 action to enjoin a violation of [section 3].

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

22 Section 8. Exemption. [This act] does not apply to
 23 sales at wholesale or retail when the motor fuel selling
 24 price is set in good faith to meet an existing price of a
 25 competitor and is based on evidence in the possession of the

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- 1 retailer or wholesaler in the form of an advertisement,
- 2 proof of sale, or receipted purchase.

-End-

APPROVED BY COMMITTEE
ON HIGHWAYS & TRANSPORTATION

1 SENATE BILL NO. 271

2 INTRODUCED BY HIRSCH, CORNE', BECK, WALLIN

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7 transportation, and any other charges not otherwise included
8 in the invoice cost or the replacement cost of the motor
9 fuel, to which shall be added a markup to cover a
10 proportionate part of the cost of doing business, which
11 markup, in the absence of proof of a lesser cost, must be 6%
12 of the cost to the retailer as herein set forth.

13 (2) "Cost to wholesaler" means:

14 (A) the current--invoice--cost--of--motor--fuel--to--the
15 wholesaler--within--30--days--prior--to--the--date--of--sale
16 PUBLISHED TERMINAL PRICES CLOSEST TO THE POINT OF AN ALLEGED
17 VIOLATION OF [THIS ACT], AS COMPILED BY GENERALLY ACCEPTED
18 PETROLEUM INDUSTRY-RELATED COMPANIES THAT PUBLISH SUCH
19 PRICES, INCLUDING OIL PRICE INFORMATION SERVICE AND COMPUTER
20 PETROLEUM INFORMATION, THAT WERE IN EFFECT ON THE DAY OF THE
21 ALLEGED VIOLATION; or

22 (B) the replacement cost of the motor fuel to the
23 wholesaler, whichever is lower, less all trade discounts
24 except customary discounts for cash, plus any excise taxes
25 imposed on the motor fuel prior to the sale at retail, any

1 cost incurred for transportation, and any other charges not
 2 otherwise included in the invoice cost or the replacement
 3 cost of the motor fuel, to which shall be added, except for
 4 sales at wholesale between wholesalers, a markup to cover a
 5 proportionate part of the cost of doing business, which
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 7 1% of the cost to the wholesaler as herein set forth.

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 9 in 15-70-201 and special fuel as defined in 15-70-301.

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 11 proprietorship, a partnership, a corporation, any other form
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 25 wholesaler at less than cost to the retailer or wholesaler

1 is prima facie evidence of intent or effect to induce the
2 purchase of motor fuel or to unfairly divert trade from a
3 competitor, or to otherwise injure a competitor.

4 (2) A RETAILER WHO IS ALSO A REFINER OR BROKER SHALL
5 ADD THE COST TO RETAILER AND COST TO WHOLESALER MARKUPS
6 REQUIRED UNDER [SECTION 2].

7 Section 4. Discrimination prohibited. (1) No supplier
8 or wholesaler of motor fuel may enter into an agreement or
9 arrangement whereby, directly or indirectly, discrimination
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13 competition or to tend to create a monopoly or to injure,
14 destroy, or prevent competition with any person in the
15 marketing of motor fuel in the community in which the
16 supplier or wholesaler is selling at a lower price. It is a
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19 whom the supplier or wholesaler sells at a lower figure is
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21 or quantity of motor fuel sold to the wholesaler or retailer
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25 lower price was made in good faith to meet an equally low

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