

HOUSE BILL 464

Introduced by Bradley, et al.

1/27	Introduced
1/27	Referred to Business & Economic Development
2/06	Hearing
2/09	Committee Report--Bill Not Passed as Amended
2/10	Adverse Committee Report Rejected
2/16	2nd Reading Passed as Amended
2/18	3rd Reading Passed

Transmitted to Senate

2/28	Referred to Highways & Transportation
3/14	Hearing
	Died in Committee

1 HOUSE BILL NO. 464
2 INTRODUCED BY Rep. Paul Rapp-Snark
3 Addy Lynd Buddy NATHAN
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 NEW SECTION. Section 1. Short title. [This act] may
12 be cited as the "Montana Petroleum Trade Practices Act".

13 NEW SECTION. Section 2. Purpose. The legislature
14 recognizes that independent and small dealers and
15 distributors of petroleum and related products are vital to
16 a healthy, competitive marketplace and are unable to survive
17 financially in competition with subsidized, below-cost
18 pricing at the retail level by others who have other sources
19 of income. The legislature believes that subsidized,
20 below-cost pricing is a predatory practice that is not
21 conducive to fair trade. The legislature finds that
22 below-cost pricing laws are effective in protecting
23 independent and small retailers and wholesalers in other
24 jurisdictions from subsidized pricing, which is inherently
25 unfair and destructive and reduces competition in the motor

1 fuel marketing industry and is a form of predatory pricing.
2 The purpose of [this act] is to prevent and eliminate
3 subsidized pricing of petroleum and related products.

4 NEW SECTION. Section 3. Definitions. As used in [this
5 act], unless the context requires otherwise, the following
6 definitions apply:

7 (1) "Cost to retailer" means the current invoice cost
8 of motor fuel to the retailer within 30 days prior to the
9 date of sale or the replacement cost of the motor fuel to
10 the retailer, whichever is lower:

11 (a) less all trade discounts except customary
12 discounts for cash; and

13 (b) plus:

14 (i) any federal or state excise taxes imposed on the
15 motor fuel;

16 (ii) any cost incurred for federal or state mandated
17 insurance programs and underground storage tank programs;

18 (iii) any cost incurred for transportation;

19 (iv) any other charges not otherwise included in the
20 invoice cost or the replacement cost of the motor fuel; and

21 (v) a markup to cover a proportionate part of the cost
22 of doing business. In the absence of proof of a lesser
23 cost, the additional markup must be 6% of the cost to the
24 retailer.

25 (2) "Cost to wholesaler" means the current invoice

1 cost of motor fuel to the wholesaler within 30 days prior to
2 the date of sale or the replacement cost of the motor fuel
3 to the wholesaler, whichever is lower:

4 (a) less all trade discounts except customary
5 discounts for cash; and

6 (b) plus:

7 (i) any federal or state excise taxes imposed on the
8 motor fuel prior to the sale at retail;

9 (ii) any cost incurred for federal or state mandated
10 insurance programs and underground storage tank programs;

11 (iii) any cost incurred for transportation;

12 (iv) any other charges not otherwise included in the
13 invoice cost or the replacement cost of the motor fuel; and

14 (v) a markup to cover a proportionate part of the cost
15 of doing business, except for sales at wholesale between
16 wholesalers. In the absence of proof of a lesser cost, the
17 additional markup must be 3% of the cost to the wholesaler.

18 (3) "Motor fuel" means gasoline, gasohol as defined in
19 15-70-201, and special fuel as defined in 15-70-301.

20 (4) "Person" means an individual, a sole
21 proprietorship, a partnership, a corporation, any other form
22 of business entity, or any individual acting on behalf of
23 any of them.

24 (5) "Replacement cost" means the cost, computed as
25 specified in subsection (1) or (2), at which motor fuel sold

1 could have been bought by the retailer or wholesaler at any
2 time within 30 days prior to the date of sale if bought in
3 the same quantity as the retailer's or wholesaler's last
4 purchase of motor fuel.

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

9 (7) "Sale at retail" means a transfer of motor fuel
10 for valuable consideration, made in the ordinary course of
11 trade or in the usual course of the retailer's business, to
12 the purchaser for consumption or use other than resale or
13 further processing.

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

18 (9) "Supplier" means a person who manufactures motor
19 fuel or who is a controlled subsidiary of a manufacturer of
20 motor fuel and who is engaged in the business of selling
21 motor fuel to wholesalers, retailers, and consumers.

22 (10) "Vertically integrated producer" means a producer
23 who controls all phases of petroleum production and sale
24 from the well through wholesalers and retailers.

25 (11) "Wholesaler" means a person engaged in the

1 business of making sales at wholesale or, in the case of a
2 person selling at both retail and wholesale, only the
3 wholesale portion of the business.

4 NEW SECTION. **Section 4. Below-cost sale prohibited.**

5 (1) A retailer may not sell or offer or advertise a sale at
6 retail at less than the cost to retailer if the effect is to
7 injure or destroy competition or substantially lessen
8 competition, unless the sale is:

9 (a) an isolated transaction and not made in the usual
10 course of business;

11 (b) a bona fide, advertised clearance sale;

12 (c) for charitable purposes or to an unemployment
13 relief agency; or

14 (d) excepted under 30-14-213.

15 (2) A retailer may not refuse to sell or limit,
16 restrict, or condition the sale at retail of petroleum
17 distillates stored at the retail outlet in 100-gallon or
18 larger containers to another retailer at the same or lower
19 price as offered, advertised, or sold to the public if the
20 petroleum distillates are offered, advertised, or sold to
21 the public at less than the cost to retailer. The burden of
22 proving an exemption from the provisions of this subsection
23 is upon the retailer claiming his sales are exempt.

24 (3) A vertically integrated producer or wholesaler may
25 not sell or transfer a petroleum distillate to its own

1 retail outlet at a price lower than the price at which that
2 petroleum distillate is offered for sale by the vertically
3 integrated producer or wholesaler to a retailer operating in
4 the same competitive area served by the retail outlet of the
5 vertically integrated producer or wholesaler. Retail sales
6 under this provision by a vertically integrated producer or
7 wholesaler must comply with all provisions of [this act].

8 (4) For retail sales by a vertically integrated
9 producer or by a supplier-operated retailer who obtains fuel
10 products from other producers or suppliers, the minimum
11 allowable cost to the vertically integrated producer or the
12 supplier-owned retailer is the price at which the other
13 producers' or suppliers' wholesalers sell to their retailers
14 or to other retailers whom they supply plus 8% of that price
15 as the cost of doing business.

16 NEW SECTION. **Section 5. Discrimination prohibited.**

17 (1) (a) A supplier or wholesaler of motor fuel may not enter
18 into an agreement or arrangement in which, directly or
19 indirectly, discrimination is made in the price at which the
20 supplier or wholesaler sells motor fuel to wholesalers or
21 retailers if the discrimination substantially lessens
22 competition or tends to create a monopoly or to injure,
23 destroy, or prevent competition with a person in the
24 marketing of motor fuel in the community where the supplier
25 or wholesaler is selling at a lower price.

1 (b) A discrimination in price is justified if the
 2 difference in the cost to wholesaler or retailer to whom the
 3 supplier or wholesaler sells at a lower figure is only
 4 commensurate with an actual difference in the quality or
 5 quantity of motor fuel sold to the wholesaler or retailer or
 6 in the transportation charges or other expenses of marketing
 7 involved in the sale to the wholesaler or retailer. A
 8 supplier or wholesaler is not prevented from showing that
 9 his lower price was made in good faith to meet an equally
 10 low price of a competitor.

11 (2) A person whose business or any part of which is
 12 the sale of motor fuel to wholesalers may not sell motor
 13 fuel for ultimate consumption or use at a price lower than
 14 that at which he sells to a wholesaler unless the lower
 15 price is justified as provided in subsection (1)(b).

16 NEW SECTION. Section 6. Coercion prohibited. A
 17 supplier or wholesaler of motor fuel may not threaten a
 18 customer with price discrimination or use any form of
 19 coercion in order to change or maintain the customer's
 20 resale price.

21 NEW SECTION. Section 7. Penalty. (1) A violation of
 22 [section 4] is an unfair trade practice and upon conviction
 23 a retailer or wholesaler is subject to a civil penalty of
 24 not more than \$1,000 a day for each day that the act or
 25 omission occurs.

1 (2) The department of commerce or a county attorney
 2 may bring an action for a violation of [section 4].

3 NEW SECTION. Section 8. Civil remedies. (1) The
 4 department of commerce may issue a cease and desist order
 5 requiring a wholesaler or retailer to cease violating the
 6 provisions of [section 4]. The department or a county
 7 attorney may commence an action on behalf of the state for
 8 failure to comply with an order. A civil penalty of not less
 9 than \$200 or more than \$5,000 may be recovered in the
 10 action.

11 (2) The department or a county attorney may bring an
 12 action to enjoin a violation of [section 4].

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

15 NEW SECTION. Section 9. Exemption. [This act] does
 16 not apply to a sale at wholesale or retail when the motor
 17 fuel selling price is set in good faith to meet an existing
 18 price of a competitor and is based on evidence in the
 19 possession of the retailer or wholesaler in the form of an
 20 advertisement, proof of sale, or receipted purchase.

21 NEW SECTION. Section 10. Saving clause. [This act]
 22 does not affect rights and duties that matured, penalties
 23 that were incurred, or proceedings that were begun before
 24 [the effective date of this act].

25 NEW SECTION. Section 11. Severability. If a part of

LC 1122/01

1 [this act] is invalid, all valid parts that are severable
2 from the invalid part remain in effect. If a part of [this
3 act] is invalid in one or more of its applications, the part
4 remains in effect in all valid applications that are
5 severable from the invalid applications.

-End-

HB 0464/02
OBJECTION RAISED TO
ADVERSE COMMITTEE REPORT
COMM. ON BUSINESS
AND ECONOMIC DEVELOPMENT
AS AMENDED

HOUSE BILL NO. 464

INTRODUCED BY BRADLEY, PECK, RAPP-SVRCEK,

ADDY, LYNCH, GRADY, NATHE, GOULD

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE PRICE OF MOTOR FUEL AT WHOLESALE AND RETAIL LEVELS; PROVIDING FOR PENALTIES AND REMEDIES FOR SALES IN VIOLATION OF ESTABLISHED PRICES; AND PROHIBITING UNFAIR PRACTICES IN THE SALE OF MOTOR FUEL; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1.** Short title. [This act] may be cited as the "Montana Petroleum Trade Practices Act".

NEW SECTION. **Section 2.** Purpose. The legislature recognizes that independent and small dealers and distributors of petroleum and related products are vital to a healthy, competitive marketplace and are unable to survive financially in competition with subsidized, below-cost pricing at the retail level by others who have other sources of income. The legislature believes that subsidized, below-cost pricing is a predatory practice that is not conducive to fair trade. The legislature finds that below-cost pricing laws are effective in protecting independent and small retailers and wholesalers in other jurisdictions from subsidized pricing, which is inherently

unfair and destructive and reduces competition in the motor fuel marketing industry and is a form of predatory pricing. The purpose of [this act] is to prevent and eliminate subsidized pricing of petroleum and related products.

NEW SECTION. **Section 3.** Definitions. As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Cost to retailer" means the current MOST RECENT invoice cost of motor fuel to the retailer within 30 days prior to the date of sale or the replacement cost of the motor fuel to the retailer, whichever is lower:

(a) less ~~all-trade~~ CUSTOMARY discounts FOR CASH except customary TRADE discounts ~~for-cash~~; and

(b) plus:

~~{i}--any-federal-or-state-excise-taxes-imposed--on--the motor-fuel;~~

~~{ii}--any--cost--incurred--for-federal-or-state-mandated insurance-programs-and-underground-storage-tank-programs;~~

{I} COST OF DOING BUSINESS AS DEFINED IN 30-14-202;

~~{iii}~~{II} any cost incurred for transportation;

~~{iv}~~{III} any other charges not otherwise included in the invoice cost or the replacement cost of the motor fuel; and

~~{v}~~{IV} a markup to cover a proportionate part of the cost of doing business. In the absence of proof of a lesser

1 cost, the additional markup must be 6% of the MOST RECENT
2 INVOICE cost to the retailer.

3 (2) "Cost to wholesaler" means the current invoice
4 cost of motor fuel to the wholesaler within 30 days prior to
5 the date of sale or the replacement cost of the motor fuel
6 to the wholesaler, whichever is lower:

7 (a) less ~~all-trade~~ CUSTOMARY discounts FOR CASH except
8 customary TRADE discounts ~~for-cash~~; and

9 (b) plus:

10 ~~{i}--any-federal-or-state-excise-taxes-imposed-on--the~~
11 ~~motor-fuel-prior-to-the-sale-at-retail;~~

12 ~~{iii}--any--cost--incurred--for-federal-or-state-mandated~~
13 ~~insurance-programs-and-underground-storage-tank-programs;~~

14 (I) COST OF DOING BUSINESS AS DEFINED IN 30-14-202;

15 ~~{iii}~~(II) any cost incurred for transportation;

16 ~~{iv}~~(III) any other charges not otherwise included in
17 the invoice cost or the replacement cost of the motor fuel;
18 and

19 ~~{v}~~(IV) a markup to cover a proportionate part of the
20 cost of doing business, except for sales at wholesale
21 between wholesalers. In the absence of proof of a lesser
22 cost, the additional markup must be 3% of the MOST RECENT
23 INVOICE cost to the wholesaler.

24 (3) "Motor fuel" means gasoline, gasohol as defined in
25 15-70-201, and special fuel as defined in 15-70-301.

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

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

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

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

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

24 (9) "Supplier" means a person who manufactures motor
25 fuel or who is a controlled subsidiary of a manufacturer of

1 motor fuel and who is engaged in the business of selling
2 motor fuel to wholesalers, retailers, and consumers.

3 (10) "TRANSPORTATION COST" MEANS THE ACTUAL COST OF
4 TRANSPORTATION OF MOTOR FUEL OR, IN THE ABSENCE OF PROOF OF
5 ACTUAL COST, THE COMMON CARRIER RATES FIXED BY THE PUBLIC
6 SERVICE COMMISSION FOR THE IMMEDIATE MARKET AREA CONCERNED.

7 ~~(10)~~(11) "Vertically integrated producer" means a
8 producer who controls all phases of petroleum production and
9 sale from the well through wholesalers and retailers.

10 ~~(11)~~(12) "Wholesaler" means a person engaged in the
11 business of making sales at wholesale or, in the case of a
12 person selling at both retail and wholesale, only the
13 wholesale portion of the business.

14 NEW SECTION. Section 4. Below-cost sale prohibited.

15 (1) A retailer may not sell or offer or advertise a sale at
16 retail at less than the cost to retailer if the effect is to
17 injure or destroy competition or substantially lessen
18 competition, unless the sale is:

19 (a) an isolated transaction and not made in the usual
20 course of business;

21 (b) a bona fide, advertised clearance sale;

22 (c) for charitable purposes or to an unemployment
23 relief agency; or

24 (d) excepted under 30-14-213.

25 (2) A retailer may not refuse to sell or limit,

1 restrict, or condition the sale at retail of petroleum
2 ~~distillates~~ MOTOR FUELS stored at the retail outlet in
3 100-gallon or larger containers to another retailer at the
4 same or lower price as offered, advertised, or sold to the
5 public if the petroleum-~~distillates~~ MOTOR FUELS are offered,
6 advertised, or sold to the public at less than the cost to
7 retailer. The burden of proving an exemption from the
8 provisions of this subsection is upon the retailer claiming
9 his sales are exempt.

10 (3) A vertically integrated producer or wholesaler may
11 not sell or transfer a petroleum-~~distillate~~ MOTOR FUEL to
12 its own retail outlet at a price lower than the price at
13 which that petroleum-~~distillate~~ MOTOR FUEL is offered for
14 sale by the vertically integrated producer or wholesaler to
15 a retailer operating in the same competitive area served by
16 the retail outlet of the vertically integrated producer or
17 wholesaler. Retail sales under this provision by a
18 vertically integrated producer or wholesaler must comply
19 with all provisions of [this act].

20 (4) For retail sales by a vertically integrated
21 producer or by a supplier-operated retailer who obtains fuel
22 products from other producers or suppliers, the minimum
23 allowable cost to the vertically integrated producer or the
24 supplier-owned retailer is the price at which the other
25 DELIVERING producers' or suppliers' wholesalers sell to

1 their retailers or to other retailers whom they supply plus
2 8% of that price as the cost of doing business.

3 NEW SECTION. Section 5. Discrimination prohibited.

4 (1) (a) A supplier or wholesaler of motor fuel may not enter
5 into an agreement or arrangement in which, directly or
6 indirectly, discrimination is made in the price at which the
7 supplier or wholesaler sells motor fuel to wholesalers or
8 retailers if the discrimination substantially lessens
9 competition or tends to create a monopoly or to injure,
10 destroy, or prevent competition with a person in the
11 marketing of motor fuel in the community where the supplier
12 or wholesaler is selling at a lower price.

13 (b) A discrimination in price is justified if the
14 difference in the cost to wholesaler or retailer to whom the
15 supplier or wholesaler sells at a lower figure is only
16 commensurate with an actual difference in the quality or
17 quantity of motor fuel sold to the wholesaler or retailer or
18 in the transportation charges or other expenses of marketing
19 involved in the sale to the wholesaler or retailer. A
20 supplier or wholesaler is not prevented from showing that
21 his lower price was made in good faith to meet an equally
22 low price of a competitor.

23 (2) A person whose business or any part of which is
24 the sale of motor fuel to wholesalers may not sell motor
25 fuel for ultimate consumption or use at a price lower than

1 that at which he sells to a wholesaler unless the lower
2 price is justified as provided in subsection (1)(b).

3 NEW SECTION. Section 6. Coercion prohibited. A
4 supplier or wholesaler of motor fuel may not threaten a
5 customer with price discrimination or use any form of
6 coercion in order to change or maintain the customer's
7 resale price.

8 NEW SECTION. Section 7. Penalty. (1) A violation of
9 [section 4] is an unfair trade practice and upon conviction
10 a retailer or wholesaler is subject to a civil penalty of
11 not more than \$1,000 a day for each day that the act or
12 omission occurs.

13 (2) The department of commerce or a county attorney
14 may bring an action for a violation of [section 4].

15 NEW SECTION. Section 8. Civil remedies. (1) The
16 department of commerce may issue a cease and desist order
17 requiring a wholesaler or retailer to cease violating the
18 provisions of [section 4]. The department or a county
19 attorney may commence an action on behalf of the state for
20 failure to comply with an order. A civil penalty of not less
21 than \$200 or more than \$5,000 may be recovered in the
22 action.

23 (2) The department or a county attorney may bring an
24 action to enjoin a violation of [section 4].

25 (3) An action under this section must be commenced in

1 the county where the motor fuel is sold.

2 NEW SECTION. Section 9. Exemption. [This act] does
3 not apply to a:

4 (1) sale at wholesale or retail when the motor fuel
5 selling price is set in good faith to meet an existing price
6 of a competitor and is based on evidence in the possession
7 of the retailer or wholesaler in the form of an
8 advertisement, proof of sale, or receipted purchase; OR

9 (2) BULK SALE AT EITHER THE WHOLESALE OR RETAIL LEVEL
10 TO A PERSON ENGAGED IN AGRICULTURE IF THE FUEL IS USED FOR
11 AGRICULTURAL PURPOSES.

12 NEW SECTION. Section 10. Saving clause. [This act]
13 does not affect rights and duties that matured, penalties
14 that were incurred, or proceedings that were begun before
15 [the effective date of this act].

16 NEW SECTION. Section 11. Severability. If a part of
17 [this act] is invalid, all valid parts that are severable
18 from the invalid part remain in effect. If a part of [this
19 act] is invalid in one or more of its applications, the part
20 remains in effect in all valid applications that are
21 severable from the invalid applications.

22 NEW SECTION. SECTION 12. EFFECTIVE DATE. [THIS ACT]
23 IS EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

1 HOUSE BILL NO. 464

2 INTRODUCED BY BRADLEY, PECK, RAPP-SVRCEK,

3 ADDY, LYNCH, GRADY, NATHE, GOULD

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

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

12 NEW SECTION. Section 1. Short title. [This act] may
13 be cited as the "Montana Petroleum Trade Practices Act".

14 NEW SECTION. Section 2. Purpose. The legislature
15 recognizes that independent and small dealers and
16 distributors of petroleum and related products are vital to
17 a healthy, competitive marketplace and are unable to survive
18 financially in competition with subsidized, below-cost
19 pricing at the retail level by others who have other sources
20 of income. The legislature believes that subsidized,
21 below-cost pricing is a predatory practice that is not
22 conducive to fair trade. The legislature finds that
23 below-cost pricing laws are effective in protecting
24 independent and small retailers and wholesalers in other
25 jurisdictions from subsidized pricing, which is inherently

1 unfair and destructive and reduces competition in the motor
2 fuel marketing industry and is a form of predatory pricing.
3 The purpose of [this act] is to prevent and eliminate
4 subsidized pricing of petroleum and related products.

5 NEW SECTION. Section 3. Definitions. As used in [this
6 act], unless the context requires otherwise, the following
7 definitions apply:

8 (1) "Cost to retailer" means the current MOST RECENT
9 invoice cost of motor fuel to the retailer within 30 days
10 prior to the date of sale or the replacement cost of the
11 motor fuel to the retailer, whichever is lower:

12 (a) less ~~all~~-trade CUSTOMARY discounts FOR CASH except
13 customary TRADE discounts ~~for-cash~~; and

14 (b) plus:

15 ~~(i) any federal or state excise taxes imposed on the~~
16 ~~motor fuel;~~

17 ~~(ii) any cost incurred for federal or state mandated~~
18 ~~insurance programs and underground storage tank programs;~~

19 ~~(I) COST OF DOING BUSINESS AS DEFINED IN 30-14-202 ANY~~
20 ~~FEDERAL OR STATE EXCISE TAXES IMPOSED ON THE MOTOR FUEL;~~

21 ~~(iii) (II)~~ any cost incurred for transportation;

22 ~~(iv) (III)~~ any other charges not otherwise included in
23 the invoice cost or the replacement cost of the motor fuel;
24 and

25 ~~(v) (IV)~~ a markup to cover a proportionate part of the

1 cost of doing business. In the absence of proof of a lesser
2 cost, the additional markup must be 6% of the MOST RECENT
3 INVOICE cost to the retailer.

4 (2) "Cost to wholesaler" means the current MOST RECENT
5 invoice cost of motor fuel to the wholesaler within 30 days
6 prior to the date of sale or the replacement cost of the
7 motor fuel to the wholesaler, whichever is lower:

8 (a) less all-trade CUSTOMARY discounts FOR CASH except
9 customary TRADE discounts for-cash; and

10 (b) plus:

11 ~~{i}-any-federal-or-state-excise-taxes-imposed-on-the~~
12 ~~motor-fuel-prior-to-the-sale-at-retail;~~

13 ~~{ii}-any-cost-incurred-for-federal-or-state-mandated~~
14 ~~insurance-programs-and-underground-storage-tank-programs;~~

15 ~~(I) COST-OF-DOING-BUSINESS-AS-DEFINED-IN-30-14-202 ANY~~
16 FEDERAL OR STATE EXCISE TAXES IMPOSED ON THE MOTOR FUEL
17 PRIOR TO THE SALE AT RETAIL;

18 ~~{iii}{II}~~ any cost incurred for transportation;

19 ~~{iv}{III}~~ any other charges not otherwise included in
20 the invoice cost or the replacement cost of the motor fuel;
21 and

22 ~~{v}{IV}~~ a markup to cover a proportionate part of the
23 cost of doing business, except for sales at wholesale
24 between wholesalers. In the absence of proof of a lesser
25 cost, the additional markup must be 3% of the MOST RECENT

1 INVOICE cost to the wholesaler.

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

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

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

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

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

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

1 to a retailer or purchaser for resale or further processing.

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

6 (10) "TRANSPORTATION COST" MEANS THE ACTUAL COST OF
7 TRANSPORTATION OF MOTOR FUEL OR, IN THE ABSENCE OF PROOF OF
8 ACTUAL COST, THE COMMON CARRIER RATES FIXED BY THE PUBLIC
9 SERVICE COMMISSION FOR THE IMMEDIATE MARKET AREA CONCERNED.

10 (11) "Vertically integrated producer" means a
11 producer who controls all phases of petroleum production and
12 sale from the well through wholesalers and retailers.

13 (12) "Wholesaler" means a person engaged in the
14 business of making sales at wholesale or, in the case of a
15 person selling at both retail and wholesale, only the
16 wholesale portion of the business.

17 **NEW SECTION. Section 4. Below-cost sale prohibited.**

18 (1) A retailer may not sell or offer or advertise a sale at
19 retail at less than the cost to retailer if the effect is to
20 injure or destroy competition or substantially lessen
21 competition, unless the sale is:

22 (a) an isolated transaction and not made in the usual
23 course of business;

24 (b) a bona fide, advertised clearance sale;

25 (c) for charitable purposes or to an unemployment

1 relief agency; or

2 (d) excepted under 30-14-213.

3 (2) A retailer may not refuse to sell or limit,
4 restrict, or condition the sale at retail of petroleum
5 distillates MOTOR FUELS stored at the retail outlet in
6 100-gallon or larger containers to another retailer at the
7 same or lower price as offered, advertised, or sold to the
8 public if the petroleum-distillates MOTOR FUELS are offered,
9 advertised, or sold to the public at less than the cost to
10 retailer. The burden of proving an exemption from the
11 provisions of this subsection is upon the retailer claiming
12 his sales are exempt.

13 (3) A vertically integrated producer or wholesaler may
14 not sell or transfer a petroleum-distillate MOTOR FUEL to
15 its own retail outlet at a price lower than the price at
16 which that petroleum-distillate MOTOR FUEL is offered for
17 sale by the vertically integrated producer or wholesaler to
18 a retailer operating in the same competitive area served by
19 the retail outlet of the vertically integrated producer or
20 wholesaler. Retail sales under this provision by a
21 vertically integrated producer or wholesaler must comply
22 with all provisions of [this act].

23 (4) For retail sales by a vertically integrated
24 producer or by a supplier-operated retailer who obtains fuel
25 products from other producers or suppliers, the minimum

1 allowable cost to the vertically integrated producer or the
2 supplier-owned retailer is the price at which the other
3 DELIVERING producers' or suppliers' wholesalers sell to
4 their retailers or to other retailers whom they supply plus
5 8% 9% of that price as the cost of doing business.

6 NEW SECTION. Section 5. Discrimination prohibited.

7 (1) (a) A supplier or wholesaler of motor fuel may not enter
8 into an agreement or arrangement in which, directly or
9 indirectly, discrimination is made in the price at which the
10 supplier or wholesaler sells motor fuel to wholesalers or
11 retailers if the discrimination substantially lessens
12 competition or tends to create a monopoly or to injure,
13 destroy, or prevent competition with a person in the
14 marketing of motor fuel in the community where the supplier
15 or wholesaler is selling at a lower price.

16 (b) A discrimination in price is justified if the
17 difference in the cost to wholesaler or retailer to whom the
18 supplier or wholesaler sells at a lower figure is only
19 commensurate with an actual difference in the quality or
20 quantity of motor fuel sold to the wholesaler or retailer or
21 in the transportation charges or other expenses of marketing
22 involved in the sale to the wholesaler or retailer. A
23 supplier or wholesaler is not prevented from showing that
24 his lower price was made in good faith to meet an equally
25 low price of a competitor.

1 (2) A person whose business or any part of which is
2 the sale of motor fuel to wholesalers may not sell motor
3 fuel for ultimate consumption or use at a price lower than
4 that at which he sells to a wholesaler unless the lower
5 price is justified as provided in subsection (1)(b).

6 NEW SECTION. Section 6. Coercion prohibited. A
7 supplier or wholesaler of motor fuel may not threaten a
8 customer with price discrimination or use any form of
9 coercion in order to change or maintain the customer's
10 resale price.

11 NEW SECTION. Section 7. Penalty. (1) A violation of
12 [section 4] is an unfair trade practice and upon conviction
13 a retailer or wholesaler is subject to a civil penalty of
14 not more than \$1,000 a day for each day that the act or
15 omission occurs.

16 (2) The department of commerce or a county attorney
17 may bring an action for a violation of [section 4].

18 NEW SECTION. Section 8. Civil remedies. (1) The
19 department of commerce may issue a cease and desist order
20 requiring a wholesaler or retailer to cease violating the
21 provisions of [section 4]. The department or a county
22 attorney may commence an action on behalf of the state for
23 failure to comply with an order. A civil penalty of not less
24 than \$200 or more than \$5,000 may be recovered in the
25 action.

1 (2) The department or a county attorney may bring an
2 action to enjoin a violation of [section 4].

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

5 NEW SECTION. Section 9. Exemption. [This act] does
6 not apply to a:

7 (1) sale at wholesale or retail when the motor fuel
8 selling price is set in good faith to meet an existing price
9 of a competitor and is based on evidence in the possession
10 of the retailer or wholesaler in the form of an
11 advertisement, proof of sale, or receipted purchase; OR

12 (2) BULK SALE AT EITHER THE WHOLESALE OR RETAIL LEVEL
13 TO A PERSON ENGAGED IN AGRICULTURE IF THE FUEL IS USED FOR
14 AGRICULTURAL PURPOSES.

15 NEW SECTION. Section 10. Saving clause. [This act]
16 does not affect rights and duties that matured, penalties
17 that were incurred, or proceedings that were begun before
18 [the effective date of this act].

19 NEW SECTION. Section 11. Severability. If a part of
20 [this act] is invalid, all valid parts that are severable
21 from the invalid part remain in effect. If a part of [this
22 act] is invalid in one or more of its applications, the part
23 remains in effect in all valid applications that are
24 severable from the invalid applications.

25 NEW SECTION. SECTION 12. EFFECTIVE DATE. [THIS ACT]

1 IS EFFECTIVE ON PASSAGE AND APPROVAL.

-End-