HOUSE BILL NO. 216

INTRODUCED BY DOHERTY, GRADY, HARRINGTON, HARPER, STRIZICH, BECK, KENNEDY, COCCHIARELLA, WALLIN, T. NELSON, STANG, HARP, R. JOHNSON

IN THE HOUSE

JANUARY 16, 1993

INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.

FIRST READING.

FEBRUARY 13, 1993 COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 15, 1993 PRINTING REPORT.

ON MOTION, CONSIDERATION PASSED FOR THE DAY.

FEBRUARY 16, 1993 SECOND READING, DO PASS.

FEBRUARY 17, 1993 ENGROSSING REPORT.

THIRD READING, PASSED. AYES, 78; NOES, 21.

FEBRUARY 19, 1993 TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 20, 1993

FEBRUARY 18, 1993

INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.

FIRST READING.

MARCH 30, 1993 COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.

MARCH 31, 1993 SECOND READING, CONCURRED IN.

APRIL 1, 1993 THIRD READING, CONCURRED IN. AYES, 27; NOES, 23.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 5, 1993

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APRIL 7, 1993

SECOND READING, AMENDMENTS CONCURRED IN.

THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

LC 0982/01

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USE BILL NO. 216 1 INTRODUCTO BY 2 3 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MOTOR FUE 4 MARKETING UNFAIR PRACTICES LAW: PROVIDING THAT AN ADVERTISEMENT, OFFERING TO SELL, OR SALE OF MOTOR FUEL AT 6 7 LESS THAN COST IS PRIMA FACIE EVIDENCE OF INTENT TO INJURE 8 OR DESTROY COMPETITORS, INJURE OR DESTROY COMPETITION, OR SUBSTANTIALLY LESSEN COMPETITION; REMOVING THE TERMINATION 9 10 OF THE REGULATION OF RETAIL MOTOR FUEL PRICING; AMENDING 11 SECTION 30-14-804, MCA, AND SECTION 9, CHAPTER 499, LAWS OF 12 1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

15 Section 1. Section 30-14-804, MCA, is amended to read: 16 "30-14-804. (Temporary) Below-cost sale prohibited. (1) A wholesaler may not sell motor fuel to a retail motor fuel 17 18 outlet at less than the delivered cost of the motor fuel plus the cost of doing business if the effect is to injure 19 or destroy competitors or to injure or destroy competition 20 21 or substantially lessen competition.

22 (2) A retailer may not sell motor fuel at less than the 23 delivered cost of the motor fuel plus the cost of doing 24 business if the effect is to injure or destroy competition 25 or substantially lessen competition.

1 (3) A wholesaler may not sell or transfer motor fuel to 2 itself or an affiliate for resale at a retail outlet at a transfer price lower than the price the wholesaler charges 4 another retail motor fuel outlet that purchases a like quantity within the same competitive area if the effect is to injure or destroy competition or substantially lessen competition.

8 (4) The provisions of this part do not apply to a sale 9 at wholesale or a sale at retail made:

10 (a) in an isolated transaction not in the usual course 11 of business;

12 (b) if motor fuels are advertised, offered for sale, or 13 sold in a bona fide clearance sale for the purpose of 14 discontinuing trade in the motor fuel and the advertising, 15 offer to sell, or sale states the reason for the sale and 16 the quantity of the motor fuel advertised, offered for sale, 17 or to be sold:

18 (c) if the motor fuel is advertised, offered for sale, 19 or sold as imperfect or damaged and the advertising, offer 20 of sale, or sale states the reason for the sale and the 21 quantity of the motor fuel advertised, offered for sale, or 22 sold:

23 (d) if motor fuel is sold upon the final liquidation of 24 a business: or

25 (e) if motor fuel is advertised, offered for sale, or

> HB all -2-INTRODUCED BILL



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sold by a fiduciary or other officer under the order or
 direction of a court.

3 (5) Notice required under this section is not 4 sufficient unless the subject of the sale is kept separate 5 from other stocks and is clearly and legibly marked with the 6 reason for the sale and any advertisement of the goods 7 indicates the same facts and the quantity to be sold.

8 (6) A wholesaler or retailer may advertise, offer to 9 sell, or sell motor fuel at a price made in good faith to 10 meet the price of a competitor who is selling the same or a similar product of like grade and quality. The price of 11 12 motor fuel advertised, offered for sale, or sold under the exceptions in subsection (4) may not be considered the price 13 14 of a competitor and may not be used as a basis for 15 establishing prices below cost, and the price established at a bankruptcy sale may not be considered the price of a 16 17 competitor under the provisions of this section.

(7) If a wholesaler sells motor fuel to another 18 wholesaler, the former is not required to include in his 19 20 selling price to the latter the cost of doing business as 21 defined in 30-14-803, but the latter wholesaler, upon resale 22 to a retailer, is subject to the provisions of this section. 23 (8) Evidence of advertisement, offering to sell, or 24 sale of motor fuel at less than cost is prima facie evidence of intent to injure competitors or destroy or substantially 25

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1 lessen competition. (Terminates July 1, 1993--sec. 9, Ch.
2 499, L. 1991.)"

3 Section 2. Section 9, Chapter 499, Laws of 1991, is
4 amended to read:

5 "Section 9. Effective date ---termination. [This act]
6 is effective on passage and approval and-terminates-July-17
7 1993."

8 <u>NEW SECTION.</u> Section 3. Effective date. [This act] is
9 effective on passage and approval.

-End-

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53rd Legislature

HB 0216/02

HB 0216/02

APPROVED BY COMM. ON BUSINESS AND ECONOMIC DEVELOPMENT

1	HOUSE BILL NO. 216	1	business-if-the-effect-is-to-injure-ordestroycompetition
2	INTRODUCED BY DOHERTY, GRADY, HARRINGTON, HARPER, STRIZICH,	2	or-substantially-lessen-competition-
3	BECK, KENNEDY, COCCHIARELLA, WALLIN, T. NELSON, STANG,	3	<pre>f3}A-wholesaler-may-not-sell-or-transfer-motor-fuel-to</pre>
4	HARP, R. JOHNSON	4	itselforanaffiliate-for-resale-at-a-retail-outlet-at-a
5		5	transfer-price-lower-than-the-price-thewholesalercharges
6	A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE-MOTOR-FUEL	6	anotherretailmotorfueloutletthatpurchases-a-like
7	Markefingunpairpracticeslaw;providingthatan	7	quantity-within-the-same-competitive-area-if-theeffectis
8	Aðverfis ement7 -pperingtosell7-or-gale-op- motor -puel-at	8	toinjureordestroycompetition-or-substantially-lessen
9	bess-than-cost-is-prima-facie-evidence-of-intenttoinjure	9	competition
10	ordestroycompetitors;injure-or-destroy-competition;-or	10	(4)The-provisions-of-this-part-do-not-apply-to-asale
11	Substantially-lessen-competition;-removing the termination	11	at-wholesale-or-a-sale-at-retail-made:
12	OF THE REGULATION OF RETAIL MOTOR FUEL PRICING; AMENDING	12	ta}inan-isolated-transaction-not-in-the-usual-course
13	SECTION-30-14-0047-MCA7-AND SECTION 9, CHAPTER 499, LAWS OF	13	of-business;
14	1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."	14	tb)if-motor-fuels-are-advertised7-offered-for-sale7-or
15		15	sold-in-a-bonafideclearancesaleforthepurposeof
16	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	16	discontinuingtradein-the-motor-fuel-and-the-advertising;
17	Section-1Bection-30-14-0047-MEA7-is-amended-to-read:	17	offer-to-selly-or-sale-states-the-reason-forthesaleand
18	#38-14-884(Temporary)-Below-cost-sale-prohibited+1)	18	the-quantity-of-the-motor-fuel-advertisedy-offered-for-saley
19	Awholesaler-may-not-sell-motor-fuel-to-a-retail-motor-fuel	19	or-to-be-so ld;
20	outlet-at-less-than-the-delivered-costofthemotorfuel	20	<pre>(c)ifthe-motor-fuel-is-advertised;-offered-for-sale;</pre>
21	plusthecost-of-doing-business-if-the-effect-is-to-injure	21	or-sold-as-imperfect-or-damaged-and-theadvertising;offer
22	or-destroy- <u>competitors-or-to-injure-ordestroy</u> competition	22	ofsaleyorsalestatesthe-reason-for-the-sale-and-the
23	or-substantially-lessen-competition.	23	quantity-of-the-motor-fuel-advertised;-offered-for-sale;or
24	t2;A-retailer-may-not-sell-motor-fuel-at-less-than-the	24	sold;
25	deliveredcostofthemotorfuel-plus-the-cost-of-doing	25	<pre>(d)if-motor-fuel-is-sold-upon-the-final-liquidation-of</pre>

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SECOND READING

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1	a-business;-or
2	te;ifmotorfuel-is-advertised;-offered-for-sale;-or
3	sold-by-a-fiduciary-or-otherofficerundertheorderor
4	direction-of-a-court;
5	(5)Noticerequiredunderthissectionisnot
6	sufficient-unless-the-subject-of-the-sale-iskeptseparate
7	from-other-stocks-and-is-clearly-and-legibly-marked-with-the
8	reasonforthesaleandanyadvertisement-of-the-goods
9	indicates-the-same-facts-and-the-quantity-to-be-sold-
10	(6)A-wholesaler-or-retailer-mayadvertise;offerto
11	sellyorsellmotor-fuel-at-a-price-made-in-good-faith-to
12	meet-the-price-of-a-competitor-who-is-selling-the-same-ora
13	similarproductoflikegradeand-qualityThe-price-of
14	motor-fuel-advertised7-offered-for-sale7-or-soldunderthe
15	exceptions-in-subsection-(4)-may-not-be-considered-the-price
16	ofacompetitorandmaynotbeusedasabasis-for
17	establishing-prices-below-costy-and-the-price-established-at
18	a-bankruptcy-sale-may-notbeconsideredthepriceofa
19	competitor-under-the-provisions-of-this-section-
20	t7tifawholesalersellsmotorfueltoanother
21	wholesalery-the-former-is-not-requiredtoincludeinhis
22	sellingpricetothe-latter-the-cost-of-doing-business-as
23	defined-in-30-14-8037-but-the-latter-wholessler7-upon-resale
24	to-a-retailery-is-subject-to-the-provisions-of-this-section;
25	<u> t0}Bvidence-of-advertisement;offeringtosell;or</u>

1	
	sale-of-motor-fuel-at-less-than-cost-is-prima-facie-evidence
2	ofintent-to-injure-competitors-or-destroy-or-substantially
3	lessen-competition:-(Terminates-July-171993sect97Cht
4	4997-b1991-)*
5	Section 1. Section 9, Chapter 499, Laws of 1991, is
6	amended to read:
7	"Section 9. Effective datetermination
8	TERMINATION. (This act) is effective on passage and approval
9	and-terminates-July-17-1993 AND TERMINATES JULY 1, 1995."
10	NEW SECTION. Section 2. Effective date. [This act] is
11	effective on passage and approval.

-End-

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HB 0216/02

1	HOUSE BILL NO. 216	1	business-if-the-effect-is-to-injure-ordestroycompetition
2	INTRODUCED BY DOHERTY, GRADY, HARRINGTON, HARPER, STRIZICH,	2	or-substantially-lessen-competition-
3	BECK, KENNEDY, COCCHIARELLA, WALLIN, T. NELSON, STANG,	3	(3)A-wholesaler-may-not-sell-or-transfer-motor-fuel-to
4	HARP, R. JOHNSON	4	itselforanaffiliate-for-resale-at-a-retail-outlet-at-a
5		5	transfer-price-lower-than-the-price-thewholesalercharges
6	A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE-MOTOR-FUEL	6	anotherretailmotorfueloutletthatpurchases-a-like
7	MarkbringUnpairpracticesLaw;providingThatAn	7	quantity-within-the-same-competitive-area-if-theeffectis
8	Advertisement,offeringtoselly-or-sale-of-motor-publ-at	8	toinjureordestroycompetition-or-substantially-lessen
9	bess-than-cost-is-prima-pacie-evidence-op-intenttoinjure	9	competition:
10	ordestroycompetitorsinjure-or-destroy-competitionor	10	t4)The-provisions-of-this-part-do-not-apply-to-asale
11	SUBSTANTIALLY-LESSEN-COMPETITION7-REMOVING THE TERMINATION	11	at-wholesale-or-a-sale-at-retail-made:
12	OF THE REGULATION OF RETAIL MOTOR PUEL PRICING; AMENDING	12	tajinan-isolated-transaction-not-in-the-usual-course
13	SBCTION-30-14-0047-NCA7-AND SECTION 9, CHAPTER 499, LAWS OF	13	of-business;
14	1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."	14	<pre>(b)if-motor-fuels-are-advertised;-offered-for-sale;-or</pre>
15		15	sold-in-a-bonafideclearancesaleforthepurposeof
. 16	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	16	discontinuingtradein-the-motor-fuel-and-the-advertising;
17	Section 1 Bection-30-14-8047-MCA7-is-amended-to-read:	17	offer-to-selly-or-sale-states-the-reason-forthesaleand
18	#30-14-804{Temporary}-Below-cost-sale-prohibited	18	the-quantity-of-the-motor-fuel-advertisedy-offered-for-saley
19	Awholessler-may-not-sell-motor-fuel-to-a-retail-motor-fuel	19	or-to-be-sold;
20	outlet-at-less-than-the-delivered-costofthemotorfuel	20	tc;ifthe-motor-fuel-is-advertised;-offered-for-sale;
21	plusthecost-of-doing-business-if-the-effect-is-to-injure	21	or-sold-as-imperfect-or-damaged-and-theadvertising;offer
22	or-destroy-competitors-or-to-injurg-ordestroycompetition	22	ofsaleyorsalestatesthe-reason-for-the-sale-and-the
23	or-substantially-lessen-competition:	23	quantity-of-the-motor-fuel-advertisedy-offered-for-saleyor
24	<pre>/2)A-retailer-may-not-sell-motor-fuel-at-less-than-the</pre>	24	sold;
25	deliveredcostofthemotorfuel-plus-the-cost-of-doing	25	(d)if-motor-fuel-is-sold-upon-the-final-liquidation-of
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HB 216

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HB 0216/02

1	a-business;-or
2	{e}ifmotorfuel-is-advertised,-offered-for-sale,-or
3	sold-by-a-fiduciary-or-otherofficerundertheorderor
4	direction-of-a-court.
5	<pre> (5)Noticereguiredunderthissectionisnot</pre>
6	sufficient-unless-the-subject-of-the-sale-iskeptseparate
7	from-other-stocks-and-is-clearly-and-legibly-marked-with-the
8	reasonforthesaleandanyadvertisement-of-the-goods
9	indicates-the-same-facts-and-the-quantity-to-be-sold-
10	(6)A-wholesaler-or-retailer-mayadvertise,offerto
11	sellyorsellmotor-fuel-at-a-price-made-in-good-faith-to
12	meet-the-price-of-a-competitor-who-is-selling-the-same-ora
13	similarproductoflikegradeand-quality:-The-price-of
14	motor-fuel-advertisedy-offered-for-saley-or-soldunderthe
15	exceptions-in-subsection-(4)-may-not-be-considered-the-price
16	efacompetitorandmaynotbeusedasabasis-for
17	establishing-prices-below-costy-and-the-price-established-at
18	a-bankruptcy-sale-may-notbeconsideredthepriceofa
19.	competitor-under-the-provisions-of-this-section;
20	+7+Ifawholesalersellsmotorfueltoanother
21	wholesalery-the-former-is-not-requiredtoincludeinhis
22	sellingpricetothe-latter-the-cost-of-doing-business-as
23	defined-in-30-14-003y-but-the-latter-wholesalery-upon-resale
24	to-a-retailery-is-subject-to-the-provisions-of-this-section.
25	<u>{8}Bvidence-of-advertisementyofferingtosellyor</u>
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sale-of-motor-fuel-at-less-than-cost-is-prima-facie-evidence of--intent-to-injure-competitors-or-destroy-or-substantially lessen-competition:-{Terminates-July-17--1993--secr--97--Chr 4997-br-1991r)* Section 1. Section 9, Chapter 499, Laws of 1991, is

7 "Section 9. Effective date -----termination --8 <u>TERMINATION</u>. [This act] is effective on passage and approval
9 and-terminates-duly-ly-1993 <u>AND TERMINATES JULY 1, 1995</u>."

10 NEW SECTION. Section 2. Effective date. [This act] is

11 effective on passage and approval.

amended to read:

-End-

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BB 216

SENATE STANDING COMMITTEE REPORT

Page 1 of 4 March 27, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 216 (third reading copy -- blue), respectfully report that House Bill No. 216 be amended as follows and as so amended be concurred in.

That such amendments read:

1. Title, line 11.

Following: "REMOVING"

Insert: "THE MOTOR FUEL MARKETING UNFAIR PRACTICES LAW; PROVIDING THAT AN ADVERTISEMENT, OFFERING TO SELL, OR SALE OF MOTOR FUEL AT LESS THAN COST IS PRIMA FACIE EVIDENCE OF INTENT TO INJURE OR DESTROY COMPETITORS, INJURE OR DESTROY COMPETITION, OR SUBSTANTIALLY LESSEN COMPETITION; REMOVING"

2. Title, line 13.

Pollowing: "AND"

Insert: "SECTIONS 30-14-803 AND 30-14-804, MCA, AND"

- 3. Page 4.
- Following: line 4

Insert: "Section 1. Section 30-14-803, MCA, is amended to read: "30-14-803. (Temporary) Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Affiliate" means a person who, other than through a franchise or marketing agreement, controls, is controlled by, or is under common control with any other person.

(2) "Cost of doing business", in the absence of proof of lesser cost, means 1% of the delivered cost of motor fuel for wholesale sales and 6% of the delivered cost of motor fuel for retail sales and in other cases includes all costs incurred in the conduct of business, including but not limited to.

(a) labor, including salaries of executives and officers; (b) rent that is not less than the fair market value based on current use;

(c) interest on borrowed capital;

(d)--depreciation;-

(e) selling cost;

(f) maintenance of equipment;

- (g) losses due to breakage or damage;
- (h) credit card fees or other charges;

(i) credit losses; and

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(j) all licenses, taxes, insurance, and advertising.

 $(\overline{3})(2)$ "Customary discount for cash" means an allowance, whether part of a larger discount or not, made to a wholesaler or retailer when a person pays for motor fuel within a limited or specified time.

(4)(3) "Delivered cost of motor fuel" means:

(a) for a distributor or retailer, the lower of the most recent cost of motor fuel to the distributor or retailer or the lowest replacement cost of motor fuel to the distributor or retailer within 5 days prior to the date of sale, in the quantity last purchased, whether within or before the 5-day period, less all trade discounts except customary discounts for cash plus transportation costs and any taxes that may be required by law if not already included in the invoice cost; or

(b) for a refiner, that refiner's posted rack price to the wholesale class of trade at the terminal used by the refiner to obtain the motor fuel, plus transportation costs and any taxes that may be required by law. If the refiner does not regularly sell to the wholesale class of trade at the terminal or does not post a terminal price, the refiner may use as its rack price the posted price of any other refiner at a terminal within the general trade area that has products readily available for sale to the wholesale class of trade.

 $\frac{(5)(4)}{(5)}$ "Distributor" means a person engaged in the purchase of motor fuel for resale to a retail motor fuel outlet.

 $\frac{(6)(5)}{(5)}$ "Motor fuel" means gasoline, as defined in 15-70-201, alcohol blended with gasoline to produce gasohol, and special fuel as defined in 15-70-301.

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

 $\frac{\{3\}}{\{7\}}$ "Posted rack price" means the f.o.b. terminal price for a particular motor fuel that a refiner, producer, or person offers for sale or transfer to itself or any related or unrelated person.

(9)(8) "Refiner" means a person engaged in the production or refining of motor fuel, whether the production or refining occurs in this state or elsewhere, and includes any affiliate of the person.

(10)(9) "Retailer" means a person engaged in the business of selling motor fuel at a retail motor fuel outlet.

(11)(10) "Retail motor fuel outlet" means a place of

business where motor fuel is sold and delivered into the tanks of motor vehicles regardless of whether the income from the selling and delivery of the fuel is the primary source of revenue of that business.

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

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motor fuel, including a transfer of motor fuel by a person to himself or to his affiliate.

(13)(12) "Transfer price" means the price used by a person to transfer motor fuel to himself or to an affiliate for resale at a retail motor fuel outlet.

(14)(13) "Transportation cost" means the actual cost of transportation of motor fuel or, in the absence of proof of actual cost, the common carrier rates fixed by the public service commission for the immediate market area concerned.

 $\frac{(15)(14)}{(16)}$ "Wholesaler" means a person engaged in the business of making sales at wholesale to a retail motor fuel outlet. (Terminates July 1, 1993--sec. 9, Ch. 499, L. 1991.) "

Section 2. Section 30-14-804, MCA, is amended to read: "30-14-804. (Temporary) Below-cost sale prohibited. (1) A wholesaler may not sell motor fuel to a retail motor fuel outlet at less than the delivered cost of the motor fuel plus the cost of doing business if the effect is to injure or destroy <u>competitors or to injure or destroy</u> competition or substantially lessen competition.

(2) A retailer may not sell motor fuel at less than the delivered cost of the motor fuel plus the cost of doing business if the effect is to injure or destroy competitors or to injure or destroy competition.

(3) A wholesaler may not sell or transfer motor fuel to itself or an affiliate for resale at a retail outlet at a transfer price lower than the price the wholesaler charges another retail motor fuel outlet that purchases a like quantity within the same competitive area if the effect is to injure or destroy competitors or to injure or destroy competition or substantially lessen competition.

(4) The provisions of this part do not apply to a sale at wholesale or a sale at retail made:

(a) in an isolated transaction not in the usual course of business;

(b) if motor fuels are advertised, offered for sale, or sold in a bona fide clearance sale for the purpose of discontinuing trade in the motor fuel and the advertising, offer to sell, or sale states the reason for the sale and the quantity of the motor fuel advertised, offered for sale, or to be sold;

(c) if the motor fuel is advertised, offered for sale, or sold as imperfect or damaged and the advertising, offer of sale, or sale states the reason for the sale and the quantity of the motor fuel advertised, offered for sale, or sold;

(d) if motor fuel is sold upon the final liquidation of a business; or

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(e) if motor fuel is advertised, offered for sale, or sold by a fiduciary or other officer under the order or direction of a court.

(5) Notice required under this section is not sufficient unless the subject of the sale is kept separate from other stocks and is clearly and legibly marked with the reason for the sale and any advertisement of the goods indicates the same facts and the quantity to be sold.

(6) A wholesaler or retailer may advertise, offer to sell, or sell motor fuel at a price made in good faith to meet the price of a competitor who is selling the same or a similar product of like grade and quality. The price of motor fuel advertised, offered for sale, or sold under the exceptions in subsection (4) may not be considered the price of a competitor and may not be used as a basis for establishing prices below cost, and the price established at a bankruptcy sale may not be considered the price of a competitor under the provisions of this section.

(7) If a wholesaler sells motor fuel to another wholesaler, the former is not required to include in his selling price to the latter the cost of doing business as defined in 30-14 803, but the latter wholesaler, upon resale to a retailer, is subject to the provisions of this section.

(7) Evidence of advertisement, offering to sell, or sale of motor fuel at less than cost is prima facie evidence of intent to injure competitors or destroy or substantially lessen competition. (Terminates July 1, 1993-sec. 9, Ch. 499, L. 1991.)""

Renumber: subsequent sections

4. Page 4, lines 7 and 8. Strike: "-- TERMINATION"

5. Page 4, line 9. Strike: "AND TERMINATES JULY 1, 1995"

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 2 March 29, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 216 (third reading copy -- blue), respectfully report that House Bill No. 216 be amended as follows and as so amended be concurred in.

That such amendments read:

1. Title, line 11.

Following: "REMOVING"

Insert: "THE MOTOR FUEL MARKETING UNFAIR PRACTICES LAW; PROVIDING THAT AN ADVERTISEMENT, OFFERING TO SELL, OR SALE OF MOTOR FUEL AT LESS THAN COST IS PRIMA FACIE EVIDENCE OF INTENT TO INJURE OR DESTROY COMPETITORS, INJURE OR DESTROY COMPETITION, OR SUBSTANTIALLY LESSEN COMPETITION; REMOVING"

2. Title, line 13. Following: "AND" Insert: "SECTION 30-14-804, MCA, AND"

3. Page 4.

Following: line 4

Insert: "Section 1. Section 30-14-804, MCA, is amended to read: "30-14-804. (Temporary) Below-cost sale prohibited. (1) A wholesaler may not sell motor fuel to a retail motor fuel outlet at less than the delivered cost of the motor fuel plus the cost of doing business if the effect is to injure or destroy competitors or to injure or destroy competition or substantially lessen competition.

(2) A retailer may not sell motor fuel at less than the delivered cost of the motor fuel plus the cost of doing business if the effect is to injure or destroy competitors or to injure or destroy competition or substantially lessen competition.

(3) A wholesaler may not sell or transfer motor fuel to itself or an affiliate for resale at a retail outlet at a transfer price lower than the price the wholesaler charges another retail motor fuel outlet that purchases a like quantity within the same competitive area if the effect is to injure or destroy competitors or to injure or destroy competition or substantially lessen competition.

(4) The provisions of this part do not apply to a sale at wholesale or a sale at retail made:

(a) in an isolated transaction not in the usual course of business:



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(b) if motor fuels are advertised, offered for sale, or sold in a bona fide clearance sale for the purpose of discontinuing trade in the motor fuel and the advertising, offer to sell, or sale states the reason for the sale and the quantity of the motor fuel advertised, offered for sale, or to be sold;

(c) if the motor fuel is advertised, offered for sale, or sold as imperfect or damaged and the advertising, offer of sale, or sale states the reason for the sale and the quantity of the motor fuel advertised, offered for sale, or sold;

(d) if motor fuel is sold upon the final liquidation of a business; or

(e) if motor fuel is advertised, offered for sale, or sold by a fiduciary or other officer under the order or direction of a court.

(5) Notice required under this section is not sufficient unless the subject of the sale is kept separate from other stocks and is clearly and legibly marked with the reason for the sale and any advertisement of the goods indicates the same facts and the quantity to be sold.

(6) A wholesaler or retailer may advertise, offer to sell, or sell motor fuel at a price made in good faith to meet the price of a competitor who is selling the same or a similar product of like grade and quality. The price of motor fuel advertised, offered for sale, or sold under the exceptions in subsection (4) may not be considered the price of a competitor and may not be used as a basis for establishing prices below cost, and the price established at a bankruptcy sale may not be considered the price of a competitor under the provisions of this section.

(7) If a wholesaler sells motor fuel to another wholesaler, the former is not required to include in his selling price to the latter the cost of doing business as defined in 30-14-803, but the latter wholesaler, upon resale to a retailer, is subject to the provisions of this section.

(8) Evidence of advertisement, offering to sell, or sale of motor fuel at less than cost is prima facie evidence of intent to injure competitors or destroy or substantially lessen competition. (Terminates July 1, 1993 - sec. 9, Ch. 499, L. 1991.1"

Renumber: subsequent sections

4. Page 4, lines 7 and 8. Strike: "-- TERMINATION"

5. Page 4, line 9. Strike: "AND TERMINATES JULY 1, 1995" -END-

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1	HOUSE BILL NO. 216	1	outlet-at-less-than-the-
2	INTRODUCED BY DOHERTY, GRADY, HARRINGTON, HARPER, STRIZICH,	2	plusthecost-of-doing
3	BECK, KENNEDY, COCCHIARELLA, WALLIN, T. NELSON, STANG,	3	or-destroy- <u>competitors-o</u>
4	HARP, R. JOHNSON	4	or-substantially-lessen-
5		5	(2)A-retailer-may-
6	A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE-MOTOR-PUEL	6	deliveredcostofthe
7	MARKETINGUNPAIRPRACTICESLAW+PROVIDINGTHATAN	7	business-if-the-effect-i
8	Advertisement7opperingtosebb7-or-sabe-op-motor-fueb-at	8	or-substantially-lessen-
9	6899-Than-Cost-IS-Prima-Facie-Evidence-of-IntenttoInjure	9	(3) A-wholesaler-ma
10	ordestroycompetitors7injure-or-destroy-competition7-or	10	itselforanaffiliat
11	SUBSTANTIALLY-LESSEN-CONFERITION;-REMOVING THE MOTOR FUEL	11	transfer-price-lower-tha
12	MARKETING UNFAIR PRACTICES LAW; PROVIDING THAT AN	12	anotherretailmotor
13	ADVERTISEMENT, OFFERING TO SELL, OR SALE OF MOTOR FUEL AT	13	quantity-within-the-same
14	LESS THAN COST IS PRIMA FACIE EVIDENCE OF INTENT TO INJURE	14	toinjureordestroy-
15	OR DESTROY COMPETITORS, INJURE OR DESTROY COMPETITION, OR	15	competition.
16	SUBSTANTIALLY LESSEN COMPETITION; REMOVING THE TERMINATION	16	(4)The-provisions-
17	OF THE REGULATION OF RETAIL MOTOR FUEL PRICING; AMENDING	17	at-wholesale-or-a-sale-a
18	SECTION	18	ta)inan-isolated
19	SECTION 9, CHAPTER 499, LAWS OF 1991; AND PROVIDING AN	19	of-business;
20	IMMEDIATE EFFECTIVE DATE."	20	(b)if-motor-fuels-
21		21	sold-in-a-bonafidecl
22	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	22	discontinuingtradein
23	Section-1 Section-38-14-8847-MCA7-is-amended-to-read:	23	offer-to-selly-or-sale-s
24	#30-14-804(Temporary)-Below-cost-sale-prohibited(1)	24	the-quantity-of-the-moto
25	Awholesaler-may-not-sell-motor-fuel-to-a-retail-motor-fuel	25	or-to-be-sold;



1	outlet-at-less-than-the-delivered-costofthemotorfuel
2	plusthecost-of-doing-business-if-the-effect-is-to-injure
3	or-destroy- <u>competitors-or-to-injure-ordestroy</u> competition
4	or-substantially-lessen-competition.
5	<pre>t2)A-retailer-may-not-sell-motor-fuel-at-less-than-the</pre>
6	deliveredcostofthemotorfuel-plus-the-cost-of-doing
7	business-if-the-effect-is-to-injure-ordestroycompetition
8	or-substantially-lessen-competition-
9	(3)A-wholesaler-may-not-sell-or-transfer-motor-fuel-to
10	itselforanaffiliate-for-resale-at-a-retail-outlet-at-a
11	transfer-price-lower-than-the-price-thewholesalercharges
12	anotherretailmotorfueloutletthatpurchases-a-like
13	quantity-within-the-same-competitive-area-if-theeffectis
14	toinjureordestroycompetition-or-substantially-lessen
15	competition.
16	(4)The-provisions-of-this-part-do-not-apply-to-asale
17	at-wholesale-or-a-sale-at-retail-made:
18	ta)inan-isolated-transaction-not-in-the-usual-course
19	of-business;
20	(b)if-motor-fuels-are-advertised7-offered-for-sale7-or
21	sold-in-a-bonafideclearancesaleforthepurposeof
22	discontinuingtradein-the-motor-fuel-and-the-advertising;
23	offer-to-selly-or-sale-states-the-reason-forthesaleand
24	the-quantity-of-the-motor-fuel-advertised;-offered-for-sale;

-2-HB 216 REFERENCE BILL AS AMENDED

1	<pre>(c)ifthe-motor-fuel-is-advertised7-offered-for-sale7</pre>
2	or-sold-as-imperfect-or-damaged-and-theadvertising7offer
3	ofsaieyorsaiestatesthe-reason-for-the-saie-and-the
4	quantity-of-the-motor-fuel-advertised,-offered-for-sale,or
5	sold;
б	<pre>(d)if-motor-fuel-is-sold-upon-the-final-liquidation-of</pre>
7	a-business;-or
8	{e}ifmotorfuel-is-advertised;-offered-for-sale;-or
9	sold-by-a-fiduciary-or-otherofficerundertheorderor
10	direction-of-a-court;
11	(5)Noticerequiredunderthissectionisnot
12	sufficient-unless-the-subject-of-the-sale-iskeptseparate
13	from-other-stocks-and-is-clearly-and-legibly-marked-with-the
14	reasonforthesaleandanyadvertisement-of-the-goods
15	indicates-the-same-facts-and-the-quantity-to-be-sold-
16	(6)A-wholesaler-or-retailer-mayadvertise;offerto
17	sellyorsellmotor-fuel-at-a-price-made-in-good-faith-to
18	meet-the-price-of-a-competitor-who-is-selling-the-same-ora
19	similarproductoflikegradeand-qualityThe-price-of
20	motor-fuel-advertised;-offered-for-sale;-or-soldunderthe
21	exceptions-in-subsection-(4)-may-not-be-considered-the-price
2.2	ofacompetitorandmaynotbeusedasabasis-for
23	establishing-prices-below-costy-and-the-price-established-at
24	. a-bankruptcy-sale-may-notbeconsideredthepriceofa
25	competitor-under-the-provisions-of-this-section-

1	{7}Ifawholesalersellsmotorfueltoanother
2	wholesalery-the-former-is-not-requiredtoincludeinhis
3	sellingpricetothe-latter-the-cost-of-doing-business-as
4	defined-in-30-14-8037-but-the-latter-wholesaler7-upon-resale
5	to-a-retailery-is-subject-to-the-provisions-of-this-section;
6	<u> 187Bvidence-of-advertisement7offeringtosell7or</u>
7	sale-of-motor-fuel-at-less-than-cost-is-prima-facie-evidence
8	of intent-to-injure-competitors-or-destroy-or-substantially
9	lessen-competition:-(Perminates-July-171993sect97Ch;
10	499 7- 6-1991-; *
11	SECTION 1. SECTION 30-14-804, MCA, IS AMENDED TO READ:
12	"30-14-804. (Temporary)-Below-cost sale prohibited. (1)
13	A wholesaler may not sell motor fuel to a retail motor fuel
14	outlet at less than the delivered cost of the motor fuel
15	plus the cost of doing business if the effect is to injure
16	or destroy competitors or to injure or destroy competition
17	or substantially lessen competition.
18	(2) A retailer may not sell motor fuel at less than the
19	delivered cost of the motor fuel plus the cost of doing
20	business if the effect is to injure or destroy competitors
21	or to injure or destroy competition or substantially lessen
22	competition.
23	(3) A wholesaler may not sell or transfer motor fuel to

(3) A wholesaler may not sell or transfer motor fuel to
itself or an affiliate for resale at a retail outlet at a
transfer price lower than the price the wholesaler charges

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another retail motor fuel outlet that purchases a like
 quantity within the same competitive area if the effect is
 to injure or destroy competitors or to injure or destroy
 competition or substantially lessen competition.

5 (4) The provisions of this part do not apply to a sale 6 at wholesale or a sale at retail made:

7 (a) in an isolated transaction not in the usual course
 8 of business;

9 (b) if motor fuels are advertised, offered for sale, or 10 sold in a bona fide clearance sale for the purpose of 11 discontinuing trade in the motor fuel and the advertising, 12 offer to sell, or sale states the reason for the sale and 13 the quantity of the motor fuel advertised, offered for sale, 14 or to be sold;

15 (c) if the motor fuel is advertised, offered for sale, 16 or sold as imperfect or damaged and the advertising, offer 17 of sale, or sale states the reason for the sale and the 18 quantity of the motor fuel advertised, offered for sale, or 19 sold;

(d) if motor fuel is sold upon the final liquidation of
 a business: or

(e) if motor fuel is advertised, offered for sale, or
sold by a fiduciary or other officer under the order or
direction of a court.

25 (5) Notice required under this section is not

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sufficient unless the subject of the sale is kept separate from other stocks and is clearly and legibly marked with the reason for the sale and any advertisement of the goods indicates the same facts and the quantity to be sold.

(6) A wholesaler or retailer may advertise, offer to 5 6 sell, or sell motor fuel at a price made in good faith to meet the price of a competitor who is selling the same or a 7 similar product of like grade and quality. The price of 8 9 motor fuel advertised, offered for sale, or sold under the 10 exceptions in subsection (4) may not be considered the price of a competitor and may not be used as a basis for 11 establishing prices below cost, and the price established at 12 13 a bankruptcy sale may not be considered the price of a 14 competitor under the provisions of this section.

15 (7) If a wholesaler sells motor fuel to another 16 wholesaler, the former is not required to include in his selling price to the latter the cost of doing business as 17 18 defined in 30-14-803, but the latter wholesaler, upon resale 19 to a retailer, is subject to the provisions of this section. (8) Evidence of advertisement, offering to sell, or 20 sale of motor fuel at less than cost is prima facie evidence 21 of intent to injure competitors or destroy or substantially 22 23 lessen competition. (Perminates--July-17-1993--sect-97-Cht 24 4997-5--1991-;*

25 Section 2. Section 9, Chapter 499, Laws of 1991, is

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1 amended to read:

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2 "Section 9. Effective date -----termination --

3 TERMINATION. [This act] is effective on passage and approval

4 and-terminates-July-1,-1993 AND-TBRMINATES-JULY-1,-1995."

5 NEW SECTION. Section 3. Effective date. [This act] is

6 effective on passage and approval.

-End-

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