

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.
FEBRUARY 18, 1993	THIRD READING, PASSED. AYES, 78; NOES, 21.
FEBRUARY 19, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 20, 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

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 7, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *216*
 2 INTRODUCED BY *Donity*
 3 *Back*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MOTOR FUEL
 5 MARKETING UNFAIR PRACTICES LAW; PROVIDING THAT AN
 6 ADVERTISEMENT, OFFERING TO SELL, OR SALE OF MOTOR FUEL AT
 7 LESS THAN COST IS PRIMA FACIE EVIDENCE OF INTENT TO INJURE
 8 OR DESTROY COMPETITORS, INJURE OR DESTROY COMPETITION, OR
 9 SUBSTANTIALLY LESSEN COMPETITION; REMOVING THE TERMINATION
 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."

13
 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)
 17 A wholesaler may not sell motor fuel to a retail motor fuel
 18 outlet at less than the delivered cost of the motor fuel
 19 plus the cost of doing business if the effect is to injure
 20 or destroy competitors or to injure or destroy competition
 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
 3 transfer price lower than the price the wholesaler charges
 4 another retail motor fuel outlet that purchases a like
 5 quantity within the same competitive area if the effect is
 6 to injure or destroy competition or substantially lessen
 7 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

1 sold by a fiduciary or other officer under the order or
2 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
11 similar product of like grade and quality. The price of
12 motor fuel advertised, offered for sale, or sold under the
13 exceptions in subsection (4) may not be considered the price
14 of a competitor and may not be used as a basis for
15 establishing prices below cost, and the price established at
16 a bankruptcy sale may not be considered the price of a
17 competitor under the provisions of this section.

18 (7) If a wholesaler sells motor fuel to another
19 wholesaler, the former is not required to include in his
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
25 of intent to injure competitors or destroy or substantially

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 NEW SECTION. **Section 3.** Effective date. [This act] is
9 effective on passage and approval.

-End-

APPROVED BY COMM. ON BUSINESS
AND ECONOMIC DEVELOPMENT

HOUSE BILL NO. 216

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

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING 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 THE TERMINATION
OF THE REGULATION OF RETAIL MOTOR FUEL PRICING; AMENDING
SECTION 30-14-804, MCA, AND SECTION 9, CHAPTER 499, LAWS OF
1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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--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--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

1 a-business, or

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

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

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

20 (7) If a wholesaler sells motor fuel to another
21 wholesaler, the former is not required to include in his
22 selling price to the latter the cost of doing business as
23 defined in 38-14-803, but the latter wholesaler, upon resale
24 to a retailer, is subject to the provisions of this section;

25 (8) Evidence of advertisement, offering to sell, or

1 sale of motor fuel at less than cost is prima facie evidence
2 of intent to injure competitors or destroy or substantially
3 lessen competition. (Terminates July 17, 1993 sec. 9, Ch.
4 499, Laws of 1991.)

5 **Section 1.** Section 9, Chapter 499, Laws of 1991, is
6 amended to read:

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

HOUSE BILL NO. 216

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

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING 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 THE TERMINATION
OF THE REGULATION OF RETAIL MOTOR FUEL PRICING; AMENDING
SECTION 30-14-004, MCA, AND SECTION 9, CHAPTER 499, LAWS OF
1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 4. Section 30-14-004, MCA, is amended to read:

"30-14-004.---(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--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--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

1 a-business; or

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

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

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

20 (7)--If---a--wholesaler--sells--motor--fuel--to--another
21 wholesaler,--the--former--is--not--required--to--include--in--his
22 selling--price--to--the--latter--the--cost--of--doing--business--as
23 defined--in--30-14-003,--but--the--latter--wholesaler,--upon--resale
24 to--a--retailer,--is--subject--to--the--provisions--of--this--section;

25 (8)--Evidence--of--advertisement,--offering--to--sell,--or

1 sale--of--motor--fuel--at--less--than--cost--is--prima--facie--evidence
2 of--intent--to--injure--competitors--or--destroy--or--substantially
3 lessen--competition. (Terminates--July--1,--1993--sec--9,--Ch--
4 499,--hr--1991,.)"

5 Section 1. Section 9, Chapter 499, Laws of 1991, is
6 amended to read:

7 "Section 9. Effective date -----termination --
8 TERMINATION. (This act) is effective on passage and approval
9 and--terminates--July--1,--1993 AND TERMINATES JULY 1, 1995."

10 NEW SECTION. Section 2. Effective date. (This act) is
11 effective on passage and approval.

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 4
March 27, 1993

Page 2 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.

Signed: *W. Yellowtail*
Senator William "Bill" Yellowtail, Chair

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: "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 1/3 of the delivered cost of motor fuel for wholesale sales and 6/10 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

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

~~(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.

~~(5)(4)~~ "Distributor" means a person engaged in the purchase of motor fuel for resale to a retail motor fuel outlet.

~~(6)(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.

~~(8)(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

Mr. Amd. Coord.
Sec. of Senate

Doherty
Senator Carrying Bill

691308SC.Sma

SENATE
HB 216

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.

~~(15)~~(14) "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 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;

(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.~~

~~(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

Page 2 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.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

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;

(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.)"

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

HB 216

701247SC.San

Amd. Coord.
Sec. of Senate

Donnelly
Senator Carrying Bill

701247SC.San

HOUSE BILL NO. 216

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

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING 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 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 THE TERMINATION
OF THE REGULATION OF RETAIL MOTOR FUEL PRICING; AMENDING
SECTION 30-14-804, MCA, AND SECTION 30-14-804, MCA, AND
SECTION 9, CHAPTER 499, LAWS OF 1991; AND PROVIDING AN
IMMEDIATE EFFECTIVE DATE."

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

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 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 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

{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, Lr. 1991.)

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

1 another retail motor fuel outlet that purchases a like
2 quantity within the same competitive area if the effect is
3 to injure or destroy competitors or to injure or destroy
4 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;

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

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

25 (5) Notice required under this section is not

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

5 (6) A wholesaler or retailer may advertise, offer to
6 sell, or sell motor fuel at a price made in good faith to
7 meet the price of a competitor who is selling the same or a
8 similar product of like grade and quality. The price of
9 motor fuel advertised, offered for sale, or sold under the
10 exceptions in subsection (4) may not be considered the price
11 of a competitor and may not be used as a basis for
12 establishing prices below cost, and the price established at
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
17 selling price to the latter the cost of doing business as
18 defined in 30-14-803, but the latter wholesaler, upon resale
19 to a retailer, is subject to the provisions of this section.

20 (8) Evidence of advertisement, offering to sell, or
21 sale of motor fuel at less than cost is prima facie evidence
22 of intent to injure competitors or destroy or substantially
23 lessen competition. ~~†Terminates--July-17-1993--sec-97-Ch-~~
24 ~~4997-B7-199177"~~

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

1 amended to read:

2 "Section 9. Effective date -----termination --
3 TERMINATION. [This act] is effective on passage and approval
4 ~~and-terminates-July-17-1993 AND-TERMINATES-JULY-17-1995.~~"

5 NEW SECTION. Section 3. Effective date. [This act] is
6 effective on passage and approval.

-End-